

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-917-2022 (O&M)
Date of decision : 23.02.2023

M/S Kapoor Trading Co. & Anr.

... Petitioner(s)

Versus

M/S Basant Knitting Industry

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Bharat Bhushan Sharma, Advocate for the petitioners.

Mr. Jai Bhagwan Sharma, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed against the impugned order dated 01.09.2021 (Annexure P-7) vide which the second application filed by the defendant-petitioners under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) has been dismissed.

The plaintiff-respondent filed a suit for recovery of Rs.4,59,778/-. During the pendency of the suit, an application under Order 7 Rule 11 CPC was filed by the defendant-petitioners which was dismissed on 25.05.2017 by a speaking order holding as under :

“.....Hence, it can be said that the Delhi jurisdiction clause on the invoices was not a binding term between the parties. The applicant has acknowledged the receipt of invoices where the said clause is present as well as

those invoices where the said clause is absent. At this stage of deciding an application under Order 7 Rule 11 there is no evidence on the file to show that there was a specific agreement between the parties by which they subjected themselves to the jurisdiction of courts at Delhi. This can only be proved by way of evidences. The issue of jurisdiction in the present case is a mixed question of law and fact and can only be decided after evidences have been adduced in this regard. Hence, the application in hand is dismissed. Now to come upon 07.07.2017 for filing of written statement by the defendants.”

The said order attained finality inasmuch as the same was not challenged. Thereafter, while the evidence was being led, a second application was filed for rejection of the plaint on the ground that now the invoices had been placed on the record as evidence and that clearly stated that jurisdiction would lie in Delhi Courts. Vide the impugned order dated 01.09.2021, the application has been dismissed. Hence, the present revision petition.

Learned counsel for the defendant-petitioners would contend that since the invoices have now been placed on the record as evidence, hence, the application under Order 7 Rule 11 CPC ought to be allowed.

Heard.

It is trite that at the time of deciding an application under Order 7 Rule 11 CPC, only the averments made in the plaint and the documents appended thereto are to be seen. From a meaningful reading of the plaint in the present case it cannot be said that jurisdiction lies in Delhi. It would be a matter of evidence as to whether the jurisdiction lies in Delhi or at Faridabad.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. The present revision petition which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.02.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO