

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.2128 of 2013
and
MP.No.1 of 2013

M/s.Hindustan Photo Films,
Manufacturing Company Limited,
Ootacamund.

... Appellant/Plaintiff

Vs.

1. K.L.Agarwal,
Proprietor,
M/s.Shanky Films,
63/3, M.G.Marg
Sundari Theatre Building,
Kanpur-208 004.

2. Balraj Sahani

... Respondent/Defendant

Prayer:- Civil Miscellaneous Appeal preferred under Order 43 Rule(a) of Civil Procedure Code, against the judgment and decree in O.S.No.11 of 2010 on the file of Court of the District Judge of the Nilgiris at Ootacamund dated 01.04.2016.

For Appellant : Mr.E.Sampathkumar

For Respondent : Mr.R.Gowri

JUDGMENT

[JUDGMENT OF THE COURT WAS DELIVERED BY C.T.SELVAM, J]

The appellant has filed O.S.No.11 of 2010 on the file of the learned District Judge, The Nilgiris, Ootacamund, seeking recovery of monies from the respondents/defendants as payments due against supply of graphic art films. Defendants filed written statement and therein raised a contention of Court below not having territorial jurisdiction alleging that the entire transactions between the appellant/plaintiff Company and the respondents/defendants Company took place only at Chennai and

Kanpur and not at Ootacamund. Such issue was gone into by Court below and under order dated 01.04.2013, Court below found that it has no territorial jurisdiction as the entire suit transactions were found to have taken place at Kanpur. Aggrieved, Appellant/plaintiff has moved the present Civil Miscellaneous Appeal.

2. Heard learned counsel for appellant and learned counsel for respondents and perused the papers.

3. The appellant informs jurisdiction of the Court below at Ootacamund, alleging in para 11 of the plaint as follows:-

"11. The plaintiff further states that the 1st Defendant had also placed an order with the plaintiff's Deputy Manager at Ambathur, Chennai for making further supply of graphic art films and the Deputy General Manager immediately after receipt of the said order had communicated the same to the Plaintiff's factory at Ootacamund and the Plaintiff had sent the requisite supply of graphic art films to the 1st Defendant through the Pondicherry Branch of the Plaintiff and the 1st Defendant had taken delivery of the said graphic art films from the Plaintiff's Pondicherry Branch as per the Invoice No.80047 dated 17.3.2007 issued by the Plaintiff's Pondicherry Branch to the value of Rs.118,55,128/-. The Xerox copy of the Invoice dated 17.03.2007 is filed herewith".

4. The fact that the appellant-Company chose to act through its factory at Ootacamund to suit its own purposes, would not confer jurisdiction on a Court at Ootacamund. Cause of action must also include an act of the respondents/defendants.

5. We find no reason to differ with the order under challenge. However, learned counsel for appellant submitted that it is the appellant's/plaintiff's assertion that the supply of graphic art films was placed with the plaintiff's Deputy Manager at Ambathur, Chennai and also the assertion of the respondents in the written statement that the entire transactions between the plaintiff's Company and the defendants' Company took place 'only at Chennai and Kanpur' and hence the position of the Court having jurisdiction over Ambathur, Chennai being one of the Courts before whom plaint is to be presented, is beyond challenge.

6. Learned counsel for appellant/plaintiff prays that this Court may now permit the appellant/plaintiff to effect the re-presentation before District Court, Tiruvallur. Finding correct such submission of learned counsel for appellant, this Court directs the appellant/plaintiff to effect re-presentation of the plaint, which has been erroneously filed in O.S.No.11 of 2010 before District Court , The Nilgiris, before the District Court, Tiruvallur, within a period of one month from the date of receipt of a copy of this order.

7. The Civil Miscellaneous Appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

kmi

To:

1. The District Judge,
The Nilgiris at Ootacamund.
2. The Section Officer,
V.R.Section,
High Court, Madras.
3. The District Judge
Thiruvallur.

+1 CC to M/s.E. Sampath Kumar, Advocate sr 81824.

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C.M.A.No.2128 of 2013

AD(CO)
SP(11/01/2018)

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