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

***Decided on: 19.07.2019***

+ CM(M) 95/2018 & CM APPL. 2656/2018

+ CM(M) 1073/2018 & CM APPL. 36835/2018

PUNEET KUMAR NARULA

..... Petitioner

Through: Mr. Vikas Arora, Advocate with  
Ms. Radhika Arora, Advocate

versus

AFZAL FAKIR SHAH & ANR

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**PRATEEK JALAN, J. (ORAL)**

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1. These two petitions under Article 227 of the Constitution of India arise out of the same suit, being Civil Suit No. 148/2015 pending in the Court of the Additional District Judge, District West, Tis Hazari Courts, Delhi.

2. In C.M (M) 95/2018, the petitioner/plaintiff has challenged an order dated 17.10.2017 by which his application under Order I Rule 10 read with Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") for impleadment of three new defendants and consequential amendment in pleadings, was dismissed. This Court issued notice in CM(M) 95/2018 on 22.01.2018 and directed that proceedings before the Trial Court shall continue, subject to the decision in the petition.

3. It transpired that on the very same day i.e., 22.01.2018, the Trial Court heard and decided an application filed by the defendants under Order VII Rule 11 of the CPC. Treating it to be an application under Order VII Rule 10 of the CPC, the Trial Court returned the plaint for want of territorial jurisdiction. The plaintiff applied for review of the aforesaid order, which was dismissed vide an order dated 12.03.2018. The orders dated 21.02.2018 and 12.03.2018 passed by the Trial Court are the subject matter of challenge in CM(M) 1073/2018.

4. Notice in both the petitions has been served on the defendants and appearance has been entered on their behalf. However, they have not been represented before the Court on the last three dates of hearing and are also not represented today. Therefore, there is no impediment to proceeding with the hearing in their absence.

5. The suit arises out of an agreement dated 19.02.2014, between the plaintiff and the defendant no.1 (respondent no.1 herein) by which the plaintiff was granted leave and license in respect of a hotel in Goa, namely, Hotel Cliff for a period of 11 months from 01.03.2014 to 31.01.2015. It is averred in the plaint that the transaction between the plaintiff and defendant no.1 was carried out at the instance of defendant no. 2, who is a mutual friend of the plaintiff and defendant no. 1. According to the plaintiff, a sum of ₹5,00,000/- was paid by the plaintiff to defendant no. 1 as security deposit at the time of signing the agreement. However, the transaction did not fructify and it is claimed by the plaintiff that a deed of cancellation of the agreement was executed on 10.04.2014. The defendants were required thereunder to refund the amount of ₹5,00,000/- paid as security deposit, to the plaintiff. The failure of the defendants to pay the said amount led to the institution of the suit on 19.10.2015 for a decree of sum of ₹6,80,000/-

(including pre-suit interest) along with *pendente lite* and future interest at the rate of 24% per annum.

6. The defendants made an application under Order VII Rule 11 of the CPC which resulted in the plaintiff becoming aware of certain new facts including, *inter alia*, that the amount of ₹5,00,000/- paid by him as security deposit was credited to the joint account of Mrs. Roshan Ara Shah and Sh. Umar Shah. The petitioner also states that he came to know that the defendant no. 1 is a partner in a partnership concern which carries on business as Hotel Cliff. Although that application under Order VII Rule 11 was ultimately dismissed in default, the plaintiff sought impleadment of the parties associated with the partnership concern namely, Sh. Umar Shah (a partner) and Mrs. Roshan Ara Shah (his wife) as defendants. The plaintiff also sought certain consequential amendments in the plaint. This application was made on 22.08.2016 and was resisted on behalf of the original defendants. As stated hereinabove, the Trial Court dismissed the application vide its order dated 17.10.2017 and also declined review of the said order by its subsequent order dated 12.12.2017.

7. The reasoning of the Trial Court is contained in the following paragraphs of its order dated 17.10.2017:-

*“16. The plaintiff filed the present suit on 23.10.2015. The averments of the plaintiff are that defendant no. 1 Afzal Fakir Shah and defendant no. 2 Mr Harpal Singh induced the plaintiff to pay Rs. 5 lacs as negotiations were took place for taking the Hotel Cliff at Goa on licence. The cheque was duly encashed by defendant no. 1 and defendant no. 2 was the personal guarantor. A legal notice was also served upon defendants prior to filing of the present suit on the similar set of facts. Defendant no. 1 & 2 put in their appearance and filed an application under order 7 rule 11 CPC. The main objection is about the territorial jurisdiction of the court. Now the*

*plaintiff filed the present application under order 1 rule 10 read with order 6 rule 17 CPC.*

*17. The plaintiff wish to implead Hotel Cliff, the partnership firm and its partners as defendants. In my considered opinion the Hotel Cliff and other partners are not necessary parties for adjudication of the present dispute. Neither any payment or cheque made by plaintiff to Hotel Cliff or it partners. It is categorically pleaded that the cheque was given to defendant no. 1 and defendant no. 2 was the guarantor. Therefore, in the whole transaction there is no role of defendant no. 3 to 5 in regard to payment of Rs. 5 lacs. The consequent amendments of pleadings is also based upon the impleadment of the parties. When impleadment of parties not allowed. The amendment cannot also allowed.”*

8. During the pendency of this petition, a subsequent application was filed by the defendants under Order VII Rule 11 of the CPC on 14.10.2017, which came to be decided on 22.01.2018. In the said application, the defendants had alleged that the Trial Court lacked territorial jurisdiction to entertain the suit. Treating this application as one under Order VII Rule 10 of the CPC, the Trial Court allowed the suit on the following reasoning:-

*“16. The, plaintiff is claiming recovery of Rs.6,80,000/- against both the defendants. The defendant No.1 Afzal Fakir Shah is resident of Goa. The address of the defendant No.2 Harpal Singh is stated to be of Delhi. The address of the defendant No.2 has been disputed by the defendants and it is stated that he is permanent resident of Goa.*

*17. The genesis of the present suit lies in the agreement between defendant No.1 and plaintiff with regard to the Hotel Cliff situated at Goa. Both entered into agreement dated 19.02.2014. I have gone through the said agreement. It bears the signatures of plaintiff and defendant No.1 and the defendant No.2 is shown to be a witness and his address is mentioned as "Karma Garden Chicalim, Goa". The agreement was notarized and executed at Vasco-da-Gama, Goa. This*

agreement establishes that plaintiff is resident of Delhi whereas defendant Nos. 1 and 2 are residents of Goa. The Hotel Cliff is also situated within the jurisdiction of Goa. The plaintiff further relied upon another document, which is cancellation of the earlier document dated 10.04.2014, which was also executed at Vasco-da-Gama, Goa. However, It does not bear signatures of defendant No.1 and bears signatures of defendant No.2 and it also mentions the address of Goa. As per the averments made in the plaint, the defendants particularly defendant No.2 induced to pay Rs. 5 lacs at Delhi. However, this averment in the plaint is contrary to the documents relied upon by the plaintiff. A resident of Goa how come to Delhi and gave assurances and stood as guarantor whereas as per agreement he was one of the witnesses to the agreements relied by the plaintiff. No date, month or year is mentioned in the plaint with regard to the meeting of defendants at Delhi at the residence of plaintiff. In my considered opinion, the averments made in the plaint with regard to cause of action in Delhi are misconceived and artificial. The defendants are residents of Goa. The lease property is situated at Goa and the agreement was executed at Goa. Therefore, no cause of action had taken place within the jurisdiction of Delhi Courts.

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19. It is pertinent to mention here that plaintiff had failed to explain that why the address of defendant No.2 in the plaint is shown of Delhi whereas he is well aware that defendant No.2 is resident of Goa. As per agreement, defendant No.2 never stood as guarantor. He was one of the witness to both the agreements. The cancellation agreement dated 10.04.2014 is also not signed by defendant No. 1. Therefore, in my considered opinion no cause of action arose within the jurisdiction of Delhi. I agree with the contention of Ld. Counsel for defendants with regard to lack of territorial jurisdiction of Delhi. Therefore, Order VII Rule 11 CPC cannot be invoked. However, power vested under Order VII

*Rule 10 CPC can be exercised. Accordingly, the present plaint shall be returned to the plaintiff as per Order VII Rule 10 read with Order VII Rule 10A CPC. The plaintiff is directed to present the plaint before the competent Court at Goa on 05.03.2018. The defendants shall also appear on the same date before the said Court. The application is disposed off accordingly.*

***File be consigned to Record Room.***”

9. The plaintiff filed an application for review of the said order by drawing the attention of the Trial Court specifically to the fact that it had pleaded that the amount of ₹5,00,000/- paid as security deposit was drawn on the plaintiff's bank in Delhi which is within the jurisdiction of the Court. The Trial Court noted in the order in review that the plaintiff relied upon several judgments including one of the learned Single Judge in *M/s Mountain Mist Agro India Pvt. Ltd. vs. S. Sunramaniyam* (I.A. No. 8979/2006 in CS (OS) 1643/2005, decided on 24.10.2007). Although it has been noticed that the said judgment was cited, the Trial Court has not dealt with it in the impugned order and has dismissed the review application.

10. Having heard learned counsel for the petitioner, I am of the view that the Trial Court has erred on both counts. Turning first to the application under Order VII Rule 11 of the CPC, it is important to note that the application ought to have been decided on the basis of the pleadings contended in the plaint and the documents filed therein. The plaintiff has, at several places in the plaint, referred to events which occurred within the jurisdiction of the Delhi Courts. The contents of the paragraph 14 of the plaint in CM(M) 1073/2018, wherein the territorial jurisdiction of the Court has been established are significant:-

*“14. That the Hon’ble court has the requisite territorial jurisdiction as the entire negotiations regarding Leave and License agreement took place at the residence of plaintiff in Delhi, the security amount which was given to the defendants by the plaintiff was handed over in Delhi, the cheque through which the security deposit was made was drawn on a bank in Delhi and the cancellation agreement was also entered into by the plaintiff and the defendant in Delhi.”*

11. Importantly, whether or not the above paragraph relates to any other part of cause of action, the plaintiff has expressly pleaded that the cheque through which the security deposit was made, was drawn on a bank in Delhi. To that extent the judgment of this Court in Mountain Mist (supra), cited before the Trial Court, covered the issue. After consideration of several authorities on the point, in the context of dishonor of a cheque, a learned Single Judge of this Court held that the location of the drawee bank attracts part of cause of action in the suit. The judgment of the Single Judge was affirmed by the Division Bench of this Court in *Mountain Mist Agro India (P) Ltd. & Anr. vs. S. Subramaniam* (2008) 149 DLT 40 (DB). In Mountain Mist (supra) this Court held *inter alia* that a cheque is honoured and dishonoured only upon presentment at the drawee bank. The cheque in that case having been presented at a Delhi bank, but drawn on a bank in Ootacamund, it was held that the presentment of the cheque did not form part of the cause of action.

12. For similar reasons, it is evident that the location of the drawee bank is the place where the payers bank account is debited. To that extent, part of the cause of action does arise at the location of the drawee bank. Section 20(c) of the CPC permits the plaintiff to file a suit where a part of cause of action arises. As long as any part of the bundle of facts necessary for the

plaintiff to claim relief has occurred within the jurisdiction of the Court, the plaintiff is entitled to elect to sue in that Court.

13. The Trial Court while dealing with the application, at first instance did not enter into any discussion on this aspect and instead, appears to have pronounced the judgment on the veracity of the contentions raised in the plaint. The discussion of the Trial Court, to this extent, was in excess of the consideration required in an application under Order VII Rule 11 of the CPC. Even in the review order, the judgment of the Single Judge in Mountain Mist (supra) is noticed but not discussed. The Trial Court missed an important aspect of its jurisdictional consideration and, therefore, the orders dated 22.01.2018 and 12.03.2018 passed by it cannot be sustained.

14. Turning now to the question of impleadment and amendment, it is significant to note that the application was made by the plaintiff at a very preliminary stage of the suit and, in fact, even prior to filing of the written statements. A liberal approach to amend pleadings has been emphasized by the Supreme Court in a number of judgments including, *inter alia*, *Revajeetu Builders and Developers vs. Narayanswamy and Sons & Ors.* (2009) 10 SCC 84. The approach of the Court in these cases is to avoid multiplicity of litigation and to adjudicate the real and complete controversy between the parties. The relevant observations in *Revajeetu Builders*(supra) are reproduced below:

***“Factors to be taken into consideration while dealing with applications for amendments***

***63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:***

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”*

15. The plaintiff's application for impleadment, insofar as it specifically averred that the amount of security deposit, of which he sought refund, was paid into the accounts of two of the proposed defendants, was not unjustified. Similarly, having discovered, through the application filed by the defendants themselves, that Hotel Cliff is a partnership concern; the plaintiff was well within his rights to implead the partnership concern. Although the plaintiff originally did not claim any relief against the partnership concern, in light of the pleadings in interlocutory proceedings, he was entitled to implead the partnership concern and seek relief.

16. The Trial Court has rather cryptically stated that Hotel Cliff and its partners are not necessary parties to the adjudication of the dispute. However, the observation of the Trial Court that no payment or cheque was drawn by the plaintiff in favour of Hotel Cliff or its partners is not consistent with the averment in the amended plaint that payment was made

to the joint account of Umar Shah and Roshan Ara Shah, of whom Umar Shah is a partner in the Hotel Cliff alongwith original defendant no.1. In the facts and circumstances of the case therefore, the plaintiff's application for impleadment and consequential amendment ought to have been allowed.

17. For the reasons aforesaid, both these petitions succeed, and the impugned orders of the Trial Court dated 17.10.2017, 12.12.2017, 22.01.2018 and 12.03.2018 are set aside. The suit (CS No. 137/17/15 (New No. 608882/16)) is restored to the file of the Trial Court. The Trial Court shall take on record the amended plaint and issue summons to the newly impleaded defendants. The Trial Court shall thereafter proceed in their suit in accordance with law. The plaintiff shall appear before the Trial Court on 22.08.2019 for directions.

18. The petitions are allowed in the terms aforesaid.

**PRATEEK JALAN, J.**

**JULY 19, 2019/'j'**

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