

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2016

CAV ON : 18.04.2016

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD).No.4495 of 2013

and

M.P.No.1 of 2013

M/s.Irbaz Shoes

Represented by its Proprietor,
No.2, (487), Kilpauk Garden Road,
Kilpauk,
Chennai - 600 010.

... Petitioner/Defendant

Vs.

M/s.Bostik India Private Limited,
Represented by its Technical
Service Executive Mr.J.Balaji,
No.W-393/9, 4th Floor,
A.R.Building, School Road,
Anna Nagar West Extension,
Chennai - 600 101.

... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order in I.A.No.1025/2012 in O.S.No.3954 of 2012, dated 20.09.2013 passed by the IV Assistant City Civil Court, Chennai.

For Petitioner : M/s.Mohammed Fayaz Ali

For Respondent : M/s.S.Parthasarathy

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O R D E R

Heard Mr.Mohammed Fayaz Ali, learned counsel for the Revision Petitioner and Mr.S.Parthasarathy, learned counsel for the Respondent.

2. The respondent in the Revision petition has originally filed in O.S.No.3954 of 2012 before the IV Assistant City Civil Court, Chennai, against the Revision Petitioner for recovery of

money for supplies of adhesives made between 09.10.2010 to 03.03.2011 to the tune of Rs.4,78,379/-. In the Plaint, it has been stated that the cause of action for the suit arose at Chennai where the Defendant Office is situated and the goods were purchased from the Office of the Plaintiff in Chennai.

2. Aggrieved by the filing of the above suit, the Revision Petitioner has preferred in I.A.No.1025 of 2012 in O.S.No.3954 of 2012 under Order VII Rule 10 of C.P.C praying that the Plaint be returned to be presented before the appropriate Court in which the suit should have been instituted since the terms and conditions of sale contained in the invoices at Clause 13 stated that "the condition of sale shall be construed in accordance with and governed by Law in India and the parties accept the exclusive jurisdiction of the Courts exercising jurisdiction over the territory in which the registered office of the company is situated viz., Bangalore".

3. The Plaintiff has filed a counter to the said Application stating the same has been filed only to protract the proceedings and to harass the Plaintiff and it has been further stated that the Office of the Revision Petitioner is situated at Kilpauk, Chennai which is well within the jurisdiction of the City Civil Court, Chennai, according to Section 20 of C.P.C. The IV Assistant City Civil Court by Order dated 20.09.2013, has dismissed the said Petition by holding that:

"On cursory reading of the Plaint averments, prima facie case is made out before this Court that this Court has ample jurisdiction to entertain and try the suit. Just because the head office of the Plaintiff is at Bangalore, the Petitioner cannot seek for return of Plaint, the litigation before this Court is so convenient to advance their respective cases and there is no question of any of the parties harassed by litigation filed at faraway place."

4. Aggrieved by the order passed in I.A.No.1025 of 2012, the present revision petition has been preferred.

5. The learned counsel for the Petitioner would contend that the Trial Court has failed to appreciate the condition prescribed in Clause 13 of the terms and conditions that specifically ousted the jurisdiction of all Court in Chennai and also submitted that the Trial Court erred in observing that no cause of action has arisen in Bangalore whereas the entire cause of action has arisen only in Bangalore. In support of his contention, the learned counsel for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in New Moga Transport Company Vs. United India Insurance Company Limited,

2004 (3) CTC 154. It is his further contention that the Plaintiff is not entitled to go back on the explicit term with respect to jurisdiction of Courts and the Trial Court, in haste, has rejected the I.A filed by the Revision Petitioner under Order VII Rule 10 of C.P.C without appreciating the said submission in the right perspective.

6. The Respondent in the course of his submission has brought to the notice of this Court, the fact that the Trial Court while dismissing the Application filed by the Petitioner has taken note of the fact that there is no iota of evidence produced from the side of the Petitioner to indicate that clause 13 of the terms and conditions was accepted by the petitioner in letter and spirit. Further, it has been contended that the order of supply was made only to the Kilpauk Branch of the Revision Petitioner and goods were supplied to the Petitioner at Ambur and hence, the suit should be filed at Ambur or Chennai only. The other aspect that has also been canvassed by Mr.Parthasarathy is that when no transaction has taken place within the jurisdiction of Courts in Bangalore, simply because the head office of the plaintiff is situated at Bangalore, cannot be a ground for return of the Plaint by the Court.

7. The issue that has to be decided by this Court revolves around a narrow compass as to the scope of Order VII Rule 10 of C.P.C and on what grounds the Court shall return the Plaint to be represented before the appropriate Court. The scope of Order VII Rule 10 of C.P.C is very limited and the Court shall return the Plaint where the Court has no jurisdiction at all to entertain the suit and when no cause of action has arisen within the jurisdiction of the Court. The legislative intent behind Order VII Rule 10 of C.P.C is to ensure that a Court having no jurisdiction shall direct the Plaintiff to approach the appropriate Court which would have jurisdiction over the said matter by returning the Plaint thereby affording him an opportunity to pursue the matter in accordance with law. It is also pertinent to note that Rule 10A and 10B which have been added by virtue of the C.P.C (Amendment Act, 1976) elaborates the power of the Court for returning the Plaint and the manner in which the same ought to be done.

8. Therefore, the first aspect that has to be considered before entertaining an Application under Order VII Rule 10 of C.P.C is to ascertain whether the Court has any jurisdiction to entertain the matter or not or whether at least a part of cause of action has arisen within its jurisdiction. Section 20 of C.P.C elucidates where the suit can be filed as stated below:

20. Other Suits to be instituted where defendants reside or cause of action arises-Subject to the

limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction;

(a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation: A Corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

9. A cursory perusal of Section 20 makes it very clear that a suit shall be filed where the Defendant resides or the cause of action has arisen including where the Principal Office or a Subordinate Office of a Corporation is situated. In the case at hand, it is even not disputed by the Revision Petitioner that its office is situated at Chennai, which is well within the jurisdiction of the IV Assistant City Civil Court, Chennai. Further, it has also been pointed out that considerable part of the transactions have also taken place within the jurisdiction of the Court in which the suit has been filed. Thus, the Revision Petitioner has not made out a case for invocation of Order VII Rule 10 of C.P.C, since it has not been established that the Court in which the suit has been filed has no jurisdiction at all to entertain the matter. At this juncture, it is relevant to point out that the decision cited by the petitioner is clearly distinguishable on facts and would not apply to the present case.

10. Once when the Revision Petitioner has not been able to demonstrate that the Court in which the suit has been instituted has no jurisdiction at all, I am of the opinion that the Trial

Court was perfectly justified in dismissing the Application filed under Order VII Rule 10 of CPC for returning the Plaint. The sine qua non for an Application to be sustainable under Order VII Rule 10 of C.P.C is that the Court in which the suit has been filed should be a Court that has no jurisdiction at all to entertain the suit and the said fact has to be convincingly established.

11. In light of the above said discussions, I do not find any merit in the present Civil Revision Petition and the same is dismissed. It is however clarified that the aspect as to whether the Courts at Chennai have territorial jurisdiction is not being finally decided by this order and this issue will be decided by the Trial Court after evidences led by the parties on all issues. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The IV Assistant City Civil Court,
Chennai.

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.25186

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C.R.P(PD)No.4495 of 2013

NM(CO)
CA(09/05/2016)

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