

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

+ **FAO No.429/2015**

% **13<sup>th</sup> September, 2017**

PIYUSH DEVBRAT ..... Appellant

Through: Mr. Sanjeev Anand, Advocate  
with Mr. Dibya Nishant,  
Advocate and Mr. Pallav  
Kumar, Advocate.

versus

M/s ERGO CREATIVE SOLUTION PVT. LTD. & ORS.

..... Respondents

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This first appeal is filed under Order XLIII Rule 1(a) of Code of Civil Procedure, 1908 (CPC) impugning the order of the trial court dated 4.9.2015 by which trial court has returned the plaint under Order VII Rule 10 CPC for being filed in the court of correct territorial jurisdiction. The plaint has been returned at the initial stage of filing of the suit when summons were not yet issued to the defendants. The subject suit was filed by the appellant/plaintiff for recovery of a sum of Rs.8,92,650/-, essentially being the arrears of

salary payable by the respondents/defendants towards employment of the appellant/plaintiff. Salary has been claimed from the month of April, 2014 to the month of September, 2014. Appellant/plaintiff has also claimed certain further amounts from the respondents/defendants towards the rented accommodation etc. Cause of action for filing of the subject suit was that the appellant/plaintiff claimed that he was appointed as the Regional Manager of North to be based in Delhi for looking after the business of the respondent nos.1 and 2/defendant nos.1 and 2 and which companies were engaged in the business of furniture and interior items related trading. As per the appellant/plaintiff, he received an offer letter dated 12.10.2013 and which wrongly talked of appellant/plaintiff being based in Mumbai, and which could not have been so because the appellant/plaintiff was appointed as Regional Manager for North. The appellant/plaintiff pleads that the respondents/defendants vide its e-mail dated 11.12.2013 realizing the mistake corrected the offer letter with respect to the appellant/plaintiff for being based at Delhi as Regional Manager and not at Mumbai. The appellant/plaintiff claimed that his services

were wrongly terminated and he was not paid salary for the period he worked and therefore the subject suit came to be filed.

2. Since the impugned order is a short order, the same is reproduced as under:-

“Arguments on the point of territorial jurisdiction heard. Record perused. It is submitted by counsel for the plaintiff that the cause of action arose within the jurisdiction of this court. Hence, this court is having territorial jurisdiction.

The plaintiff has filed the present suit for recovery against defendants. None of the defendants is residing or working for gain within the jurisdiction of this court. Therefore, this court does not have territorial jurisdiction under the provisions of Section 20(a) and (b) of CPC.

It is submitted by counsel for the plaintiff that cause of action arose in Delhi when the plaintiff met various company official in Delhi for promotion of the products of the defendants. The plaintiff is claiming that defendants have asked him to handle the business of the plaintiff company and the plaintiff was offered the position of Regional Manager, North Human Scale vide offer letter dated 10.12.13. That the said offer letter provided that plaintiff would be based in Mumbai instead of Delhi. The plaintiff is seeking the recovery of his monthly salary against defendants being their employee.

The clause C of Section 20 provides that the suit may be filed where the cause of action or part of cause of action arose. The meeting of the plaintiff with the customer of the defendants at Delhi does not come within the meaning of cause of action or part cause of action. The cause of action should relate to the claim filed by the plaintiff. The plaintiff has filed the present claim for recovery of his monthly salary against defendant company which is situated outside the jurisdiction of this court.

In the present facts and circumstances, I am of the considered opinion that neither the cause of action nor part of cause of action has arose within jurisdiction of this court. Accordingly, plaint filed by the plaintiff is returned under the provisions of Order 7 Rule 10 CPC, to be filed in the court having territorial jurisdiction over the subject matter. The certificate of return of the plaint be issued.

File be consigned to record room after completion of necessary formalities.”  
(underlining added)

3. A reference to the impugned order shows that the trial court has committed an error in referring to the term of being based at Mumbai in the letter of the respondent no.1/defendant no.1 dated 10.12.2013 and not referring to the subsequent e-mail dated 11.12.2013 showing the basing of the appellant/plaintiff at Delhi, and which e-mail along with relevant facts are duly mentioned in para 3 of the plaint.

4. In contractual matters those courts which would have jurisdiction where the contract is executed, where the contract has to be performed or where payment under the contract has to be made vide ***A.B.C. Laminart Pvt. Ltd. & Anr. Vs. A.P. Agencies, Salem AIR 1989 SC 1239***. Since in the present case performance of the contract was to be including at Delhi, and which is logical because appellant/plaintiff was appointed as a Regional Manager for North, hence part of cause of action will arise at Delhi. Civil courts at Delhi, therefore, as per the averments of the plaint, and which only at this stage can be looked at, would have territorial jurisdiction.

5. In view of the above discussion, this appeal is allowed and the impugned order dated 4.9.2015 is set aside. It is held that at

the stage of filing of the plaint, and considering that the averments only in the plaint are to be looked at, the civil courts at Delhi would have territorial jurisdiction, subject to this issue being otherwise finally decided in the suit.

6. Appellant/plaintiff will appear before the District and Sessions Judge, West, Tis Hazari Courts, Delhi on 23<sup>rd</sup> October, 2017 and the District and Sessions Judge will mark the suit for disposal to a competent court in accordance with law. Trial court will issue summons in the suit to the respondents/defendants and thereafter proceed to dispose of the suit in accordance with law.

**SEPTEMBER 13, 2017**  
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**VALMIKI J. MEHTA, J**