

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(P.D).No.2781 of 2018
and C.M.P.No.16303 of 2018

M/s.Fawas Footwear
Represented by its Proprietor,
487, Kilpauk Garden Road,
Kilpauk, Chennai – 600 010.

... Petitioner

Vs

M/s.Bostik India Private Limited,
Rep. by its Technical Service Executive
J.Balaji
No.W-393/9, 4th Floor,
A.R.Building, School Road,
Anna Nagar West Extension, Chennai.

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Judgment and Decree dated 30.11.2017 made in C.M.A.No.133 of 2015 on the file of the VII Additional Judge, City Civil Court, Chennai, reversing the fair and decreetal order dated 03.08.2013 made in I.A.No.16914 of 2012 in O.S.No.2121 of 2012 on the file of the XVII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.Mohammed Fayaz Ali
For Respondent : Mr.S.Parthasarathy

ORDER

This Civil Revision Petition is filed against the Judgment and Decree dated 30.11.2017 made in C.M.A.No.133 of 2015 on the file of the VII Additional Judge, City Civil Court, Chennai, reversing the fair and decreetal order dated 03.08.2013 made in I.A.No.16914 of 2012 in O.S.No.2121 of 2012 on the file of the XVII Assistant Judge, City Civil Court, Chennai, thereby ordered to return the suit to be presented in the proper Court.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit in O.S.No.2121 of 2012 for recovery of money. According to the respondent, they are the manufacturer and dealer of adhesive. During the course of business, the petitioner approached the respondent for the supply of adhesive and received the product worth of Rs.90,641/- in various invoices. Even then, the petitioner did not make any payment but admitted the liability. Hence, the suit.

3. Pending suit, the petitioner filed a petition to return the suit to be presented in the proper Court for the reason that the suit ought to have been filed before the Courts in Bangalore not in Chennai. No cause of action arose in Chennai. The respondent herein had supplied the goods through his Consignor situated at Ambur, Vellore District to the petitioner factory at Ambur. The respondent Company situated at Bangalore and as such, there is no cause of action has arisen at Chennai.

4. Whereas, the respondent contended that the petition was filed only to drag the proceedings and to harass the respondent company. As per Section 20 of the CPC, the respondent had right to sue either at the residence of the petitioner or where the cause of action arose. Insofar as the present suit is concerned, it was dealt with by the Chennai Branch at Anna Nagar West Extension. The petitioner is residing at Kilpauk within the jurisdiction of the Court below. All the orders for the supply of adhesives were made only in the Anna Nagar Branch Office of the respondent herein and the goods were supplied to the factory of the petitioner herein.

5. It is also seen that already the respondent filed a similar suit as against the sister concern of the petitioner i.e., Irbaz Shoes. In the said suit also, the petitioner's sister concern raised the same issue and this Court held in C.R.P.(PD) No.4495 of 2013 dated 22.04.2016, as follows :-

7. The issue that has to be decided by this Court revolves around a narrow compass as to the scope of Order 7, Rule 10 of C.P.C. and on what grounds the Court shall return the Plaint to be represented before the appropriate Court. The scope of Order 7, Rule 10 of C.P.C. is very limited and the Court shall return the Plaint where the Court has no jurisdiction at all to entertain the Suit and when no cause of action has arisen within the jurisdiction of the Court. The legislative intent behind Order 7, Rule 10 of C.P.C. is to ensure that a Court having no jurisdiction shall direct the Plaintiff to approach the appropriate Court which would have jurisdiction over the said matter by returning the Plaint thereby affording him an opportunity to pursue the matter in accordance with law. It is also pertinent to note that Rules 10-A & 10-B, which have been added by virtue of the C.P.C. (Amendment Act, 1976) elaborates the power of the Court for returning the Plaint and the manner in which the same ought to be done.

8. Therefore, the first aspect that has to be considered before entertaining an Application under Order 7, Rule 10 of C.P.C. is to ascertain whether the Court has any jurisdiction to entertain the matter or not or whether at least a part of cause of action has arisen within its jurisdiction. Section 20 of C.P.C. elucidates where the Suit can be filed as stated below:

"20. 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.

Explanation.-- A Corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

9 . A cursory perusal of Section 20, makes it very clear that a Suit shall be filed where the Defendant resides or the cause of action has arisen including where the Principal Office or a Subordinate Office of a Corporation is situated. In the case at hand, it is even not disputed by the Revision Petitioner that its office is situated at Chennai, which is well within the jurisdiction of the IV Assistant City Civil Court, Chennai. Further, it has also been pointed out that considerable part of the transactions have also taken place within the jurisdiction of the Court in which the Suit has been filed. Thus, the Revision Petitioner has not made out a case for invocation of Order 7, Rule 10 of C.P.C., since it has not been established that the Court in which the Suit has been filed has no jurisdiction at all to entertain the matter. At this juncture, it is relevant to point out that the decision cited by the Petitioner is clearly distinguishable on facts and would not apply to the present case.

10. Once when the Revision Petitioner has not been able to demonstrate that the Court in which the Suit

has been instituted has no jurisdiction at all, I am of the opinion that the Trial Court was perfectly justified in dismissing the Application filed under Order 7, Rule 10 of C.P.C., for returning the Plaint. The sine qua non for an Application to be sustainable under Order 7, Rule 10 of C.P.C. is that the Court in, which the Suit has been filed should be a Court that has no jurisdiction at all to entertain the Suit and the said fact has to be convincingly established.

11. In light of the above said discussions, I do not find any merit in the present Civil Revision Petition and the same is dismissed. It is, however, clarified that the aspect as to whether the Courts at Chennai have Territorial jurisdiction is not being finally decided by this Order and this issue will be decided by the Trial Court after evidences led by the parties on all issues. Consequently, connected Miscellaneous Petition is closed. No costs."

6. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Therefore, the Civil Revision Petition is dismissed. Since, the suit is of the year 2012, the

Court below is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

22.07.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To

The XV Assistant Judge,
City Civil Court,
Madras.

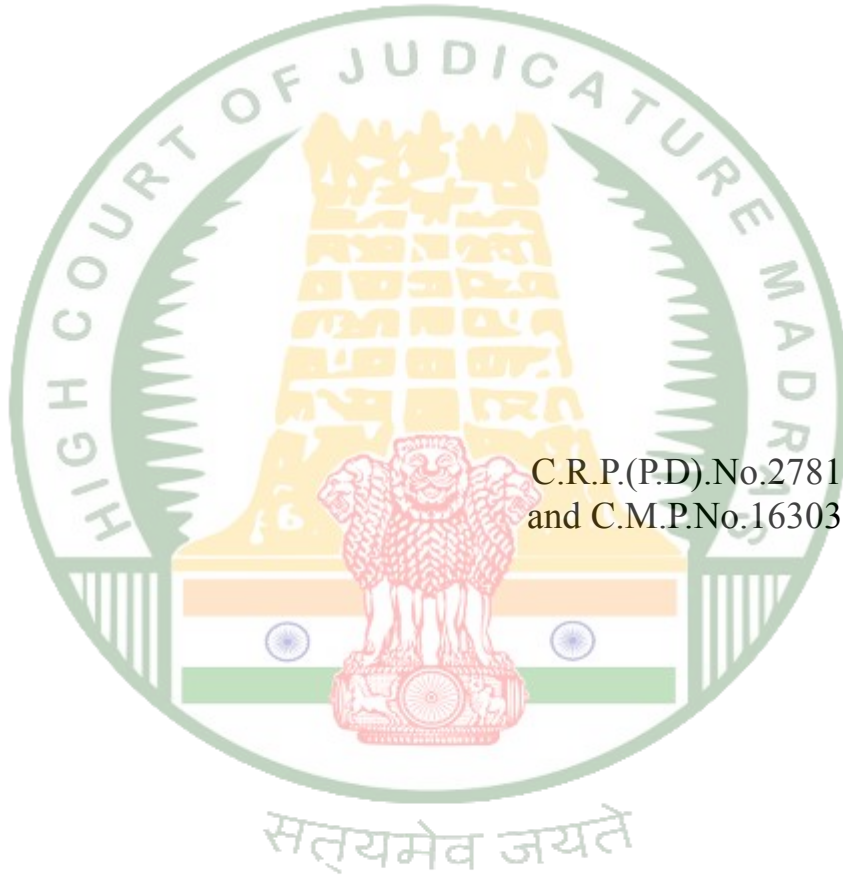


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G.K.ILANTHIRAIYAN,J.

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