$~12

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

Date of Decision: September 22, 2016

\+ **FAO 48/2016**

M/S HARIT POLYTECH PVT LTD ..... Appellant
Through: Mr. Kumar Vikram, Advocate

versus

M/S COLT CABLES PRIVATE LTD & ANR .....Respondents
Through: Mr. Kumar Mihir and Mr. Avinash Menon, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

Appellant's suit for recovery of ₹7,99,143.20/- is disposed of by trial court vide order of 7th July, 2015 while directing that the plaint be returned to appellant-plaintiff for presentation before the competent court of territorial jurisdiction. While deciding the jurisdictional issue, trial court has also decided the main issue regarding the entitlement to the suit amount. It has been held by trial court in the impugned order that appellant-plaintiff is entitled to recover the suit amount as the stand of appellant-plaintiff is un-rebutted on account of respondent-defendant failing to appear before trial court to cross-examine appellant-plaintiff's witness. The nature of transaction between the parties is noticed by trial court in paragraph No.2 of the impugned order. It would suffice to note that the Invoice in question contains jurisdictional clause, which read *"subject to Jaipur jurisdiction"*.

It is not in dispute that appellant-plaintiff, though stationed in Delhi and has its banker in Delhi, but had supplied the goods from its registered office at Jaipur to respondent at Mumbai and that respondent-defendant had made the last payment to appellant-plaintiff at Delhi. It is a matter of record that respondent-defendant has not filed any cross-objections in respect of the findings returned on main issue No.1 regarding appellant's entitlement to the suit amount.

At the hearing of this appeal, the submissions of both the sides are confined to issue No.2 i.e. the jurisdictional issue only. According to appellant's counsel, the substantial cause of action arose in Delhi as the payments from respondent-defendant were received by appellant-plaintiff at Delhi. Regarding the jurisdictional clause in the Invoice, it is submitted that the jurisdictional clause in the Invoice does not restrict it to Jaipur only and so, there is no ouster of the jurisdiction of Delhi courts where material cause of action has arisen as the substantial payments have been received in Delhi. To support above submissions, reliance is placed upon Supreme Court's decision in *R.S. D.V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Works Ltd.,* AIR 1993 SC 2094.

To the contrary, while supporting the impugned order, reliance is placed by respondent's counsel upon Supreme Court's decision in *Oil and Natural Gas Corporation Limited v. Modern Construction and*

Company, (2014) 1 SCC 648 to submit that on account of lack of territorial jurisdiction of Delhi courts, the finding returned on merits ought to be set aside and the plaint be returned to appellant for presentation before the Jaipur courts.

It is submitted by respondent's counsel that merely because some payment was received by appellant-plaintiff in Delhi, it would not justify entertaining of appellant's suit in Delhi because appellant is bound by the jurisdictional clause provided in appellant's Invoice. Thus, it is submitted that impugned order suffers from no infirmity and this appeal deserves dismissal.

Upon hearing the submissions advanced by both sides and on perusal of impugned order, the decisions cited and the material on record, I find that there is no challenge to the finding returned by trial court on the main issue of appellant-plaintiff's entitlement to the suit amount. The only challenge is to finding on the jurisdictional issue. For this purpose, the plaint has to be looked into. Paragraph No.28 of the plaint reads as under: -

> *"28. That this Hon'ble court is competent to entertain and hear the present suit as Plaintiff has Office at Delhi. Part of Cause of Actions accrued at Delhi as payment made to the plaintiff at Delhi. Therefore, this Hon'ble Court has territorial jurisdiction to try and entertain the present suit."*

A bare perusal of pleadings of the parties and the evidence led reveals that important cause of action arose in Delhi as payments in respect of transaction in question were received in Delhi. Supreme Court in *R.S. D.V. Finance Co. (supra)* has reiterated that since the jurisdiction of other courts is not specifically ousted, therefore, the court where the payment was received would have the territorial jurisdiction to entertain the suit.

On the territorial jurisdictional issue, the apt observations of Supreme Court in *A. B. C. Laminart Pvt. Ltd. & Anr. v. A. P. Agencies, Salem* AIR 1989 SC 1239 are as under:-

> *"15. .... Part of cause of action arises where money is expressly or impliedly payable under a contract."*

A Coordinate Bench of this Court in *Mrs. Shradha Wassan & Ors. v. Mr. Anil Goel & Anr. 2009 SCC Online Del. 1285* has also reiterated as follows:-

> *"I find that this court in Milkfood Ltd v. Union Bank of India MANU/DE/8271/2007 has held that even if it is assumed that Delhi was not the expressly contracted place of payment, Delhi would still be a presumed place of payment because of the general rule that in the absence of a contract to the contrary, a debtor is bound to find the creditor for making the payment-the place of payment is where the creditor resides.*
>
> *In this regard it may be noticed that in this case the legal notice demanding the payment, preceding the suit was sent from Delhi and demanding the payment at Delhi. The principle of debtor must seeks the creditor was held to be applicable."*

In the considered opinion of this Court, an important part of cause of action arose within the territorial jurisdiction of Delhi Courts and so, trial court has erred in solely relying upon the jurisdictional clause in the Invoice although it did not oust the jurisdiction of the other courts. Thus, the findings of the trial court in impugned order on jurisdictional issue are hereby set aside and it is held that Delhi courts have the territorial jurisdiction to entertain the suit. The jurisdictional issue is accordingly answered in favour of appellant-plaintiff and against respondent-defendant. In view of the findings returned by this Court on jurisdictional issue No.2, reliance placed by respondent's counsel upon *Oil and Natural Gas Corporation Limited (supra)* is of no avail. This Court is of the considered view that Trial Court's finding on main issue No.1 is duly supported by unchallenged documentary evidence on record and is found to be not suffering from any infirmity.

Since the findings on the main issue of appellant's entitlement to the suit amount remain unrebutted, therefore, in view of the afore-noted finding on jurisdictional issue No.2, appellant/plaintiff's suit of ₹7,99,143.20/- is hereby decreed with costs and with interest at the rate of 9% *per annum* from the date of institution of the suit till realization.

While maintaining the finding on issue No.1 and in view of above finding on issue No.2, appellant's suit is accordingly decreed.

With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 22, 2016
s