

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

+ **C.R.P. 41/2015 & CM 5485/2015 (stay)**

% Decided on: 21st May, 2015

AMS BUILDING MATERIALS Petitioner
Through Mr. Jojo Jose, Adv.

versus

POOJA GARG Respondent
Through Mr. Neeraj Jain, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 5th September, 2014 disposing of the preliminary issue raised by the petitioner/defendant in Suit No. 220/13 titled as 'Smt. Pooja Garg Vs. M/s. AMS Building Materials', the petitioner M/s. AMS Building Material (in short M/s. AMS) files the present petition.
2. Issue No.2 framed by the learned Trial Court was "*Whether this Court has no territorial jurisdiction to entertain and try the present suit? (OPD)*". Arguments were addressed by the parties and vide the impugned order it was held that the Court at Delhi had territorial jurisdiction to entertain the suit and the trial court thus decided the issue against the petitioner/defendant and in favour of the plaintiff/respondent.
3. Smt. Pooja Garg filed a plaint for recovery of ₹2,57,137/- stating that she was the proprietor of M/s. Tirupati Traders which business was being

looked after by her manager/ special attorney Shri Jagveer Singh with the help of her husband. M/s. AMS has been purchasing kitchen accessories on credit from Smt. Pooja Garg and making payment on account of such purchases. Pooja Garg was maintaining accounts in ordinary course of business including accounts of M/s. AMS. Despite M/s. AMS paying ₹1 lakh on 24th August, 2011 there was an outstanding amount of ₹1,81,403/- as against the purchases made on credit from Smt. Pooja Garg by M/s. AMS. Despite several request M/s. AMS failed to make payment of ₹1,81,403/-, hence the suit for recovery of the principal amount along with the interest was filed. In paragraph relating to jurisdiction it was stated that the goods were supplied to defendant from Delhi and the plaintiff had raised bills towards the goods at Delhi and thus Delhi Court has jurisdiction to entertain and try the suit.

4. Vide the impugned order the learned Civil Judge held that since part of cause of action accrued in Delhi and even the payments were made to M/s. AMS at Delhi. Further the invoices raised by Smt. Pooja Garg mentioned in the terms and conditions “*subject to Delhi jurisdiction only*”, thus the parties had agreed to subject themselves to the jurisdiction of Delhi Court only. Thus, this Court had territorial jurisdiction to entertain and try the present suit.

5. Learned counsel for the petitioner urges that as per Article 14 of the Limitation Act, the limitation starts to run from the date of delivery and thus if no delivery is effected no cause of action arises. Since delivery of the goods was required to be effected at Trivandrum, the cause of action arises at Trivandrum and there being no cause of action at Delhi, the Court at Delhi had no territorial jurisdiction to entertain and try the suit.

6. The contention of learned counsel for the petitioner fails to consider the fundamental fact that the cause of action comprises bundle of facts which are relevant for determination of the cause between the parties. Indubitably, the delivery at Trivandrum was a fact which comprised cause of action, however the same was not the only fact which gave rise to cause of action. The delivery was preceded by an agreement entered into between the parties to supply the goods from Delhi at Trivandrum and payment was to be made at Delhi. Since both the Courts had jurisdiction to entertain the suit and the invoice noted the condition “*subject to Delhi jurisdiction only*”, the parties could have validly contracted to submit to the jurisdiction of one Court as against both or all the Courts where cause of action arose.

7. In A.B.C. Laminart Pvt. Ltd. & Anr. Vs. A.P. Agencies, Salem AIR 1989 SC 1239 it was held:

“15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have been performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed

there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.”

8. In view of the aforesaid discussion, I find no illegality in the impugned order. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 21, 2015
‘ga’