

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Tr.C.M.P.No.384 of 2014

and

M.P.No.1 of 2014

M/s.Micro Enterprises
Rep. By its Managing Partner B.Jayakumar,
Having Office at No.58, New No.7,
Kamaraj Nagar, 8th Street,
(M.P.M. Street), Chennai - 600 039. .. Petitioner/Defendant

Vs

Dr.Mohamed Afsal .. Respondent/Plaintiff

Prayer:Civil Revision Petition filed under Section 24 of Civil Procedure Code to withdraw O.S.No.67 of 2014 pending on the file of the Sub Court, Attur and to transfer the same to City Civil Court, Chennai.

For Petitioner : Mr.C.Shankaar

For Respondent : Mr.R.Marudhachalamurthy

O R D E R

The petitioner, who is the defendant in O.S.No.67 of 2014 has come forward with this petition to transfer O.S.No.67 of 2014 from the file of the Sub Court, Attur to the file of the City Civil Court at Chennai.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3.Learned counsel for the petitioner submitted that the respondent as a plaintiff filed a suit in O.S.No.67 of 2014 on the file of the Sub Court, Attur for the following reliefs:

- a) directing the defendant to take back his blood analyzer machine Pentagon Hematology Analyzer Model PHA238 and to repay the plaintiff its price

Rs.2,15,000/- (Rupees Two Lakhs Fifteen Thousand Only) along with interest at the rate of Re.1/- per hundred per month from the date of filing of the suit till its realization;

b) directing the defendant to pay the plaintiff Rs.1,00,000/- (Rupees One Lakh Only) the price of the plaintiffs old blood analyzer machine along with interest at the rate of Re.1/- per hundred per month from the date of filing of the suit till its realization;

c) directing the defendant to pay the plaintiff a compensation of Rs.1,00,000/- (Rupees One Lakh Only) to his mental agony due to the defendant's deficient service and unfair trade practice.

He would submit that in the document in page No.1 of the typed set of papers, namely, the invoice it was specifically mentioned that the invoice is subject to the Chennai jurisdiction only and so, only the Court at Chennai have the jurisdiction. He further submitted that the petitioner/defendant is residing at Chennai and the machine has been purchased at Chennai but delivered to the respondent/plaintiff in his place and installed there. Hence as per Section 19 of Civil Procedure Code the Court at Chennai alone have the jurisdiction to entertain the suit. Therefore, he prayed for transfer of the suit in O.S.No.67 of 2014 from the file of the Sub Court, Attur.

4.Resisting the same, the learned counsel for the respondent would submit that the cause of action arose at Attur where the respondent/plaintiff is residing . He would further submit that in paragraph No.9 of the plaint it was specifically mentioned that the petitioner/defendant came over to Attur where the respondent/plaintiff is having his Hospital and he sold the machine. But the machine was not in a good condition and hence, the respondent/plaintiff was constrained to file a suit. He would also submit that even in the invoice it was stated as "Above mentioned products are delivered in good condition at Chennai, This Invoice is subject to CHENNAI JURISDICTION only". But here, the goods are delivered only within the jurisdiction of Attur Court. In the invoice, jurisdiction of the Court was not specifically mentioned. Hence, he prayed for dismissal of the petition.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The respondent/plaintiff purchased Pentagon Hematology Analyzer PHA23s and admittedly has been installed by the petitioner/defendant where the respondent/plaintiff having his Hospital and three years warranty was given. Since there was some defects there was exchange of communication. Since it was

not replaced even after issuing legal notice, the respondent/plaintiff was constrained to file a suit for the aforesaid reliefs. Now, the only point to be decided is whether in the invoice it was conferred jurisdiction to the Court at Madras? Usually in the invoice it will be specifically mentioned that if there is any dispute, it is subject to the jurisdiction of the Court at Chennai. But here in the invoice the Court jurisdiction has not been mentioned and in that it was mentioned as follows:

"Above mentioned products are delivered in good condition at Chennai, This Invoice is subject to CHENNAI JURISDICTION only"

7.Further, in paragraph No.9 of the plaint, it was specifically mentioned that cause of action arose at Attur. As per Section 19 of Civil Procedure Code, if some portion of cause of action arose at the plaintiff's place, he may very well file a suit before the Court in that place. In such circumstances, merely because the petitioner/defendant is residing at Chennai and major portion of cause of action arose within the jurisdiction of Attur, I do not find any reason for transfer. Hence, the Transfer Civil Miscellaneous Petition deserves to be dismissed.

8.In the result, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cse
To

The Subordinate Judge, Attur.

+ 1 cc to Mr.C. Shankar, Advocate Sr.60994
+ 1 cc to Mr.R. Marudhachalamurthy, Advocate Sr.61487

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SK(CO)

EU 27.11.15