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

+ RFA 342/2018 and CM 16135/2018

M/S TARAPORE & COMPANY & ANR ... Appellants

Through: Ms. Priya Kumar, Mr. Tejas  
Chhabra and Mr. Arpit Sharma, Advs.

Versus

M/S BRITISH SCAFFOLDING  
INDIA LTD & ORS

..... Respondents

Through: None

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT (ORAL)**

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**05.09.2022**

1. Respondent 1 was represented by the Counsel on the last date of hearing. Respondents 2 to 4, in this case, are the partners of the appellants and are not, therefore, contesting respondents. Learned Counsel appeared on the last date of hearing on behalf of Respondent 1 and sought time to file Vakalatnama. However, there is no appearance on behalf of Respondent 1 today.

2. The order, dated 23<sup>rd</sup> December 2017, passed by the learned Additional District Judge ("the learned ADJ") in Civil Suit No. 10328/2016 (*British Scaffolding India Ltd v. Tarapore & Co*), somewhat quixotically, even while holding that (i) the learned ADJ

RFA 342/2018

Page 1 of 7



lacks the territorial jurisdiction to entertain and try the suit, (ii) the plaint was liable to be returned to be represented before the appropriate jurisdictional court and (iii) the plaint was not duly verified and instituted through a duly authorized person in accordance with law, holds that the plaintiff was entitled to recover, from the appellants and Respondents 2 to 4 (being the joint defendants in the suit) an amount of ₹ 8,56,077.50.

3. Noting this strange discrepancy in the impugned order, this Court, on 2<sup>nd</sup> August 2018, issued notice limited to the aspect of whether, having held that she has no territorial jurisdiction to entertain the suit, the learned ADJ could nonetheless have returned the finding that the Respondent 1 was entitled to recover ₹ 8,56,077.50.

4. Despite issuance of notice as far back as on 2<sup>nd</sup> August 2018, Respondent 1 appeared in these proceedings only on 6<sup>th</sup> March 2020 and 22<sup>nd</sup> April 2022.

5. Today, there is no appearance on behalf of the respondents despite the matter having been called out twice. Given the nature of the controversy, I have heard Ms. Priya Kumar, learned Counsel for the appellants and have perused the order under challenge.

6. Ms. Priya Kumar submits that her limited prayer is that the observation, in the impugned order, to the extent it holds the appellants and Respondents 2 to 4 liable to pay ₹ 8,56,077.50 to Respondent 1, be quashed and set aside. The reason is obvious. If the



appellants were to approach a jurisdictional court, the aforesaid finding would stare the appellants in their face.

7. Given the nature of the controversy, hardly any recital of facts is needed. A bare outline would suffice.

8. Civil Suit No. 10328/2016, in which the impugned order has come to be passed, was instituted by Respondent 1 against the appellants and Respondents 2 to 4, for recovery of an amount of ₹ 20,03,996/- along with interest *pendente lite* and future.

9. The learned ADJ framed, on 17<sup>th</sup> May 2007, the following issues as arising for consideration in the suit:

“1. Whether this Court has territorial jurisdiction to try the present suit? OPP

2. Whether with the last payment stated to have been made on 19-11-1998, there was accord and satisfaction? OPD

3. Whether the suit has been properly valued for the purposes of Court fees and jurisdiction? OPP

4. Whether the suit is liable to be dismissed on account of non-joinder of parties? OPD

5. Whether the plaint has been signed, verified and the suit instituted by duly authorised person as well as in accordance with law? OPP

6. What amount is the plaintiff entitled to and from which of the parties? OPP



7. Whether the plaintiff is entitled to any interest, if so, what rate and for what period? OPP

8. Relief.”

**10.** The learned ADJ opines, at the outset, that the issues would be taken up together as they were interrelated and interconnected. This observation, even by itself, appears to be incorrect, as the issue of territorial jurisdiction was distinct and cannot be regarded as interrelated or interconnected to the issue of substantive liability of the appellants towards Respondent 1, if any. By its very nature, it was required to be addressed as a preliminary issue.

**11.** Instead of doing so, the learned ADJ proceeds, in the impugned order, to examine, in detail, the liability of the appellants towards Respondent 1 and holds, towards the conclusion of para 8, that an amount of ₹ 8,56,077.50 remained outstanding to be paid by the appellants and its Directors to Respondent 1. Thereafter, the learned ADJ proceeds, in para 9 to observe that “before determining the entitlement of the plaintiff”, there was “one valid aspect to be addressed”.

**12.** The “aspect” in question was of territorial jurisdiction. Dealing with the said aspect, the learned ADJ observes that the purchase order placed by the appellants on Respondent 1 was for supply of items at Airport Road, Bangalore. Invoices were raised by Respondent 1 from M/s British Scaffolding (India) Ltd at Kundli, Sonapat, Haryana or from Bhiwadi. The invoices raised from Bhiwadi on an endorsement



that all disputes shall be subject to Bhiwadi Jurisdiction. The invoices also contained endorsements to the effect that material was to be delivered to the appellants at Bangalore. Having noted thus, the learned ADJ proceeds to observe as under:

“Neither the purchase order is issued from within the territorial limits of this Court nor is the purchase order addressed to the registered office of the plaintiff within the territorial limits of this court, nor is the material despatched from within the territorial limits of this court, nor is the material despatched from within the territorial limits of this court. No part of cause of action has arisen within the territorial limits of this court.”

**13.** The learned ADJ, thereafter, after citing Section 20 of the CPC, holds that the basic premise, as contained in para 11 of the plaint, on the basis of which the territorial jurisdiction of the Courts at Delhi was invoked, was contrary to the documents. She, therefore, concludes thus:

“From a perusal of the documentary evidence relied upon by the plaintiff itself it is crystal clear that no part of the cause of action has accrued within the territorial jurisdiction of this court. The findings on issue no: 1 are necessarily to be returned against the plaintiff and in favor of the defendants as neither the defendant is shown to carry on business from within the territorial jurisdiction of this court, nor any part of the cause of action has accrued within the territorial jurisdiction of this court. The plaint is therefore liable to be returned to be presented before the appropriate court of jurisdiction.”

**14.** The impugned order goes on to conclude thus:

**“12. Relief:**



As a consequence of the issue wise findings returned *the plaintiff is held entitled to recover from the defendants jointly and severally a sum of Rs.8,56,077.50/-*, however, it is also held that this court lacks the territorial jurisdiction to entertain and try the suit for recovery at the first instance and *plaint is liable to be returned to be presented before the appropriate court of jurisdiction* and also that the plaint is not duly verified and instituted through a duly authorized person in accordance with law. The suit for recovery is disposed of accordingly.

The defendant is awarded the costs of the proceedings.

Decree sheet be prepared accordingly.

File be consigned to the record room.”

15. The impugned order is *ex facie* perverse in law.

16. It is obvious, at a bare glance, that the finding of the learned ADJ, to the effect that Respondent 1 was entitled to recover ₹ 8,56,077.50 from the appellants and Respondents 2 to 4, is unsustainable. A Court which is bereft of territorial jurisdiction is *coram non judice*. It has no authority, whatsoever, to return any finding on merits. It was completely impermissible for the learned ADJ to, after finding herself to be *coram non judice*, return findings on merits regarding the entitlement of Respondent 1 against the appellants and its Directors.

17. The impugned judgment, to the extent it holds Respondent 1 to be entitled to recover from the appellants and Respondents 2 to 4 an



amount of ₹ 8,56,077.50 is quashed and set aside.

18. The appeal is accordingly allowed with no order as to costs.
19. Pending miscellaneous applications, if any, stand disposed of.

**C.HARI SHANKAR, J**

**SEPTEMBER 5, 2022**  
*r.bararia*

