

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12056 OF 2016

Manudhane Treading Company Ltd.
Pro. Maoj Gokuldas Manudhane

..PETITIONER

VERSUS

Jai Sai Traders
Pro. Kumar Jaikishan Dandwani

..RESPONDENT

....

Mr. V.B. Anjanwatikar, Advocate for petitioner.
Mr. A.S. Sawant, Advocate for respondent.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 26th JULY, 2017**

ORDER :

1. The petitioner – original defendant in Special Civil Suit No. 32 of 2014 is aggrieved by the order dated 18th October, 2016 by which application Exhibit 29 seeking framing of preliminary issue about the bar on the count of territorial jurisdiction, has been partly rejected. The Trial Court has indicated that the issue would be framed and the same would be tried alongwith all other issues as it is a mixed question of facts and law.

2. I have considered the strenuous submissions of the learned Counsel for the respective sides. With their assistance, I have gone through the petition paper book and the plaint which is on record.

3. There is no dispute that the address of the petitioner - defendant is at Erandol and the respondent – plaintiff resides at Dhule. The suit has been instituted at Dhule.

4. Mr. Anjanwatikar, learned Counsel has strenuously submitted on behalf of the petitioner that notwithstanding their business address and the location of their establishment, no business transaction between the plaintiff and the defendant took place at Dhule. The entire transaction took place at Erandol and as such, the plaintiff should have file a suit at Erandol. He further submits that though the suit is for specific performance and for recovery of an amount of Rs.8,84,000/-, the property of the defendant situated at Erandol is identified and the request of the plaintiff is for attachment of the property before the Jalgaon Court. He therefore submits that in the light of the law laid down by the Hon'ble Supreme Court in *Begum Sabiha Sultan Vs. Nawab Mohd. Mansur Ali Khan and Others* 2007 AIR (SC) 1636 and the law laid down by this Court in the matter of *Videocon Industries Ltd. Vs. Mr. Rajesh Kumar Kedia* 2013 (5) All M.R. 226, the suit filed at Dhule would be untenable in law.

5. Mr. Sawant, learned Counsel for the respondent – original plaintiff submits that his business establishment is at Dhule. The goods purchased from the defendant were for the purposes of his business at Dhule. The goods

supplied by the defendants were transported to Dhule and were utilized for the business purposes at Dhule. He further adds that since the property of the defendant is situated at Erandol, he had no alternative but to identify that property and if the plaintiff is willing to pay the outstanding amount, he is not interested in the property. He further states that, if the property of the defendant is situated at Dhule, he would have identified that property.

6. He therefore submits that in the light of the judgment of the Hon'ble Apex Court in the matter of ***Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others AIR 2006 SC 3672***, the entire dispute between the parties being a mixed question of facts and law, unless the evidence is adduced by the parties, the issue involved in this matter cannot be appreciated or assessed by the Trial Court. He therefore supports the impugned order and contends that the Trial Court has rightly held that this issue of jurisdiction requires recording of evidence and will have to be considered alongwith the other issues.

7. It is undisputed between the litigating sides that there was no written contract between the parties. It is also evident that the goods were supplied by the defendant from Erandol and the goods were transported to Dhule for the business purposes of the plaintiff at Dhule. It is equally undisputed that payments were made by the plaintiffs from the bank account held at Dhule.

8. In my view, at a prima facie stage, it appears that this entire dispute between the parties as regards the purchasing of the goods, supply or transportation of the goods, utilization of the goods at Dhule and similar other facts pertaining to the business activities of both the sides, will have to be scrutinized before the Trial Court on the basis of evidence. On a prima facie reading of the submissions of the parties, I do not find that the Trial Court was well assisted with such material that could have led to an inescapable conclusion that the suit would be maintained only at Erandol. I find that this aspect between the parties would require recording of evidence.

9. Considering the above, as the Trial Court has framed the issue, I do not find that doors of the defendants are closed in so far as the territorial jurisdiction is concerned.

10. In the light of the above, this petition is dismissed as the impugned order does not appear to be perverse or erroneous or likely to cause grave injustice to the petitioner. Needless to state, all the observations of this Court are based on the submissions of the parties and at a prima facie stage which would not influence the Trial Court while considering the rival contentions regarding the territorial jurisdiction.

(RAVINDRA V GHUGE, J.)

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