

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1508 OF 2019
WITH
CIVIL APPLICATION NO.2798 OF 2017**

Prime Incorporate ... Appellant

V/s.

VIP Clothing Ltd ... Respondent

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.01.09
10:25:10
+0530

Mr. Mahima Shah i/by Intralegal for the appellant.

Mr. Aditya Udeshi with Mr. N.N. Gawade, and Mr.
Rahul Sanghvi i/by M/s. Sanjay Udeshi & Co. for the
respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 7, 2023

P.C.:

1. The appeal is by the original defendant challenging judgment and decree passed in Summary Suit No.5535 of 2007. The learned Judge, City Civil Court, Greater Mumbai decreed the suit directing the appellant/defendant to pay sum of Rs.5,68,830/- (Rupees Five Lakh Sixth-Eight Thousand Eight Hundred Thirty Only) along with future interest at the rate of 9% per annum from the date of the suit till realization of the amount.

2. The plaintiff supplied goods to the defendant under invoices and challans. The period of invoices ranged from 2003 to 2006. Based on the said invoices and delivery of goods, a claim of

Rs.5,68,830/- was made before the Trial Court. The case of the plaintiff was that towards discharge of price of goods supplied to the defendant, the defendant issued twelve (12) cheques in favour of the plaintiff, which had been dishonoured and, therefore, he was constrained to file the suit.

3. The defendant contested the suit by filing written statement. The defendant raised issue of territorial jurisdiction. The defendant also raised defense that the cheques which were handed over to the plaintiff were blank cheques and were to be deposited with the banker only on the instructions from the defendant. It is stated that the plaintiff had terminated agency of the defendant with effect from 1st April 2005 and, therefore, there is no question of paying liability accrued thereafter.

4. The learned City Civil Court framed five (5) issues. One of the issue was in relation to the territorial jurisdiction. Rest all the issues were on merits of the controversy involved between the parties.

5. Learned advocate for the appellant submitted that only because the office of the plaintiff is situated in Mumbai, that itself is not sufficient to confer territorial jurisdiction on the Court in Mumbai. He submitted that the entire cause of action accrued beyond the territorial jurisdiction of the Mumbai Court.

6. Learned City Civil Court while considering issue no.1 has considered the said issue in detail. It needs to be noted that the learned Trial Court in paragraph 20 has noted relevant pleadings of the plaintiff in para 10 of the plaint which reads thus:

“20. But before considering the evidence, let us move towards the pleadings in the plaint. The plaintiff pleaded in para no.10 as

“Plaintiff submits that the goods were supplied from Mumbai. The orders were placed in Mumbai. The sums due were payable at Mumbai. Parties have subjected themselves to the jurisdiction of the courts in Mumbai. The plaintiff’s registered office is in Mumbai. However, as the defendant is having office outside the jurisdiction of this Hon’ble Court i.e. at Kannur, the plaintiff by way of abundant precaution are praying for leave under Clause XII of the Letters Patent. Thus the entire cause of action has arisen in Mumbai and even after granting the said leave to the plaintiff this Hon’ble Court will have jurisdiction to try and entertain this suit.”

7. It appears from the record that initially the suit was filed before this Court. This Court granted leave to the plaintiff to file the suit as the defendants were residing outside territorial jurisdiction of this Court. The suit was thereafter transferred to the City Civil Court. The evidence on record in the form of testimony of the plaintiff shows that the goods were supplied from Mumbai, the orders were placed in Mumbai. On the basis of the invoices which contains clause conferring jurisdiction on the Courts in Mumbai, the City Civil Court recorded a finding that the Courts in Mumbai has the jurisdiction. The original bills containing clause of jurisdiction has been admitted by the defendant. Therefore, in my view, the City Civil Court was right in answering issue no.1 in favour of the plaintiff.

8. In so far as the liability of the defendant to pay the amount is concerned, the bills issued by the plaintiff to the defendant filed

below Exhibit 5 were admitted by the defendant. The twelve (12) cheques issued in favour of the plaintiffs have also been admitted by the defendant. The only defense raised was that the blank cheques were issued to the plaintiff which were to be deposited only after the instructions from the defendant.

9. The said defense has not been proved by the defendant. The plaintiff has proved supply of goods. The defendant has failed to prove that he had returned the goods worth more than Rs.1 lakh as claimed. The defendant has also failed to prove the defense that he had paid amount of Rs.75,000/- (Rupees Seventy-Five Thousand Only) towards security. On the basis of the evidence on record, the learned City Civil Court recorded a finding based on admissible evidence that the plaintiff supplied and delivered goods worth Rs.5,60,830/- (Rupees Five Lakh Sixty Thousand Eight Hundred and Thirty Only) to the defendant for period ranging from 2003 to 2006.

10. In that view of the matter, in my opinion, there is no merit in the first appeal. The first appeal is, therefore, dismissed in exercise of powers under Order 41 Rule 11 of the Code of Civil Procedure, 1908.

11. In view of dismissal of appeal, the civil application does not survive and stands disposed of as infructuous.

(AMIT BORKAR, J.)