

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 6489 of 2015 (O&M)

Date of decision : 12-01-2016

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M/s Jagdamba Engineering Works through its
Prop./Partner Sh. Gulab Singh and another

.....Petitioners

Versus

M/s N.S Enterprises through its Prop. Anil Goyal

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. D.K Singal, Advocate for the petitioners.

Mr. J.S Hooda, Advocate for the respondent.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

C.M No. 22436-37-CII of 2015

C.M is allowed.

Documents (Annexures P-6 and P-7) are taken on record
subject to all just exceptions.

C.M No. 20959-CII of 2015

C.M is allowed subject to all just exceptions.

C.R No. 6489 of 2015

The petitioners-defendants have come up in the present revision petition against the order dated 13.8.2015 passed by the Civil Judge, Junior Division, Panchkula, whereby an application under Order 7 Rule 10 CPC filed by the petitioners-defendants for returning the plaint has been dismissed.

Respondent-plaintiff is a proprietorship firm and had placed an order of One Auto Hydro Copying Turning Machine of Rs.4,00,000/- and four sets of complete inspection Gauge MK-V, amounting to Rs.46,000/-, the order was placed at New Delhi (office of the defendants) and the total cost including the taxes was Rs.4,57,920/- as per Performa Invoice dated 30.10.2012. As per demand of the petitioners-defendants, the respondent-plaintiff paid an amount of Rs.2,00,000/- as advance amount on 25.7.2012 through RTGS for supply of aforesaid machinery which the petitioners-defendants promised to supply at the earliest and the remaining payment of Rs.2,57,920/- was agreed to be paid after getting the aforesaid machines by the respondent-plaintiff. Despite many requests by the respondent-plaintiff, the petitioners-defendants failed to supply the goods/machines as decided between them. A suit was filed for recovery of Rs.2,57,000/- (i.e Rs.2,00,000 as principal and Rs.57,000/- as interest applied at the rate of 18% up to 30.1.2014) (Annexure P-2). The petitioners-defendants filed an application under Order 7, Rule 10 CPC (Annexure P-4) for returning the plaint to the respondent-plaintiff on the ground that there was no

cause of action arising within the territorial jurisdiction of the trial Court at Panchkula. Reply to the application was filed under Order 7 Rule 10 CPC was filed by the respondent-plaintiff (Annexure P-5). The application has been dismissed by observing that the petitioners-defendants had agreed to deliver the machines at Panchkula, further the petitioners-defendants sent an e-mail requesting for time to deliver the goods at Panchkula. Thus the cause of action has arisen in Panchkula and the present suit is maintainable at Panchkula. and hence as per sub clause (c) of Section 20 CPC, Courts at Panchkula had the jurisdiction to entertain the suit.

Counsel for the petitioners-defendants has referred to the case of **Shrikant Gupta vs. Subodh Kumar Gupta 1993(2) PLR 621** and stated that the facts of the aforesaid case are directly applicable to the facts of the present case. In the case of ***Shrikant Gupta (supra)***, it was held by this Court that merely because the plaintiff was residing at Chandigarh or had been corresponding on behalf of the firm at Chandigarh or had been receiving statements of accounts at Chandigarh, it will not confer territorial jurisdiction of the Courts at Chandigarh. The trial Court has gone wrong in recording the finding that the goods were supposed to be delivered at Panchkula and suit is maintainable at Panchkula as per Section 20(c) of CPC. He has placed on record Annexures P-6 and Annexure P-7 to contend that the petitioners-defendants had sent an e-mail to the respondent-plaintiff informing that the machine will be dispatched by Mid February. As per the performa Invoice (Annexure P-7) it was

addressed to the respondent-plaintiff at 91, Phase -2, Badli Industrial Area, New Delhi. He has further informed the Court that the respondent-plaintiff-N.S Enterprises is in the list of approved vendors of the Railway Department as on January 2012 and in this list, the address of the Company has been given as 91, Phase -2, Badli Industrial Area, New Delhi and nowhere the address of the proprietorship firm has been given at Panchkula and the address given in the suit for recovery (Annexure P-2) is of a house at Panchkula. Hence as per invoice, the order was placed from 91, Phase -2, Badli Industrial Area, New Delhi and since the working office of the plaintiff-respondent was at Mohali, the delivery of goods cannot be made at Panchkula and from the e-mail (Annexure P-6) it is not made out that the machinery was to be delivered at Panchkula.

On the other hand, counsel for the respondent has argued that the order passed by the trial Court does not require any interference as all the transactions had been initiated by the Proprietor of the firm from Panchkula and hence the Court at Panchkula had territorial jurisdiction to entertain the claim.

Heard counsel for the parties. A perusal of the impugned order shows that the trial Court has returned a finding that the goods were supposed to be delivered at Panchkula. This fact is not made out perusing the e-mail (Annexure P-6). Vide e-mail (Annexure P-6), respondent had merely informed the respondent-plaintiff that the machines will be dispatched by mid February as it was under trial.

As per the performa invoice (Annexure P-7), the order was placed by

the respondent-plaintiff from the office situated at New Delhi and hence finding that the order was placed from Panchkula is also not rightly recorded by the trial Court. A perusal of Annexures P-6 and P-7 would further clarify that after accepting a certain amount as advance, remaining amount was payable and this document was not disputed by the counsel for the respondent. Another fact which has been clarified by the defendants-petitioners is that the respondent-plaintiff is an approved vendor of the railway Department and two addresses of the respondent-plaintiff have been given i.e one of Delhi and one of Mohali. For no intents and purposes, cause of action arose at Panchkula. A reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in the case of **M/s Hanil Era Textiles Ltd. VS. M/s Puromatic Filters (P) Ltd., 2004 (2) RCR (Civil) 808** wherein it was held that the parties cannot by any amount of agreement confer jurisdiction upon a Court where no part of cause of action arises and has no jurisdiction on the cause of action. In paragraph 7, the Supreme Court observed as under:

7. The effect of Clause 17 of the Purchase Order which mentions any legal proceedings arising out of the order shall be subject to the jurisdiction of the Courts in Mumbai, has to be examined in the aforesaid background. Under sub-sections (a) and (b) of Section 20, the place of residence of the defendant or where he carries on business or works for gain is determinative of the local limits of jurisdiction of the Court in which the suit is to be instituted. Sub-section (c) of Section 20 provides that the suit shall be instituted in a Court within the local limits of whose

jurisdiction the cause of action, wholly or in part, accrues. As shown above, in the present case, a part of cause of action had accrued in both the places, viz., Delhi and Bombay. In [Hakam Singh v. Gammon \(India\) Ltd.](#) 1971 (1) SCC 286, it was held that it is not open to the parties to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two Courts or more have under the Code of Civil Procedure jurisdiction to try a suit or a proceeding, an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. It was also held that such an agreement does not contravene [Section 28](#) of the Contract Act.

In the present case, neither the order was placed from Panchkula nor the goods were supposed to be delivered at Panchkula as per Annexures P-6 and P-7. The respondent-plaintiff being under the approved list of vendors had given the address as Village Kuranwala, Barwala Road, Dera Bassi, District Mohali and that nowhere the address of Panchkula for business transactions has been given in the official communications by the respondent-plaintiff. Mere giving the residential address of Panchkula will not confer the jurisdiction of the Panchkula Court as no transaction of the respondent-plaintiff was initiated from House No. 274, Sector-4, Panchkula. Applying the ratio of **M/s Hanil Era Textiles Ltd.'s** case (supra) and **Shrikant Gupta's** case (supra) to the facts of the present case, impuged order dated 13.8.2015 is set aside and the plaint is returned back to the respondent-plaintiff to be presented

before an appropriate Court of jurisdiction.

In view of all that has been discussed above, the revision
petition is allowed.

12-01-2016
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(**RITU BAHRI**)
JUDGE