

RSA No.4326 of 2017(O&M)

DATE OF DECISION:13.11.2018

Analytical Technologies Ltd.

...Appellant

Vs.

Patiala Computerized Lab & X-ray & another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Kumar Moudgil, Advocate
for the appellants.

AMIT RAWAL, J.(ORAL)

CM No.11206-C of 2017

This application has been moved under Section 151 CPC for condonation of delay of 85 days in refiling the appeal which is duly supported by an affidavit.

Application is allowed.

Delay of 85 days in refileing the appeal is condoned.

RSA No.4326 of 2017

Appellant–defendant has not been successful in defending a suit for recovery of Rs.2,93,850/- which has been confined to Rs.2,52,000/- along with interest @ 9% p.a. from the date of the payment of the machinery till decision and with further interest @ 6% p.a. from the date of decision till realization.

Case set up by the plaintiff was that in pursuance to the order placed with the respondents, he had purchased New Haematology Analyzer

2062 S/N 701116101624, Printer (DP) UPS, Dial Unit, Reagent (06 Set) of a specification vide bill dated 07.12.2011 for a sum of Rs.2,40,000/- plus VAT and another Bill No.1356 dated 22.12.2011. The said machinery started creating problem in the Software, Chamber, WBC Clog, RBC Bubbler etc.

On two occasions, i.e., on 08.01.2012 and 22.09.2012, the Engineer of the appellant/defendant visited and found machinery had been creating some problem but the same were not rectified. Numerous communications made to the defendants for replacing the new one or refund but fell on deaf ear.

Appellant-defendant opposed the suit on numerous grounds and raised the objection with regard to territorial jurisdiction as the Court at Dabwali, District Sirsa had no jurisdiction, for, defendant had been carrying on his business in Jaipur. There was no defect in the machinery as it was supplied after due verification by the plaintiff. Rather it was case of mishandling.

On the preponderance of the evidence, the trial court, as noticed above, confined the decree to Rs.2,52,000/-. Appeal taken before the lower was also dismissed.

Learned counsel appearing on behalf of the appellant/defendant in support of the memorandum of the appeal raised following two submissions:-

1. The Court at Dabwali District Sirsa did not have the jurisdiction as the defendant resided at Jaipur..
- 2.The contract still subsisted as the machinery is in possession of

the plaintiff.

Both the aforementioned pleas have not been examined by the Courts below, therefore, there is no illegality and perversity.

I am afraid, the aforementioned argument is not sustainable in view of the provision of Section 20 of Code of Civil Procedure which reads as under:-

“Other suits to be instituted where defendants reside or cause of action arises-Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part arises.”

If at all the defendant had a grievance, nothing prevented him to lodge a claim or to set up counter claim for return of the machinery. It is not a case of the plaintiff that he has been using the machinery despite all the defects.

As on upshot of aforementioned observations, no ground is made out for interference in the impugned judgments and decrees of the Courts below, much less no substantial question of law arises for adjudication of the

present appeal. Resultantly, appeal is dismissed.

13.11.2018
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No