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OSA.Nos.163 of 2013 and 164 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

OSA.Nos.163 of 2013 and 164 of 2013

M/s.Carol Garments,
Rep. by its Partner Mr.M.Venkatachalam,
No.13, Bidgeway Colony Extension,
2nd Street, Tirupur 641607.

...Appellant in both the appeal

Vs.

1. M/s.Spectra Fashions,
No.23/24, Radha Bazar Street,
Sethia House, 5th Floor, Kolkata 700001.
2. Sanjay Sethia,
Partner of M/s.Spectra Fashions,
23/24, Radha Bazar Street,
Sethia House, 5th Floor,
Kolkata 700001.
3. E.Vijay Anand

...Respondents in both the appeal

For Appellant	: Mr.V.Manohar
For Respondents	
for RR1 & 2	: Mr.M.S.Krishnan, Senior Counsel for Mr.P.John Zachariah for M/s.Fox Mandal Associates
for R3	: Served - No Appearance



Common Prayer: Original Side Appeal filed under Order XXXVI Rule 11 of O.S.Rules r/w Clause 15 of the Letters Patent, against the judgment and decree dated 23.07.2012 passed by a learned Single Judge of this Court in Appln. No.5875 of 2011 and 5876 of 2011, respectively in CS.No.624 of 2011.

COMMON JUDGMENT

[Judgment of the Court was delivered S.S.SUNDAR, J]

These two appeals arise out of the common order dated 23.07.2012 in Application Nos.5875 of 2011 and 5876 of 2011 in CS.No.624 of 2011 passed by a learned Single Judge of this Court.

2. The brief facts which are necessary for disposal of these appeals are as follows:

The appellant filed a suit in C.S.No.624 of 2011 against the defendants 1 and 2 for a sum of Rs.62,36,222/- towards principal and a sum of Rs.5,84,250/- towards interest from 30.10.2010 till the date of the plaint at the rate of 12% per annum aggregating to Rs.68,20,472/- and for other consequential reliefs. It is stated in the plaint that the appellant is a partnership Firm carrying on business in manufacturing high class hosiery.



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3. It is the case of the appellant that the defendants 1 and 2 approached the plaintiff and purchased cotton spendex RIB and printing fabrics through third defendant and the materials were transported from the plaintiff by the defendants through Lorry from Chennai during the period from 15.12.2008 to 14.01.2009. Stating that the plaintiff supplied goods to the defendants 1 and 2 to the value of Rs.82,36,222/-, but a sum of Rs.20,00,000/- alone was paid towards the value of the goods supplied by the plaintiff, the suit has been laid for recovery of a sum of Rs.62,36,822/- with interest at 12% per annum.

4. The defendants 1 and 2 are admittedly residing at Kolkata and having Office only at Kolkata. However, the third defendant is shown as a person residing in Old Washermanpet, Chennai within the jurisdiction of this Court. The cause of action paragraph in the plaint reads as follows:

"The plaintiff submits that the cause of action arose at Old Washermenpet, Chennai where the defendants received materials from the plaintiff and transported to Kolkata from Chennai during the period 15.12.2008 to 14.01.2009. Having the sale concluded and entire transaction took place at Chennai, the cause of action arose at Chennai within the



jurisdiction of this Hon'ble Court and the plaintiff sent a Legal notice on 26.10.2010 to the 1st and 2nd defendants which was received by them on 30.10.2010. The suit is well within the limitation since the transaction and the part payment are within the time prescribed."

5. It is seen from the records that the appellant filed an application in OA.No.4317 of 2011 in CS.No.624 of 2011 for grant of leave and the same was also granted on 14.09.2011.

6. After receiving the summons, defendants 1 and 2 filed an Application No.5875 of 2011 in CS.No.624 of 2012 to revoke the leave granted on 14.09.2011 in Application No.4317 of 2011 in CS.No.624 of 2014. The defendants 1 and 2 also filed an Application No.5876 of 2011 for rejection of plaint under Order 7 Rule 11 of CPC. In both the applications, the defendants 1 and 2 stated that this Court has no jurisdiction to try the suit, as no part of cause of action has arisen within the jurisdiction of this Court. Therefore, the suit against defendants 1 and 2 is not maintainable before this Court.



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7. Though it is stated in the plaint that the defendants 1 and 2 approached the plaintiff through third defendant, it is contended by the defendants 1 and 2 that no document or piece of paper or communication is produced to show that the defendants 1 and 2 had approached the plaintiff and procured the materials through third defendant. Further, it is stated that no relief is claimed against third defendant and that the third defendant who is residing at Chennai was purposely impleaded only to file the suit before this Court.

8. It is also stated that the contract of sale and purchase took place between Kolkata and Thiruppur and both the places are outside the jurisdiction of this Court. Since the whole cause of action arose outside the jurisdiction of this Court, it is contended by the defendants 1 and 2 that no leave can be granted. Though it is contended by plaintiff the goods were transported to Chennai and then to Kolkata, attention of this Court was drawn that consignor address was given at Thiruppur and the consignee at Kolkata in all invoices.

9. In the Application No.5876 of 2011 filed under Order 7 Rule 11 of



CPC, it is stated that not a single document is filed to show that there is any

connection between the defendants 1 and 2 and the third defendant. The

defendants 1 and 2 stated that the third defendant is impleaded only to

invoke the jurisdiction of this Court. It is stated that the plaintiff Firm is not

a registered Partnership Firm. However, a registration certificate was filed

to disclose that the plaintiff is a registered Firm. However, the name of

M.Venkatachalam who signed the plaint as partner of the Firm is not found

in the Registration Certificate. Hence, it is stated that the suit itself is not

maintainable by virtue of Section 69 (2) of the Indian Partnership Act.

10. Both the applications filed by the defendants 1 and 2 were allowed by the learned Single Judge of this Court mainly accepting the case of the defendants 1 and 2 that the plaintiff has not satisfied the requirements to grant leave under Clause 12 of the Letters Patent as the entire plaint does not disclose any cause of action with in the jurisdiction of this Court.

11. Though the plaint was signed by one M.Venkatachalam as a Partner of the the plaintiff Firm, learned Judge found that on the date of filing of the suit, the name of M.Venkatachalam is not shown in the Register



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of Firm as a partner of the Firm. Hence, the learned Judge held that the plaintiff is liable to be rejected. Aggrieved by the order of the learned Single Judge in both the applications, the above appeals have been preferred.

12. From the reading of the plaint as well as the averments in the affidavit filed in support of the application in AS.No.5875 of 2011, this Court finds that no relief is prayed for against the third defendant and the defendants 1 and 2 are not residing within the jurisdiction of this Court. Merely, by stating that the defendants 1 and 2 approached the plaintiff through the third defendant, jurisdiction of this Court cannot be invoked by showing the residence of the third defendant within the jurisdiction of this Court. Since the goods were booked at Tiruppur showing the consignee's address at Kolkata, the explanation that goods were transported from Tiruppur to Chennai and then from Chennai to Kolkata cannot be accepted. Therefore, this Court is of the view that the suit is not maintainable before the Original Side of this Court and the leave ought not to have been granted. Therefore, the application to revoke the leave is appropriate and this Court is in perfect agreement with the learned Single Judge revoking the leave granted. Hence, the order revoking leave is confirmed. However,



when the leave granted is revoked by the learned Single Judge, there is no need to consider the application filed under Order 7 Rule 11 of CPC to reject the plaint.

13. It is open to the plaintiff to file the suit before the Court of competent jurisdiction. We have not expressed any opinion on the merits of the case of the respective parties as regards jurisdiction of Civil Court at Tiruppur. This Court noticed that the plaintiff's case is that a part of cause of action arose within the jurisdiction of Tiruppur and therefore, the Civil Court in Tiruppur is competent to decide the suit. However, the learned Senior Counsel appearing for the respondent submitted that the Court in Tiruppur has no jurisdiction to decide the suit as no part of cause of action arose within the jurisdiction of that Court. Since this is a factual issue, we do not express any opinion.

14. Further, the question whether the suit is bound under Section 69 (2) of the Indian Partnership Act is a question which needs to be decided on facts. In a petition filed under Order 7 Rule 11 of CPC, the Court is not expected to consider the case of the defendants in the written statement, but the Court is required to consider the plaint averments. In such



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circumstances, this Court is of the view that the application filed under

Order 7 Rule 11 is not necessary and ought not to have been entertained after revoking the leave granted. Secondly, the question whether the suit is barred under Section 69 (2) of the Indian Partnership Act cannot be decided as a pure question of law and an opportunity should be given to the plaintiff in the suit. When the Court revoked leave, the Court may not be competent to reject the plaint on the absence of jurisdiction of this Court to entertain the suit is decided while revoking leave. Therefore, OSA.No.163 of 2013 against the order in Application No.5875 of 2011 in CS.No.624 of 2011 is dismissed and OSA.No.164 of 2013 against the order in Application No.5876 of 2011 is allowed. No costs.

(S.S.S.R.J.) (P.B.B.J.)
20.03.2023

Index : Yes / No
Speaking order: Yes/No
pvs



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To

The Section Officer,
VR Section High Court, Madras.



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