



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 25.01.2024

Judgment pronounced on: 15.04.2024

+ CM(M) 153/2024 & CM APPL. 4741/2024—Stay

VIJAY KUMAR GUPTA

..... Petitioner

Through: Mr. Surender Gupta, Mr. Rahul
Ranjan and Mr. Deepak Rana, Advs.

versus

MOHIT MALIK

..... Respondent

Through: Mr. Vikram Singh Bhatia and Mr.
Munnilal, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition under Article 227 of the Constitution of India has been filed impugning the orders dated 08.01.2024 and 25.11.2023, passed by the learned District Judge, Commercial Court-01, Shahdara, Karkardooma Courts, Delhi in CS(COMM) 83 of 2023 titled as "*Mohit Malik Prop. Of M/s Om Sai Traders vs. Vijay Kumar Gupta Prop. Of M/s Shri Balaji Namkeen Udyog*". The petitioner herein is the defendant and the respondent herein is the plaintiff before the learned Trial Court.

2. A brief factual history of the case is that the respondent herein is engaged in the business of supplying furnace burners for liquid fuel and other such mechanical machinery and runs its business through its



proprietorship namely “M/s Om Sai Traders” where the respondent herein, Mohit Malik, is the proprietor. The petitioner herein is engaged in the business of production of food products such as breads, pastries, cakes and many such other products through its proprietorship firm “M/s Shri Balaji Namkeen Udyog” wherein the petitioner herein, Vijay Kumar Gupta, is the proprietor.

3. The petitioner/defendant approached the respondent/plaintiff at his office in August 2018, where the petitioner expressed his desire to purchase industrial fuel. The same was purchased telephonically and an invoice amounting to Rs. 1,98,240/- was raised for the same. The amount was then deposited in the bank account of the respondent.

4. The petitioner approached the respondent in January 2020 for the supply of industrial fuel as they had done before. The respondent provided the petitioner with the same on various instances between 11.01.2020 and 18.02.2020. However, the petitioner did not provide the payment of the goods supplied to him during this period, leading to a total outstanding amount of Rs. 6,60,210/-. The respondent thereafter approached the petitioner on various occasions, demanding the payment of the outstanding amount, but all to no avail. In February 2022, the respondent also explored the possibility of mediation but there was no representation from the petitioner.

5. Thereafter, the respondent filed a suit for recovery of money on the basis of invoices starting from January 2020 stating that the petitioner had not made the payment against the said invoices. Accepting the summons of the suit, the petitioner entered his appearance and filed the written statement



on 03.06.2023 along with an application under Order VII Rule 11 Code of Civil Procedure, 1908 (hereinafter referred as 'CPC'). The matter was listed for hearing arguments on the application and the respondent was asked about place of his business and to produce its GST certificate. Thereupon, the respondent moved an application to amend its plaint on the basis of a vague application moved under Order VI Rule 17 CPC, however, the same came to be allowed by the learned Trial Court vide order dated 25.11.2023.

6. Vide the impugned order dated 08.01.2024, the learned Trial Court while dismissing the application filed by the petitioner under Order VII Rule 11 CPC stated that court merely needs to look into the averments made in the plaint and not the defense raised in the written statement. Further, a cost of Rs. 5000/- was imposed on the petitioner for causing a delay in the proceedings. Aggrieved by the same, the petitioner has approached this court.

Submissions of the Petitioner:

7. It is the contention of the petitioner that the impugned order is liable to set aside as the application of the respondent under Order VI Rule 17 is vague and does not disclose the changes made in the amended plaint. It is also stated that the respondent has not disclosed the real cause of action in the plaint. The petitioner has reiterated that he is a permanent resident of District Palwal, Haryana, and all the invoices have been raised by the plaintiff at its office at Mundka, Delhi and no payment was made by the petitioner within the territorial jurisdiction of District Shahdara.

8. The learned counsel submitted that learned Trial Court committed a grave error of law as well as of facts while dismissing the application of the



petitioner under Order VII Rule 11 Code of Civil Procedure, 1908 as the respondent has shown illusory cause of action in the plaint.

9. It was submitted that the learned Trial Court further failed to appreciate and consider that the respondents principle place of business is in Mundka, which does not fall within the territorial jurisdiction of the learned Trial Court. The invoices had been generated from Mundka, the Dharam Kanta slips were of Hodal Haryana, the e-way bills bear a Mundka address, and the transport slips are showing Mundka to Hodal and the goods were supplied in Hodal, Palwal, Haryana. Thus, no cause of action has accrued in the territorial jurisdiction of the learned Trial Court.

10. The learned counsel further submitted that the learned Trial Court while construing that a part of cause of action has accrued within its territorial jurisdiction had considered that the respondent has received the amount in his bank account in the year 2018. The respondent has contradicted himself by contending that petitioner has not paid for the invoices for which the suit was filed. It was thus submitted as the respondent works for gain and resides in Hodal, Palwal, Haryana. Therefore, the learned Trial Court has no jurisdiction to try the present suit.

Submission by the respondent:

11. It is submitted on behalf of the respondent that the petitioner has approached the respondent at its office at Jwala Nagar, Shahdara, Delhi-32 and goods were supplied by the respondent from its Mundka Godown and payments were also received from the petitioner, electronically, in its bank at Central Bank of India, Sehdev Gali, Vishawas Nagar, Shahdara, Delhi-32 and therefore, this court has the territorial jurisdiction to try and entertain the



present suit. Reliance is placed upon the judgment of this Court, in case titled as, “**M/s Auto Movers vs. Luminous Power Technologies Pvt. Ltd**”, passed in CM (M) 604/2020.

Reasons & Conclusion:

12. The position of law is settled that while considering the application under Order VII Rule 11 CPC, the averments in plaint alone are relevant and to be considered. The Court has to determine whether the plaint discloses cause of action by exploring the averments in the plaint read in synchronicity with the documents relied upon. As the Court is empowered to summarily dismiss the suit at the threshold, at this stage, the pleas taken by the defendant in the written statement would be irrelevant. Needless to say whether a plaint discloses a cause of action or not is essentially a question of fact depending upon the facts and circumstances of each case. For the purpose of Order VII Rule 11 CPC, the plaint has to be construed as whole and if the allegations prima facie show a cause of action, the Court would not be justified in exercising the power under Order VII Rule 11 CPC.

13. Section 20(c) CPC envisages every suit shall be instituted in Court within the local limits of whose jurisdiction the cause of action, the wholly or in part arises. In case of a money suit, the place where the order is placed or the money is received would also govern the cause of action having arisen at the said places. In the present case, the respondents have averred in paragraph 20 of the plaint, the petitioner approached and placed order of goods from the warehouse/godown/office of the respondent firm and got the possession of the goods at the warehouse/godown/office of the respondent firm at Shahdara district. The respondent received payment in lieu for the material delivered to the petitioner and the petitioner transferred the entire



amount of Rs.1,98,240/- in the bank account of the respondent i.e. Central Bank of India situated at 3/33-35, Sahdev Gali, Vishwas Nagar, Shahdara, Delhi. Moreover, it is the case of the respondent that the VAT number of the respondent firm was issued at the address of his firm at Shahdara, Delhi.

14. The learned Trial Court on perusal of the record has observed that various invoices have been issued by the respondent in the name of the petitioner by mentioning his official address which is in Jawala Nagar, Shahdara, Delhi and mentioning the address of his godown as Mundka, Delhi. Therefore, from the aforesaid, it is clear that petitioner had approached the respondent at his official address at Jawala Nagar, Shahdara district, Delhi-32 and the part payments were received from the petitioner electronically in its bank situated in Vishwas Nagar, Shahdara, Delhi-32. Essentially, the goods were delivered to the respondent at Palwal, Haryana from the godown of the respondent situated at Village Mundka, West Delhi.

15. It is also true that place where the payment has to be received by the respondent has not been specified by the parties. It is well-established principle of law that where, under a contract between the parties, no place of payment is declared, applying the principle, the debtor must seek his creditor and therefore, a suit for recovery is maintainable at the place where the creditor resides or works for gain, since a part of the cause of action arises at that place as well.

16. Reference is placed on the judgment in the case of **Das Brothers Zemindary Co. Ltd. vs. Surendera Nath Das**: ILR (1957) 2 Cal 8, wherein it was held that *“the obligation to pay the debt involves the obligation to find the creditor and to pay him at the place where he is when the money is payable. The application of the general rule is not excluded because the*



amount of debt is disputed.....” He has further relied upon the case of “Sreenivasa Pulvarising vs. Jal Glass & Chemicals Pvt. Ltd.” [AIR 1985 Cal 74] wherein it was held that “.....In a contract of the nature now under consideration performance of the contract consists not only of delivery of the goods but also of payment of the price. Therefore, cause of action for a suit on breach of such a contract would arise not only where the goods were to be delivered but also where the price would be payable on such delivery.....”

17. Adverting to the facts of the present case, the office of the respondent is stated to be situated at Jawala Nagar, Shahdara district, Delhi-32, as observed by the learned Trial Court and finds mention in various invoices raised by the respondent in the name of the petitioner. Categorically no place of payment has been specified in the invoices or mentioned by the parties. It is not disputed that respondent had received payment of Rs.1,98,240/- in his bank account at Vishwas Nagar, Delhi. Therefore, a part of cause of action has also arisen at Jawala Nagar, Shahdara district, Delhi-32, hence the present suit for recovery can be filed before the learned Trial Court within the territorial limits of the jurisdiction of the Court.

18. Therefore, considering the facts of the matter at hand with reference to the abovesaid submissions, it is clear that the suit for recovery can be filed before the learned Trial Court within the territorial limits of the jurisdiction of the Court. Consequently, the instant petition along with pending applications stands dismissed.

SHALINDER KAUR, J.

APRIL 15, 2024/ab