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CO No. 3330 of 2018

**Dilip Ghosh.
versus
Tapas Chandra Das**

Mr. Samiran Mandal
Mr. Nitish Samanta,
Mr. Abhinava Dan For the petitioner.

In spite of service of notice plaintiff/opposite party is not represented.

The present application under Article 227 of the Constitution of India has been preferred against the order No. 6 dated 14.06.2018 passed by the learned Civil Judge (Junior Division), 1st Court, Rampurhat, Birbhum, in Money Suit No. 3 of 2018.

Background of present dispute is that petitioner /defendant has his partnership business for setting/development of building, where plaintiff/opposite party came before him on 08.03.2017 and booked a flat depositing a sum of Rs. 20,000/- for which a money receipt was granted to him. Subsequently a further sum of Rs. 1,50,000/- was paid by cheque to petitioner on 24.04..2017. However due to difference of opinion, plaintiff afterwards terminated oral contract and claimed for refund of the said amount by filing aforesaid money suit. Petitioner /defendant contended that the talk of

purchasing flat and the aforesaid money transactions as well as issuance of money receipt took place within the jurisdiction of Haldia court and as such Rampurhat court has got no territorial jurisdiction to try the suit and on the contrary plaintiff's contention is entire talk about agreement to purchase as well as payment of money and granting of money receipt by defendant took place within the jurisdiction of Rampurhat court and as such cause of action arose within the jurisdiction of Rampurhat Court. Court below in the impugned order accepted plaintiff's contention and rejected defendants prayer for return of plaint.

Being aggrieved by that order learned counsel appearing on behalf of the petitioner submits that trial court failed to consider the issue in its proper perspective and passed the order mechanically without applying judicial mind. Petitioner is a driver and as such there was no scope for him to go outside jurisdiction of Haldia Court. Entire transaction between the parties took place within the jurisdiction of Haldia Court and the flat proposed to be sold also situates within the jurisdiction of Haldia Court and as such Rampurhat court has got no jurisdiction to try the said suit and the plaintiff/opposite party in order to harass the petitioner/defendant has filed the present suit in the Rampurhat Court. In fact, the suit is barred under the provision of Section 9 of the Civil Procedure Code and the

plaint should be returned under Order VII Rule 10 of the Code of Civil Procedure to the plaintiff for presenting the same before the Haldia Court who has got the territorial jurisdiction to try the suit.

I have gone through the order impugned as well as the certified copy of the plaint. It appears that in the plaint it has been categorically averred in paragraph 3 that the defendant during his visit at Tarapith came to the quarter of the plaintiff at Rampurhat. Defendant had talk with the plaintiff and as per their agreement, the plaintiff paid Rs.20,000/- on 08.03.2017, on the basis of a verbal agreement that the defendant will provide a flat to them and accordingly defendant had given a receipt of Rs.20,000/- to the plaintiff. In paragraph 4 also it has been stated in the plaint that subsequently defendant again came to the quarter of the plaintiff where plaintiff handed over a cheque to defendant, who accepted the cheque towards payment of second installment of Rs. 1,50,000/- on 24.04.2017, from the quarter of the plaintiff. However, some dispute arose between the parties at a later stage and for which plaintiff asked the defendant to refund the money which they paid by way of advance from their quarter to the defendant, which the defendant refused to return and as such the suit was filed.

From the aforesaid facts and circumstances, it is clear that agreement was oral and moreover there is

nothing in the plaint that any talk of agreement took place at Haldia or any payment was made by plaintiff at the office of Haldia. In fact in paragraph 5 of the plaint, plaintiff averred that defendant when demanded the price of proposed flat as Rs. 26,00,000/- instead of earlier agreed price of Rs. 24, 00,000/- plaintiff got astonished and demanded to return the said amount, thereby plaintiff cancelled the agreement.

While dealing with the question of maintainability of the suit on the ground of territorial jurisdiction, the averment contained in the plaint are to be looked into. The law does not permit the court to go into the submission made at this stage, by the defendant in this behalf. Even the court would have territorial jurisdiction to entertain a suit for refund of amount covered by an agreement for sale, at a place, wherefrom the plaintiff issued revocation notice. The revocation happened to be an independent cause of action. In plaint plaintiff averred in paragraph 6 of plaint that he sent written notice through his lawyer of Rampurhat court for refund of amount which in substance amounts to cancellation of agreement. Moreover on the second occasion as per averment of plaint plaintiff handed over cheque of Rs 1,50,000/- on 24.10.2017 from his quarter at Rampurhat. Accordingly it is the cheque that constitutes part transaction and as such the place where the defendant got the cheque from the plaintiff, gives rise to

a part of the cause of action and the plaintiff has the right to institute a suit for recovery of said amount in the court within whose territorial jurisdiction, the defendant got the cheque from plaintiff. In a suit of this kind the cause of action does not constitute merely the giving of the advance but it consists of a bundle of facts including the agreement relating to the transaction, the place where the plaintiff delivered the cheque to defendant and the place where the amount is to be paid back.

Apart from what has been discussed above, it is well settled that the objection as to territorial jurisdiction of a court does not stand on the same footing as to the objection regarding competence of a court to try a case. Pecuniary jurisdiction i.e competence of a court to try a suit goes to the very root of the jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to territoriality of jurisdiction of a court can be waived and this principle has got statutory recognition by enactment like section 21 of the code.

The entire gamut of the suit relates to the payment of money and plaintiff's claim to get back the money. Accordingly the court below was justified in observing that Section 20 (c) of the Code of Civil Procedure attracts in the present case as according to the plaint, the cause of action of the suit arose within the jurisdiction of

Rampurhat Court.

In view of above, I do not find anything to interfere with the order impugned.

The order impugned is affirmed and let C.O No. 3330 of 2018 is accordingly disposed of.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Ajoy Kumar Mukherjee, J.)