

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

331

**FAO No.438 of 1991 (O&M)
Date of Decision : 20.03.2018**

M/s Zenith Ltd.

..... Appellant

Versus

M/s Meghdoot Publishers and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. M.L.Sarin, Senior Advocate with
Mr. Amaninder Preet, Advocate
for the appellant.

Mr. Sarwan Singh, Senior Advocate with
Mr. N.S.Rapri, Advocate
for respondents No.2, 3, 5 to 8.

Mr. Suman Jain, Advocate
for respondents No.9 & 10.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the two orders dated 09.03.1991 passed by the Sub Judge 1st Class, Garhshankar. By the first order the plaint filed by the appellant was returned and by the second order another consequential order was passed. It is common ground between the parties that if the first order is set aside the second order would itself lose its existence. The appellant had filed a suit for recovery of an amount of Rs.11,11,000/- odd and had mentioned as follows in para 10 :-

“10. As per the terms & conditions printed on the back of the indent forms under the heading conditions of sales, “the contract is deemed to have been entered into at Banah-144522, Tehsil Balachaur. This Hon'ble Court has, therefore, jurisdiction to try this suit.”

The respondents did not file a written statement but filed an application praying that plaint be returned because it had been filed in a Court without territorial jurisdiction. It was the case of the respondents that they were all based at Patna, the order was placed at Patna and the goods were supplied at Patna. Further, para 5 of the application was as follows :-

“5. That there is no mention in the dealership agreement that the forum (Place of sueing) would be Banah. The indent does not appear in the said paper filed by the plaintiff rather dealership enquiry form which is also on the record filed by the plaintiff mentions the name of place where executed and it is at Patna.”

While deciding the application by the impugned order the learned Sub Judge, 1st Class, Garhshankar held that despite having given an opportunity to the appellant to produce the indent form on which reliance had been placed the same had not been produced and, therefore, came to the conclusion that the Court at Garhshankar had no jurisdiction to decide the issue and that is how the appellant is before this Court.

Learned senior counsel appearing on behalf of the appellant has argued that in the first place the objection as to jurisdiction had to be taken in the written statement or even if the respondents wanted to file an independent application for the same, the same could have only been filed along with the written statement. He has further argued that even in the application filed the respondents had not claimed that there was no such condition as mentioned in the plaint in the indent form and it was only pleaded that as per the dealership agreement the Patna Courts would have the jurisdiction and the copy of the indent had not been placed on the

record. As per counsel in these circumstances, the cavalier fashion in which the Court below directed the appellant to produce the indent form was a procedure unknown to law and to have decided to return the plaint on such a summary assessment was clearly illegal.

Learned senior counsel appearing for the respondents has argued that even as per the CPC it is mandatory for a plaintiff to append all the documents on which he places reliance along with the plaint and therefore, there was no illegality in the Court insisting that the appellant should place the indent form on the record.

In my opinion the order is flawed. The Court could not have lost sight of the fact that the application filed by the respondents was itself an equivocation. There was no explicit averment that the indent form did not contain the stipulation or that even though the indent form may have contained the stipulation yet for reason a, b or c the Court at Garhshankar did not have the jurisdiction.

Learned senior counsel for the appellant has argued that some of the respondents had moved an application dated 26.03.1990 for rejection of the plaint for non-production of the documents mentioned in the plaint and in para 3 it is mentioned as follows :-

“that in para No.3 of the plaint the plaintiff also alleged some invoice, some indents and invoices but the same or copy thereof has not been produced on the file....”

In a reply dated 08.04.1990 the appellant stated that the documents and copies which could not be produced with the plaint were enclosed and by an order dated 26.04.1990 the trial Court recorded that the documents sought to be produced have been placed on record and disposed

of the application. As per counsel the finding of the Court that the document was not produced is also wrong.

In my opinion, the arguments of the learned senior counsel for the appellant have more force. The respondents did not explicitly deny that there were indents on which this condition was mentioned. Moreover, once the Court had dismissed the application for rejecting the plaint on the ground that the documents had not been produced it is obvious that the finding is based on a wrong premise. Even otherwise Order 7 Rule 14 itself lays down the penalties which a plaintiff who does not append the documents may face and return of the plaint is not one of those.

In the circumstances, the impugned orders are set aside and the matter is remanded back to the trial Court from the stage at which the case was fixed i.e. the filing of the written statement. (This is one of those cases where the record had been burnt and the parties are directed to complete the record of the trial Court).

Mr. Sarwan Singh, Senior Advocate for the respondents No. 2, 3, 5 to 8 states that the place Banah which was earlier within the territorial jurisdiction of the Garhshankar Court now comes within the territorial jurisdiction of the Nawanshahr.

In the circumstances, parties through counsel are directed to appear before the District & Sessions Judge, Nawanshahr on 07.05.2018 who will assign the case to another Court.

Learned counsel for respondents No.9 & 10 states that as a matter of fact there is now no dispute surviving between the appellant and these respondents. They are at liberty to take this plea before the Court

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

20.03.2018

Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned

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Yes/No

Whether reportable

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Yes/No