*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ CIVIL REVISION PETITION No.1724 OF 2016

% Dated 18.12.2020

#
M/s. Kalyan Complex
Rep. by its Proprietor Ranimal Sokal Chandji
s/o Sokal Chand, Main Road
Tenali, Guntur Disrict ..... Petitioners

Vs.

$
Sha Sumermalji, S/o Jairupji
c/o Monica Fancy Stores,
Pulipativari Street, Vijayawada ..Respondents

! Counsel for the petitioner : Sri V.S.R Anjaneyulu

^ Counsel for the respondent : Sri M.R.L. Narasimha Rao

<GIST:

> HEAD NOTE:

? Cases referred

1. (2005) 7 Supreme Court Case 791
2. 2006 (1) ALD 580
3. 2006 (2) ALD 721
4. (2006) 5 SCC 638
5. AIR 2007 HP 93
6. AIR 2004 Mad 161
7. AIR 2002 All 356
8. AIR 2004 Del 374
9. 2002 (1) ALT 343
10. AIR 1981 Bom 346
11. AIR 1981 Bom.234 at 238
12. AIR 1993 Ker 210

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

CIVIL REVISION PETITION No.1724 OF 2016

% Dated 18.12.2020

#
M/s. Kalyan Complex
Rep. by its Proprietor Ranimal Sokal Chandji
s/o Sokal Chand, Main Road
Tenali, Guntur Disrict ..... Petitioners

Vs.

$
Sha Sumermalji, S/o Jairupji
c/o Monica Fancy Stores,
Pulipativari Street, Vijayawada ..Respondents

JUDGMENT PRONOUNCED ON: 18.12.2020

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?

2. Whether the copies of judgment may be marked to Law Reporters/Journals

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1724 OF 2016

ORDER:

This petition is filed under Article 227 of the Constitution of India, challenging the order in I.A. No. 339 of 2015 in O.S.No.114 of 2011 dated 20-11-2015 passed by the VII Additional District and Sessions Judge, Vijayawada.

The petitioner herein is the defendant in O.S. No. 114 of 2011, filed I.A.No.339 of 2015 under Order 14 Rule 2 and Section 151 of C.P.C. requesting to decide the territorial jurisdiction of the Court as preliminary issue.

It is alleged that the respondent herein/plaintiff filed O.S.No.114 of 2011 for recovery of suit amount of Rs.11,39,421/- pending before VII Additional District and Sessions Judge, Vijayawada. The petitioner herein being the defendant in O.S. No. 114 of 2011 filed a written statement raising a specific plea that no part of cause of action arose within the territorial jurisdictional limits of VII Additional District and Sessions Judge's Court, Vijayawada and the said court lacks territorial jurisdiction to entertain and try the suit. Therefore, a preliminary issue regarding territorial jurisdiction of the Court is to be decided since an issue was framed specifically as to the territorial jurisdiction of VII Additional District and Sessions Judge's Court, Vijayawada and requested to try the preliminary issue and pronounce order(s) on the issue.

The respondent/plaintiff filed counter in I.A. No. 339 of 2015, denying material allegations, *inter-alia* contending that when an objection was raised by the office of the Court of VII Additional District and Sessions Judge, Vijayawada, and returned the plaint, the respondent/plaintiff complied with the objection. On satisfaction about the jurisdiction of the Court, the Court registered the plaint as suit, as such the petitioner herein/defendant is now claiming that VII Additional District and Sessions Judge's Court at Vijayawada has no territorial jurisdiction and the petitioner herein/defendant who now claims that the VII Additional District and Sessions Judge's Court at Vijayawada has no jurisdiction, he has to prove such contention only by adducing evidence. It is further contended that the territorial jurisdiction is a mixed question of law and fact and unless, it is established beyond doubt that no part of cause of action arises within the jurisdictional limits of the court, the court cannot decide the territorial jurisdiction as a preliminary issue, as such the petition is not maintainable. It is specifically contended in the counter affidavit that respondent herein/plaintiff has paid amounts to the petitioner herein/defendant as loan by way of demand drafts drawn from various banks at Vijayawada. All the demand drafts were handed over to the petitioner herein at Vijayawada and same were encashed from the banks at Vijayawada. Further duly signed account copies were provided by the defendant at Vijayawada. Hence, cause of action arose within the jurisdictional limits of Vijayawada and thereby lacking jurisdiction to the court does not arise and requested to dismiss the I.A. No. 339 of 2015.

The Trial Court by order dated 20-11-2015 dismissed I.A. No. 339 of 2015 filed by the petitioner/defendant holding that, a plain reading of Rule 2 of Order 14 C.P.C shows that an issue may be tried as a preliminary issue only where it is an issue of law relating to jurisdiction of the court or a bar to the suit created by any law for the time being in force and where the case or any part thereof may be disposed of on such issue. Hence the trial court concluded that the territorial jurisdiction is mixed question of fact and law and the same cannot be decided based on the allegations made in the petition as a preliminary issue and dismissed I.A. No. 339 of 2015.

Aggrieved by the order in I.A. No.339 of 2015 in O.S.No.114 of 2011 dated 20-11-2015 passed by the VII Additional District and Sessions Judge, Vijayawada, the present civil revision petition is filed raising several contentions, more particularly the approach of the trial court in dismissing the application filed by the petitioner/defendant under Order 14 Rule 2 of C.P.C to decide the territorial jurisdiction as a preliminary issue is contrary to the settled principles of law on the subject. Moreover, the court below ought to have decided the issue of territorial jurisdiction as a preliminary issue, since the prima facie material available on record establishes that it has no jurisdiction to entertain the suit. But the trial court committed serious mistake in recording a finding that territorial jurisdiction is a mixed question of fact and law. Thus it is contended that the trial court committed a serious error in dismissing I.A.No.339 of 2015 which is against the principles of law

in catena of legal pronouncements and requested to set-aside the same.

During hearing learned Counsel for the petitioner Sri V.S.R. Anjaneyulu mainly contended that, when the allegations made in the plaint does not disclose that cause of action or part of cause of action arose within the territorial limits of VII Additional District and Sessions Judge's Court at Vijayawada, the plaint shall be returned for presentation in proper court having jurisdiction, deciding the preliminary issue of territorial jurisdiction which is purely a question of law. But the trial court on erroneous approach dismissed I.A.No.339 of 2015 without deciding the territorial jurisdiction as a preliminary issue which is contrary to the law laid down by the Supreme Court in **Harshad Chimn Lal Modi v. DLF Universal Limited and another**[1] and law laid down by High Court of Andhra Pradesh in **State of Tamil Nadu v. B. Anandaiah**[2] and **Syed Saleema Bee v. Syed Noorjahan and another**[3] and requested to direct the trial court to decide the territorial jurisdiction as preliminary issue and pass appropriate orders setting aside the order impugned in the revision petition.

Whereas, Sri M.R.L. Narasimha Rao, learned Counsel for the Respondent/plaintiff totally supported the order impugned in the revision petition in all respects, mainly contending that the question of territorial jurisdiction is mixed question of fact and law which

---

[1] (2005) 7 Supreme Court Cases 791
[2] 2006 (1) ALD 580
[3] 2006 (2) ALD 721

cannot be decided on the basis of pleadings and requested to dismiss the civil revision petition.

Considering rival contentions, perusing material available on record, the point that arose for consideration is:

> ***"Whether issue of territorial jurisdiction can be decided basing on the allegations made in the plaint, whether it is a mixed question of fact and law. If not, whether such issue relating to territorial jurisdiction of the court be decided as a preliminary issue?"***

P O I N T:

In view of the specific contentions raised by the learned counsel for the petitioner and conclusions arrived by the trial court to the effect that the territorial jurisdiction is mixed question of fact and law, it is necessary to advert to the pleading to find out whether any cause of action or part of cause of action arose within the territorial jurisdiction of VII Additional District and Sessions Judge's Court at Vijayawada.

The respondent/plaintiff is closely related to the petitioner/defendant and his family with that relationship, the defendant had employed to the plaintiff in sister concern of the defendant by name M/s. Kalyan Show Room of Tenali. Subsequently, the defendant has started another firm by name Kalyan Complex in his name showing him as the Proprietor and utilized the services of plaintiff in his concern also. In that way, the defendant had utilised the services of plaintiff in his concern i.e.,

M/s. Kalyan Complex as well as its sister concern i.e., M/s. Kalyan Show Room. The plaintiff is being given salaries in both the concerns. As such, separate accounts are opened in the individual name of plaintiff in both the concerns and every month's salary is being credited to his account. As and when, the defendant paid any amount to him at his request, he used to debit the said amounts to its Khatha. Thus a khatha is opened in the name of plaintiff in his account books and in the said khatha, his salary is being credited and payment received by him debited from time to time, till about 2 ½ years back when the plaintiff retired from service as requested by the defendant. The plaintiff is an Income Tax assessee as well as the defendant are also an Income Tax Assessee. Both the plaintiff and defendant are regularly submitting their respective accounts to the concerned Income Tax departments. As per the said account of the plaintiff and the defendant, the defendant had to pay an amount of Rs.4,84,589/- till the end of 31.3.2009 which is inclusive of interest. For the reasons best known to the defendant, the defendant had opened another account in the account books in the name of plaintiff and credited the salary of the individual in the said new Account about 4 years back. Since then, the defendant and plaintiff are submitting the two separate accounts to the concerned Income Tax Departments. Under the 2nd account, the defendant is are liable to pay a sum of Rs.29,778/- due till the end of 31.3.2009. Till 31.3.2009, the defendant had supplied account copies to the plaintiff whereby acknowledging his liability. But, the defendant has not furnishing the account copy relating to the period from

1.4.09 till 31.3.2010 inspite of repeated demands made by and on behalf of plaintiff.

The petitioner/defendant had borrowed a sum of Rs.50,000/- from the respondent/plaintiff for his business purpose. However, the petitioner/defendant did not repay the amount due to the respondent/plaintiff. Therefore, the respondent/plaintiff filed suit for recovery of the amount together with interest thereon and subsequent interest. A bare look at the allegations made in the plaint, it was mentioned as Kalyan Complex and Kalyan Showroom in Tenali and the account was opened at Tenali. It is alleged that, petitioner/defendant borrowed an amount of Rs.50,000/- from the respondent/plaintiff for business purpose, but failed to repay the same. It is not clear whether the petitioner/defendant borrowed the amount at Vijayawada or within the jurisdictional limits of Vijayawada. The plaint is silent as to the place of borrowing or payment of the amounts. However, the cause of action paragraph is relevant for deciding the present issue and it is extracted hereunder:

> *Cause of Action for this suit has arisen since the defendant had employed to the plaintiff in sister concern of the defendant by name M/s.Kalyan Show Room of Tenali; since the defendant has started another firm by name Kalyan Complex in his name showing him as the Proprietor and utilized the services of plaintiff; since the defendant had utilized the services of plaintiff in his concern i.e., M/s.Kalyan Show Room; since the salaries of the plaintiff in both the concerns, separate accounts are opened in the individual name of plaintiff ; since a khatha is opened in the name of plaintiff in his account books and in the said khatha all his salaries are being credited and payments received by him debited from time to time; since the plaintiff is an Income Tax Assessee and the defendant are also an Income Tax Assessee; since the defendant had to pay an amount of Rs. 4,84,589/- till the end of 31.3.2009; since*

the defendant and plaintiff are showing the two separate accounts to the concerned Income Tax Departments; since the defendant had borrowed a sum of Rs.50,000/- (Rupees Fifty thousand) in total from the plaintiff i.e., the H.U.F. Account of plaintiff for his business purpose; since the defendant has to pay a sum of Rs.4,42,465/-; since the demands made by and on behalf of plaintiff by giving evasive replies; since the plaintiff got issued a legal notice dated 285.10.2010 to the defendant and when the defendant received the registered notice under Acknowledgement but neither paid the debt due nor issued any reply since the plaintiff is constrained to file these proceedings at Vijayawada within the jurisdiction of this Court where the part of cause of action took place.

A close analysis of cause of action paragraph extracted above, no part of cause of action arose for the suit, disclosing that the defendant/plaintiff filed the suit at Vijayawada within the jurisdiction of VII Additional District and Sessions Judge's Court at Vijayawada, where the part of cause of action took place. Except issuing legal notice from Vijayawada, no transaction took place as per the allegations made in the complaint.

The respondent/plaintiff admittedly raised a contention that the VII Additional District and Sessions Judge's Court at Vijayawada has no territorial jurisdiction and a specific issue was framed.

When the allegations made in the plaint does not disclose that no part of cause of action arose within the territorial jurisdiction of the VII Additional District and Sessions Judge's Court at Vijayawada, the suit shall be filed only at the Court where cause of action or part of cause of action arose.

However, the Trial Court declined to try the issue of territorial jurisdiction as preliminary issue on the premise that the issue of

territorial jurisdiction is mixed question of fact and law. Refuting the same, learned counsel for the petitioner contended that, based on the allegations made in the plaint, the territorial jurisdiction shall be decided. In support of his contention, learned counsel for the petitioner placed reliance on the judgment of this Court in **Syed Saleema Bee v. Syed Noorjahan and another** (referred supra), wherein territorial jurisdiction arose in a case where suit for payment of retrial benefits of late husband of plaintiff – Syed Hussain who worked as goods driver in South Central Railway, filing in Court of Tirupati on ground that Head Quarters of South Central Railway, situated at Renigunta. No allegation in plaint that plaintiff is a permanent resident of Renigunta or that Syed Hussain worked at Renigunta giving right to claim retrial benefits. Fact that plaintiff gave her care of address as Renigunta does not confer jurisdiction on Court at Tirupati. Merely because Syed Hussain worked in Guntakal Division, same does not lead to inference that part of cause of action arose at Renigunta where Railway offices are located, unless it is pleaded that Syed Hussain worked and retired at Renigunta, no cause of action or part of cause of action can be said to have arisen at Renigunta.

The question that arose in **Syed Saleema Bee v. Syed Noorjahan and another** (referred supra) is almost identical to the issue involved in this matter. In **Syed Saleema Bee v. Syed Noorjahan and another** (referred supra), the Court concluded that mere residence of the plaintiff at a particular place does not give rise to any cause of action.

In **Harshad Chimn Lal Modi v. DLF Universal Limited and another** (referred supra), a similar objection was raised as to the territorial jurisdiction. In the facts of the above judgment, the appellant-original plaintiff entered into a "plot buyer agreement" with Respondent No.1, original Defendant No.1 for purchase of a residential plot. The agreement was in the Standard Form Contract of the first respondent. According to the appellant, the agreement was made in Delhi. The Head Office of Respondent No.1 was situated in Delhi. Payment was to be made in Delhi. Clause 28 of the agreement specifically provided that the transaction would be subject to the jurisdiction of the Delhi Court. It was the case of the appellant that payment was made by him in instalments as per the Schedule to the agreement. Inspite of the payment of amount, the first respondent unilaterally and illegally cancelled the agreement under the excuse that the appellant had not paid dues towards construction of Modular House to Respondent No.2, original Defendant No.2. The appellant instituted a suit on the original side of the High Court of Delhi for declaration, specific performance of the agreement, for possession of the property and for permanent injunction. After more than eight years of the filing of the written statement, the defendants filed an application under Order 6, Rule 17 of the C.P.C seeking amendment in the written statement by raising an objection as to jurisdiction of Delhi Court to entertain the suit. It was stated that the suit was for recovery of immovable property situated in Gurgaon District. Under Section 16 of the Code, such suit for recovery of property could only be instituted

within the local limits of whose jurisdiction the property was situated. Since the property was in Gurgaon, Delhi Court had no jurisdiction in the matter. The application was allowed and the written statement was permitted to be amended. After hearing the parties, the trial court upheld the contention of the defendants and ruled that the Delhi Court had no jurisdiction to try the suit. The plaint was, therefore, ordered to be returned to the plaintiff for presentation to the proper court. Being aggrieved by the said order, the appellant approached the High Court filing a revision petition which also came to be dismissed. The appellant was before the Supreme Court by special leave against the said order. The Supreme Court held that, Section 16 thus recognizes a well established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well known maxim "equity acts in personam, recognized by Chancery Courts in England. Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant relief in

suits respecting immovable property situate abroad by enforcing their judgments by process in personam, i.e. by arrest of defendant or by attachment of his property. The proviso to Section 16 is thus an exception to the main part of the section which in considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant. (vide **Ewing v. Ewing**[4]). Further, the Apex Court observed that, "In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of agreement respecting immovable property by directing the defendant No. 1 to execute sale-deed in favour of the plaintiff and to deliver possession to him. The trial court was, therefore, right in holding that the suit was covered by clause (d) of Section 16 of the Code and the proviso had no application. Plain reading of Section 20 of the Code leaves no room of doubt that it is a residuary provision and covers those cases not falling within the limitations of Sections 15 to 19. The opening words of the section "Subject to the limitations aforesaid" are significant and make it abundantly clear that the section takes within its sweep all personal actions. A suit falling under Section 20 thus may be instituted in a Court within whose jurisdiction the defendant resides, or carries on business, or personally works for gain or cause of action wholly or partly arises." and finally dismissed the appeal.

---

[4] (1883) 9 AC 34: 53 LJ Ch 435 (HL)

Though, the issue regarding jurisdiction was also raised with reference to Section 20 C.P.C, the issue was not relating to jurisdiction of the Court, but it is with regard to territorial jurisdiction of the Court.

The necessity to decide the territorial jurisdiction, if it is purely a question of law is only to avoid unnecessary trial by the Court having no jurisdiction and return of the plaint at the end. If, such territorial jurisdiction of the Court is purely a question of law, it is better to decide the territorial jurisdiction of the Court as preliminary issue and return the plaint, if the Court finds that it lacks territorial jurisdiction. Sometimes, the territorial jurisdiction may be a pure question of law and may be a mixed question of fact and law. if, it is mixed question of fact and law, such issue cannot be tried as preliminary issue, as the Code of Civil Procedure confers no jurisdiction on Court to decide a mixed question of fact and law, unless the facts are clear from the plaint itself and the mixed question of fact and law can be determined on the principle of demurer. (vide **Ramesh B. Desai v. Bipin Vadilal Mehta**[5] and **Shyam Dutt v. Ashok Kr**[6]). If, there is a pure question of law to be decided as a preliminary issue, the Order, refusing to decide the preliminary issue on the mere ground that the Court did not favour disposal of the suits on preliminary points is not justified and is liable to be interfered with under appropriate provisions of law. (vide **S.G. Badrinath v. Jagannathan**[7])

---

[5] (2006) 5 SCC 638
[6] AIR 2007 HP 93
[7] AIR 2004 Mad 161

At the same time, an issue of law may be tried as a preliminary issue provided it related to the jurisdiction of the Court or to a bar to the suit created by law for the time being in force. However, the said provision gives discretion to the Court to try an issue as preliminary issue or not. The Court is not duty bound to decide any issue as preliminary issue. This is evident from the words "it may try" occurring in the said provisions. (vide **Sidh Nath v. District Judge, Mirzapur**[8]).

Coming to the issue regarding territorial jurisdiction, the law ought to be tried as a preliminary issue. If the facts and circumstances of the case may warrant the Court to refrain itself from giving findings on all the issues as it may prejudice the trial of the case in the Court where it is filed after the plaint is returned. Once the Court comes to a finding that it had no jurisdiction to try the suit, it would have been an exercise in futility to decide other issues on the merits of the case. The findings on the other issues after the plaint was directed to be returned for presentation in appropriate Court would have prejudiced one of the parties and the trial Court has rightly not given findings on other issues framed by it. (vide **Alphabetics Private Limited v. Lohia Jute Press**[9])

In **Munakkayala Konda Reddy v. Thallam Venkata Reddy**[10], the Division Bench of the Andhra Pradesh High Court while extracting Order XIV Rule 2 C.P.C, observed that, the Court may, try and dispose of an issue of law as a preliminary issue in terms of Order 14 Rule 2 if the same relates to (a) the jurisdiction of

[8] AIR 2002 All 356
[9] AIR 2004 Del 374
[10] 2002 (1) ALT 343

Court, and/or (b) a bar to the suit created by any law for the time being in force. Under the aforementioned provision, issue relating to jurisdiction of the Court should be tried as a preliminary issue only if the same can be disposed of without recording any evidence. If the issue about jurisdiction is a mixed question of law and fact requiring recording of evidence the same cannot be tried as a preliminary issue and finally concluded that, Order XIV Rule 2 (2) C.P.C does not mandate that the Courts must try the suit on a preliminary issue. It may do so. It is the Court's discretion which is circumscribed by the fact that issue must relate to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. The Court's discretion, therefore, must be exercised judiciously. It, having regard to the fact situation of each case, may try a suit on a preliminary issue or may not.

In **(Mr.) Francis Joseph Rebellow v. Smt. Olivia Jane Rebellow**[11] the Bombay High Court set aside the order of the trial Judge deciding a case on a preliminary issue stating that the decision of the suit on the preliminary issue without examination of the legal position is something which cannot be said to be proper exercise of the Court's jurisdiction under Order 14 Rule 2 of the Code. The same principle is reiterated in **Laxmappa v. Election Officer**[12].

From the very reading of the law declared by the Courts in the above judgments, it is obvious that, if the facts regarding the territorial jurisdiction are not in dispute, in view of the allegations

---

[11] AIR 1981 Bom 234
[12] AIR 1981 Bom. 234 at 238

made in the plaint on its face value, the Court can treat the territorial jurisdiction as a question of law. If, the facts constitute cause of action pleaded in the plaint regarding territorial jurisdiction are in dispute, the Court cannot try the issue of territorial jurisdiction as a preliminary issue. In the present facts of the case, on a bare reading of the entire suit and the written statement filed by the respondent, the facts constituting cause of action regarding territorial jurisdiction is not in dispute while disputing the other claim. But, simply, the Trial Court observed that the issue of territorial jurisdiction is mixed question of fact and law without recording any reason, refused to decide the issue of territorial jurisdiction of the Trial Court as preliminary issue and avoided to record a finding. Therefore, the conclusions arrived by the Trial Court that, the issue of territorial jurisdiction is mixed question of fact and law is not supported by any reasoning, except an observation made in the order. Hence, the same is liable to be set-aside.

However, in **State of Tamil Nadu v. B. Anandaiah** (referred supra), the High Court considered the scope of Order XIV Rules 1 and 2 C.P.C and directed the Court below to decide the territorial jurisdiction of the Court as preliminary issue, such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues.

Though, learned counsel for the petitioner contended that the jurisdiction is a bare question of law, none of the judgments supports his contention. However, when the respondent/plaintiff

himself admitted about a particular fact, the Court has to decide such issue of fact based on the admitted facts, in view of the law declared in **State of Tamil Nadu v. B. Anandaiah** (referred supra).

In any view of the matter, Order XIV Rule 2 C.P.C deals with Court to pronounce judgment on all issues. Sub-rule (2) thereof permits the Court to decide the preliminary issue when it is purely a question of law and of fact arise in the same suit, which relates to the jurisdiction of the Court or a bar to the suit crated by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

A similar question came up for consideration before Kerala High Court in **M/s. Femina Handloom of India v. M/s. Verma and Sons**[13]**,** where the Court held that, issue regarding territorial jurisdiction of the Court ought to be tried as preliminary issue.

Here, in this case, as per the pleadings in the plaint, more particularly, the paragraph relating to 'cause of action' which is extracted above, it appears that the cause of action arose not within the territorial jurisdiction of VII Additional District and Sessions Judge's Court at Vijayawada. When the respondent/plaintiff himself admitted about a particular fact in the plaint to constitute cause of action based on such particular admitted fact, the Court can decide the territorial jurisdiction of the Court as a preliminary issue,

[13] AIR 1993 Ker 210

exercising power under Order XIV Rule 2 C.P.C. Even otherwise, in view of the law declared by the Kerala High Court in **M/s. Femina Handloom of India v. M/s. Verma and Sons** (referred supra), question of territorial jurisdiction ought to be tried as preliminary issue. Though the judgment of Kerala High Court is not binding on this Court, it has got persuasive value. Therefore, the Trial Court ought not to have rejected the request of the petitioner/defendant to decide the territorial jurisdiction as a preliminary issue, exercising power under Order XIV Rule 2 C.P.C, but observing that it s a mixed question of fact and law, dismissed I.A.No.339 of 2015. The order passed by the Court below denying the request of the petitioner/defendant to decide the issue of territorial jurisdiction as preliminary issue is contrary to law and thereby, the order is liable to be set aside while rejecting the contention of the learned counsel for the respondent/plaintiff, for the reason that, based on the facts pleaded in the plaint, the Court can decide whether any pat of cause of action arose within the territorial jurisdiction of VII Additional District and Sessions Judge's Court at Vijayawada.

One of the contentions of the learned counsel for the respondent/defendant is that, trial in the suit is partly completed. But, that is not a bar, however law permits the Court at any stage of the proceedings, pending before the Court, the Court can decide the preliminary issue. Even if, for any reason, the trial is completed and ultimately the Trial Court concludes that the court lacks territorial jurisdiction, the Court cannot decide the suit and such decision is without jurisdiction. Therefore, mere commencement of trial or

completion of trial is not a ground to deny such relief claimed by the petitioner/defendant. Moreover, Order XIV Rule 2 C.P.C permits the Trial Court to decide the jurisdiction of the Court and the Court is bound to decide such question of territorial jurisdiction as a preliminary issue, in view of the law declared by the Kerala High Court in **M/s. Femina Handloom of India v. M/s. Verma and Sons** (referred supra).

In view of my foregoing discussion, I find that the Trial Court committed a grave error in dismissing I.A.No.339 of 2015 in O.S.No.114 of 2011, declining the decide the territorial jurisdiction of the Court as preliminary issue and the same is liable to be set-aside.

In the result, civil revision petition is allowed, setting aside the order in I.A.No.339 of 2015 in O.S.No.114 of 2011 dated 20-11-2015 passed by the VII Additional District and Sessions Judge, Vijayawada, directing the Trial Court to try and decide the issue of territorial jurisdiction of the VII Additional District and Sessions Judge's Court at Vijayawada, uninfluenced by the observations or findings, if any recorded in the earlier paragraphs and pronounce order(s) within two months from the date of receipt of copy of this order.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:18.12.2020

SP