

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.861 OF 2012

JUDGMENT:

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The defendant in O.S.No.1989 of 2005 on the file of XI Senior Civil Judge, (Fast Track Court), City Civil Court, Hyderabad, and the respondent in A.S.No.363 of 2009 on the file of XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, preferred this Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the decree and judgment dated 23.04.2012 passed by the appellate Court in A.S.No.363 of 2009 reversing the judgment dated 17.04.2009 passed by the trial Court in O.S.No.1989 of 2005.

For convenience of reference, the parties herein will be referred to as they were arrayed before the trial Court in O.S.No.1989 of 2005.

The plaintiff (respondent in this appeal) filed the suit for recovery of Rs.2,07,594.15 ps. together with interest at 12% per annum alleging that it is a public limited company incorporated under the Companies Act, having its registered office at Santhoshnagar, Saidabad, Hyderabad, engaged in the business of manufacture and sale of Ayurvedic Medicines, and the defendant is one of its customers, to whom it used to supply Ayurvedic Medicines from time to time on credit basis, and as per the running statement of account maintained by it, the defendant became due a sum of Rs.1,85,352.15 ps. as on 31.03.2004.

Despite several demands, the defendant did not discharge the due amount. Hence, legal notice, dated 21.09.2005, demanding the defendant to pay the due amount, as referred to above, was issued, but no purpose was served. Hence, the plaintiff filed the suit.

The defendant filed written statement denying its liability to pay the suit amount and while pleading discharge of the suit amount to the Manager of Cuttack Depot of the plaintiff company, raised a specific contention that the trial Court has no territorial jurisdiction to entertain the suit, since no part of cause of action arose within the territorial jurisdiction of the trial Court, as the defendant is residing and carrying on business at Jeypore in Orissa State. On this ground also, the defendant prayed to dismiss the suit.

Basing on the above pleadings, the trial Court framed the following issues.

1. Whether plaintiff supplied Medicines to defendant from time to time on credit basis?
2. Whether the defendant received the goods on credit?
3. Whether the plaintiff is entitled to recovery of suit amount?
4. To what relief?

The trial Court did not frame any issue regarding its territorial jurisdiction and did not answer the same, dismissed the suit by judgment dated 17.04.2009.

Aggrieved by the decree and judgment, dated 17.04.2009, in O.S.No.1989 of 2005 passed by the trial Court, the plaintiff, being unsuccessful, preferred A.S.No.363 of 2009 on the file of XIII Additional Chief Judge, (Fast Track Court), City Civil Court, Hyderabad, whereby the Additional Chief Judge reversed the finding of the trial Court holding that the defendant is liable to pay the suit amount together with interest. However, the territorial jurisdiction of the trial Court was not decided while reversing the finding of the trial Court, and passed a decree in favour of the plaintiff and against the defendant. Thus, in the judgments of both the trial Court and the appellate Court, the question of territorial jurisdiction was not discussed and answered.

In this regard, Section 20 of C.P.C. is relevant provision, which deals with jurisdiction, which reads as under:

“Section 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.”

In the case on hand, the principal office of the plaintiff is at Santhoshnagar, Saidabad, Hyderabad, and the Branch is at Cuttack. But, according to Section 20 of C.P.C., the suit shall be filed where the defendant resides or works for gain or where part of cause of action arose for the suit. Actually, the defendant is residing at Jeypore in Orissa State and even as per the cause title, the cause of action for the suit arose only at Jeypore where Ayurvedic Medicines were delivered to the defendant. But, the suit is filed before the City Civil Court, Hyderabad, on the ground that a part of cause of action arose at Hyderabad.

Though a specific plea of lack of territorial jurisdiction was raised in paragraph No.4 of the written statement, the plaintiff affirmed that the trial Court has territorial jurisdiction, which gives rise to an issue under

Order XIV Rule 1 of C.P.C., since the plaintiff affirmed a fact which was denied by the defendant. But, the trial Court did not frame any issue and did not record any finding as regards the same. Though the same issue was raised before the appellate Court, no point for consideration was framed by the appellate Court, as required under Order XLI of C.P.C., and thereby the question of territorial jurisdiction was not decided though specifically disputed, and therefore the decree and judgment of the appellate Court is liable to be set aside, since the question relates to territorial jurisdiction. In those circumstances, while exercising power under Order XLI Rule 23 A of C.P.C., which permits the Court to remand the matter in any other circumstance not covered under Order XLI Rule 23 of C.P.C., this Court can frame an issue under Order XLI Rule 25 of C.P.C. remanding the matter or calling for a finding from the trial Court on the issue.

Considering the facts and circumstances of the case, I find that it is a fit case to set aside the decree and judgment of the appellate Court as well as the trial Court and to remand the same to the trial Court directing it to decide the territorial jurisdictional issue and decide the matter in accordance with law after affording a reasonable opportunity to both the parties.

Hence, the Second Appeal is allowed and the decree and judgment dated 23.04.2012 passed in A.S.No.363 of 2009 on the file of the XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, and the decree and judgment dated 17.04.2009 passed in O.S.No.1989 of 2005 on the file of XI Senior Civil Judge (Fast Track Court), City Civil Court, Hyderabad, are set aside and the suit is restored to its original file. The matter is remanded to the trial Court to decide the issue of territorial jurisdiction within a period of six months from the date of receipt of a copy of this order after affording a reasonable opportunity to both the parties. Further, both the appellant and the respondent are directed to appear before the trial Court on

23.08.2016. However, it is made clear that no further notice need be issued to both the appellant and the respondent for their appearance before the trial Court. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:03.08.2016

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