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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 533/2015 & C.M.No.10248/2015

GAJENDER SINGH YADAV

..... Petitioner

Through

Mr. Tanmay Nagar, Adv.

versus

PRAMOD KUMAR SHARMA

..... Respondent

Through

Respondent with his counsel Mr. K.S.
Goswami, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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20.01.2016

Order impugned before this Court is the order dated 02.3.2015 vide which the application filed by the defendant under Order VII Rule 10 of the CPC seeking rejection of the plaint on the ground of want of territorial jurisdiction has been dismissed and rightly so.

The present suit is a suit seeking recovery of money based on a loan transaction. This suit was originally filed in the Karkardooma Court which was decided and disposed of on 15.3.2012. An appeal was filed by the defendant. The appeal was disposed of by the Appellate Court on 10.12.2013. Matter stood remanded back. In the course of the proceedings in the remand, an application under Order VII Rule 11 CPC had been filed. The same had been dismissed on 23.7.2014. The plea was on the lack of territorial jurisdiction of the Court. The present application seeking return of the plaint on the same count was thereafter filed. The impugned order had declined this prayer.

Record shows that in the written statement no objection had been taken on the territorial jurisdiction of the Court.

Learned counsel for the petitioner submits that this legal issue could have been raised at any point of time. His vehement submission being that no cause of action has arisen within the territorial jurisdiction of the Court and the loan transaction had been executed outside the territorial jurisdiction of the Karkardooma Court and the defendant also not residing within the territorial jurisdiction of the Court, the impugned order is liable to be set aside.

This Court notes the stage at which this application has been filed. The suit had been decreed. The appellant Court had disposed of the appeal. It is only when the matter was remanded back that the present application was filed. This was after dismissal of the application under Order VII Rule 11 CPC. Section 21 of the CPC clearly specifies that no objection as to the place of suing will be taken unless such an objection is taken in the first instance and unless there has been a consequent failure of justice; the failure of justice which a ground pleaded before this Court was never a ground taken in written statement; neither before the Trial Court and nor before the Appellate Court. At the cost of repetition, it was taken only when the matter was remanded back. What is the failure of Justice suffered by the petitioner has also not been argued. The Trial judge vide the impugned order even otherwise had left the question of territorial jurisdiction open.

Impugned order in this background suffers from no infirmity. Petition is without any merit. Dismissed with cost of Rs.10,000/-

INDERMEET KAUR, J

JANUARY 20, 2016/Ndn