

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 17th March, 2015
Judgment Delivered on: 26th March, 2015

+ **FAO(OS) 32/2015**

HEM CHAND SHARMA & ANR

.....Appellants

versus

M/S INNOVATIVE TEXTILES LTD AND ANR.Respondents

Advocates who appeared in this case:

For the Petitioner: Mr Sanjay Katyal, Advocate

For the Respondents: Mr Kirti Uppal, Sr Advocate with Salar M Khan,
Advocates

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The appellants have filed the present appeal impugning the judgment dated 15.10.2014 whereby the application filed by the appellants under Order 7 Rule 10 & 11 of the Code of Civil Procedure seeking return/rejection of the plaint has been dismissed.

2. The respondents have filed a suit against the appellants for recovery of a sum of Rs. 2,20,50,000/-. As per the

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respondents/plaintiffs, in terms of an Agreement to Sell dated 28.09.2006, the respondent No.1 paid a sum of Rs. 2,20,50,000/- to Appellant No. 1/defendant No.1 as earnest money towards sale consideration of Rs. 7.35 Crores qua sale of a property measuring 61 bighas and 5 biswas of land situated at village Bather, Pargana Doon, Tehsil Kasauli, District Solan, Himachal Pradesh.

3. On completion of the pleadings, the Court framed the following issues:

- “(i) Whether the Delhi Court has the jurisdiction to try and decide the present suit? OPP
- (ii) Whether the suit is liable to be rejected under Order 7 Rule 11(a) CPC? OPD
- (iii) Whether the plaintiff is entitled to a decree of Rs2,20,50,000/-? If so, to what effect? OPP
- (iv) Whether the plaintiff is entitled to compound interest at the rate of 18% per annum with effect from 28.09.2006? If so, on what amount and for what period? OPP
- (v) Relief.”

4. The appellants filed the subject application under Order VII Rule 10 and Order VII Rule 11 CPC. It is contended that the present suit under Order XXXVII CPC was not maintainable as there was no liability, debt or liquidated demand which was owed by the appellants to the respondents. It is contended that refund of the earnest money

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was dependent upon various conditions as laid down in the agreement to sell and since the respondent has not fulfilled the same, the said amount was not payable and as such the suit was not maintainable under Order XXXVII CPC. It is contended that the plaintiff fails to disclose any cause of action which would entitle the plaintiff to a summary judgment.

5. It is further contended that the Court had no territorial jurisdiction to entertain this suit inasmuch as the property is situated outside the territorial limits of the Court and no part of the cause of action had arisen within the territorial limits of the Court. It is contended that the agreement to sell dated 28.09.2006 and the supplementary agreement dated 17.10.2006 had been executed beyond the territorial limits of the Court.

6. Per contra, the contention of the respondent is that the appellant had admittedly received the sum of Rs 2,20,50,000/- and the suit was for recovery of the said amount and as such the suit maintainable.

7. With regard to the issue of territorial jurisdiction, it is contended that the suit was not for specific performance of the agreement to sell but was for refund of money and the discussions between the parties had taken place in Delhi and even the supplementary agreement dated 17.10.2006 was executed in Delhi

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within the territorial limits of the Court and part of cause of action had arisen in Delhi.

8. Having heard the learned counsel for the parties, we are of the view that the impugned order does not suffer from any infirmity and there is no merit in the contentions raised by the appellant.

9. No doubt, that the respondents have filed a suit invoking the summary jurisdiction under Order XXXVI CPC but the perusal of the records show that the appellants have been granted leave to defend, Written Statement has been filed, issues have been framed and the matter has been set down for trial. An issue has been specifically framed as to whether the plaintiff is entitled to a decree in the sum of Rs. 2,20,50,000/-. Further, it cannot be said that the suit on its own showing is not maintainable or that there is no cause of action disclosed in the plaint. It is averred in the plaint that the said amount has been paid to the defendants and they are liable to refund the same.

10. With regard to the territorial jurisdiction, the learned Single Judge has noticed the averments of the respondent in the plaint that various meetings took place between the parties at Delhi prior to the entering into agreement to sell dated 28.09.2006. It is averred that the sale consideration was paid by a cheque issued on a bank in Delhi. The agreement dated 17.10.2006 is also stated to have been executed between the parties at Delhi. The learned Single Judge has noticed

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from paragraphs 18 to 20 of the plaint that the averments in the plaint disclose cause of action.

11. It is no longer *res integra* that it is only the averments in the plaint and the supporting documents filed by the Plaintiff that have to be examined for deciding an application under Order VII Rule 10 CPC and Order VII Rule 11 CPC. The defence raised by the defendants is not to be considered at this stage.

12. No doubt, the appellants/defendants in their written statement have denied the averments made in the plaint and also their liability but firstly the written statement is not to be considered at this stage and secondly that is a disputed question of fact which would be settled after trial. At this stage, all that has to be examined is whether the plaint discloses a cause of action or not.

13. The learned Single Judge, on examination of the plaint, has found that the plaint does disclose a cause of action and does *prima facie* show that part of the cause of action has arisen within the territorial limits of this Court. On examination of the plaint, we do not find any infirmity in the finding returned by the learned Single Judge that the plaint does disclose a cause of action.

14. In view of the above, we find no infirmity in the impugned order, we do not find any merit in the appeal. The appeal is,

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accordingly, dismissed leaving the parties to bear their own costs. We make it clear that we have not examined the dispute between the parties on merit and nothing stated herein above shall affect the merits of the case of either of the parties.

SANJEEV SACHDEVA, J.

MARCH 26, 2015
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BADAR DURREZ AHMED, J.

