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

+ **FAO 222/2011 & CM No. 8970/2011**

MANISH KUMAR Appellant
Through: Mr Sukhbir Singh, Adv.

versus

PROMOD KUMAR & ANR Respondents
Through: Mr Naveen Kr. Chaudhary, Adv. for R-1.
Mr Anil Grover & Mr Mishal Vij, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

24.11.2015

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1. This is a matter in which the trial court, vide the impugned judgement, has returned the plaint to the appellant/ plaintiff, on the ground that it did not have the territorial jurisdiction in respect of the matter. The appellant/ plaintiff had filed a suit for recovery in the sum of Rs. 7.48 lacs. Respondent no.1/ defendant no.1, who is the President of the Co-operative Group Housing Society, had, according to appellant no.1/ plaintiff no.1, induced her husband to invest a sum of Rs. 5.50 lacs; albeit on a refundable basis.

1.1 It is the case of the appellant/ plaintiff that Respondent no.1/ defendant no.1 had represented that he would refund the amount in case the plot was not allotted, along with interest at the rate of 12% per annum.

2. It is not disputed before me by counsels for the appellant / plaintiff and respondent no.1/ defendant no.1, that respondent no.2/ defendant no.2 has returned a sum of Rs. 12.70 lacs to Respondent no.1/ defendant no.1.

This refund was made on 20.05.2005 vide cheque bearing no. 076169, drawn on IDBI Bank Ltd., Panchkula, Haryana. My attention in this behalf has been drawn by counsel for respondent no.1/defendant no.1 to, paragraph 9 of the written statement under the heading reply on merits.

3. The appellant/ plaintiff being aggrieved by the fact that money invested by them was not returned, instituted a suit for recovery from which the instant appeal arises.

3.1 As noticed above, the trial court, however, came to the conclusion that it did not have the territorial jurisdiction to try and entertain the suit and accordingly, ordered return of plaint.

4. Paragraph 15 of the plaint reads as follows:

“.... That this Hon’ble Court has the jurisdiction to entertain and adjudicate the present suit since the payment of loan/ invested amount was paid to and received by the Defendant No. 1 at Delhi. The cause of action to file the suit also arose at Delhi when the Defendant No.1 had requested for the said loan amount from the plaintiff at Delhi and when the said loan amount was paid at Delhi by the plaintiff. Thus, this Hon’ble Court has the jurisdiction to entertain and decide the suit....”

5. According to me, a perusal of paragraph 15 of the plaint would suggest that it was a mixed question of fact and law, which could not have been decided without permitting the appellants to lead evidence in the matter.

5.1 Besides, at this stage, the trial court ought to have accepted the assertions made by the appellant/ plaintiff, without embarking upon an inquiry as to the correctness of the averments made in the plaint. [See observations made in judgement dated 06.11.2015, passed in FAO

214/2015, titled: *ICICI Bank Ltd. Vs. Astha Kumar and Anr.* in paragraph 8.1]. The same being apposite, are extracted hereafter :-

“.....8.1.In ascertaining as to whether or not the concerned court has territorial jurisdiction, the court should take the facts pleaded in support of the cause of action into consideration without embarking upon an enquiry, at that stage, as to the correctness or otherwise of the facts so stated. In this context, the following observations of the Supreme Court made in *Oil and Natural Gas Commission vs Utpal Kumar Basu & Ors.* (1994) 4 SCC 711 at page 717, in paragraph 6 being apposite, are extracted hereinafter:

"....6. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kour v. Partab Singh Lord Watson said:

"... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether

in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court...."

(Emphasis is mine)

6. Accordingly, the impugned judgement is set aside. The parties and their counsels will appear before the trial court, on 09.12.2015. The trial court will recommence the proceedings in the suit from the point at which it is presently positioned.

7. The appeal and the application are, accordingly, disposed of.

RAJIV SHAKDHER, J

NOVEMBER 24, 2015

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