



\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 31.01.2024+ **FAO (COMM) 113/2023****M/S EVERSHINE ENTERPRISES**

..... Appellant

Through: Mr I.K. Dubey, Advocate.

versus

M/S PK MOTORS

..... Respondent

Through: Mr Vikas Sehgal and Mr Sudeep
Vijayan, Advocate.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL)**

1. This appeal is directed against the judgment dated 21.03.2023 passed by the learned District Judge (Commercial Courts) North Rohini, Delhi.

1.1 The net impact of the impugned judgement is that while the plaint has been rejected on the ground that the court lacked territorial jurisdiction, simultaneously, unconditional leave to defend had also been given to the respondent/defendant.

2. The record shows that the appellant/ plaintiff instituted a suit for recovery with regard to goods supplied to the respondent/ defendant. The details concerning the goods supplied i.e., lubricants and the money payable *qua* the same were purportedly captured in 19 invoices. The particulars of these 19 invoices are set forth in paragraph 12 of the plaint.

Signature Not Verified

Digitally Signed By: DINESH

KUMAR

Signing Date: 06.02.2024

18:47:36

FAO (COMM) 113/2023



3. It is also the appellant's/ plaintiff's case that against the 19 invoices referred to in paragraph 12 of the plaint, part-payments were made.

3.1. The record reveals that the said 19 invoices span from 15.07.2016 to 28.02.2018.

4. It is against these assertions, a summary suit was filed seeking recovery of Rs.21,54,576.67/-, along with interest at the rate of 18% per annum.

5. The defence set up by the respondent/defendant was that it had not been supplied the goods, as alleged or at all. As a matter of fact, a very peculiar defence was taken, which was, that against the price referred to in the invoices, cheques were issued ostensibly to defray the liability, however, the appellant/plaintiff remitted the money to the respondent/ defendant *via* cash after the cheque was encashed. In other words, according to the respondent/defendant, the transactions were illusory, no goods were supplied and for certain invoices consideration ostensibly paid *via* cheques was returned in cash by the appellant/plaintiff.

5.1. This aspect is alluded to in paragraph 3 (vii) of the application, which was filed by the respondent/ defendant for seeking leave to defend. For convenience, the averments made in the said paragraph are set forth hereafter:

"That the plaintiff issued the bill nos. 076 dated - 15.07.2016, 023 dated 16.05.2017, 024 dated 16.05.2017, 032 dated 10.06.2017, 035 dated 13.06.2017, 039 dated 22.06.2017, 019 dated 19.07.2017, 025 dated 09.08.2017, 024 dated 14.08.2017, 033 dated 16.08.2017, 043 dated 15.09.2017, 079 dated 6.10.2017, 051 dated 11.10.2017, 061 dated 9.11.2017, 073 dated 5.12.2017, 080 dated 30.12.2017, 081 dated 31.12.2017, 106 dated 28.02.2018 and 105 dated 28.02.2018 upon the defendant but did not sent any goods to the defendant qua the said invoices despite receiving the invoice amount from the defendant. That the plaintiff returned the amount of bill no. 076, 023, 025, 073, 106, 105

Signature Not Verified

Digitally Signed By: DINESH
KUMAR
Signing Date: 06.02.2024
18:47:36



in cash to defendant but did not return the amount of the bill nos. 024, 032, 035, 039, 019, 024, 033, 043, 079, 051, 061, 080, 081 to the defendant.”

[Emphasis is ours]

6. On the other hand, the appellant/plaintiff asserts that goods were supplied under 19 invoices against which part payment was made.

6.1 Therefore, what emerges is that the respondent/defendant does not dispute the fact that cheques were issued to the appellant/plaintiff. The record discloses that six[6] cheques having a cumulative value of Rs.8,85,800.93/- were issued; as to whether monies were returned in cash is a matter for trial. Nevertheless, the particulars of the cheques received and encashed are as follows.

Date of presentation of cheque	Cheque no.	Cheque amount
17.06.2017	000098	1,73,000
11.07.2017	000107	1,06,500.93
03.08.2017	000115	1,46,300
12.09.2017	000123	1,50,000
10.10.2017	000131	1,50,000
16.12.2017	000140	1,60,000
Total		8,85,800.93

7. Thus, insofar as the suit action is concerned, what is required to be noticed is that the cumulative value of the 19 invoices was Rs.30,40,377.60 against which the appellant/plaintiff received, as indicated above, Rs. Rs.8,85,800.93/-, leaving a balance outstanding of Rs. 21,54,576.67/-. This is the sum, as alluded to above, that the appellant/plaintiff sought recovery

Signature Not Verified

Digitally Signed By: DINESH
KUMAR
Signing Date: 06.02.2024
18:47:36



of, along with interest.

8. Furthermore, the appellant/plaintiff has also averred that a notice of demand dated 02.11.2020 was issued to the respondent/defendant to which it received no response.

9. Given this backdrop, the respondent/defendant, in its leave to defend application, raised two principal defences.

(i) First, [something, we have already indicated above] that no goods were supplied. This defence, as noticed hereinabove, is articulated in paragraph 3(vii) of the said application.

(ii) Second, the concerned trial court had no territorial jurisdiction in the matter. It was averred that the appellant/plaintiff carried out its business from a place located in Gautam Budh Nagar, State of Uttar Pradesh. Likewise, the respondent/defendant was also carrying out its business from Meerut in the State of Uttar Pradesh.

9.1 In support of its plea that the concerned trial court lacked jurisdiction, it was averred by the respondent/defendant that the invoices contained a jurisdictional clause which provided that “**all disputes are subjected to Naida [sic Noida] Jurisdiction only**”. For convenience, the assertions made by the respondent/defendant with regard to territorial jurisdiction are set forth hereafter:

“xiv. The defendant submits that section 20 code of civil procedure, 1908 very categorically stipulates territorial jurisdiction for instituted where a defendant resides and /or voluntarily carries on business or personally works for gain. Further, as per Section 20, suit can be also instituted where cause of action arises, wholly or in partly. It is stated that the plaintiff is carry on hies [sic his] business at Gautam Budh Nagar and defendant is carry on his business in Meerut, U.P.

xv. That without prejudice to whatever has been stated herein above, the Defendants submits that even the alleged invoice issued by the Plaintiff contains jurisdiction clause i.e. Noida, U.P. For the sake of brevity, the

Signature Not Verified

Digitally Signed By: DINESH
KUMAR
Signing Date: 06.02.2024
18:47:36



jurisdiction clauses contained in the invoice is reproduced herein below:
All disputes are subjected to Noida jurisdiction only

[Emphasis is ours]

10. The learned District Judge *via* the impugned judgment, quite curiously, not only granted unconditional leave to the respondent/defendant but also ordered return of the plaint on the ground that an exclusive jurisdiction clause obtained between the parties, which confined them to Courts in Noida insofar as their *inter se* disputes was concerned.

11. Mr I.K. Dubey, learned counsel, who appears on behalf of the appellant/plaintiff, says that on both counts the learned District Judge has misdirected himself in law and on facts. It is Mr Dubey's submission that the appellant/plaintiff had made a specific assertion in the plaint that the goods were supplied from Siraspur in Delhi. For this purpose, our attention has been drawn to the relevant averments made in the plaint.

11.1 With regard to the aspect concerning grant of unconditional leave, Mr Dubey submitted that the defence raised by the respondent/defendant was a complete sham. The respondent/defendant has clearly admitted that part-payments were made *via* cheque and in order to support its plea that no goods were supplied, it has averred that the money paid to the appellant/plaintiff was returned to the respondent/defendant in cash.

12. Furthermore, Mr Dubey says that the learned district judge has relied upon the judgment of the Supreme Court rendered in *M/s Mechalec Engineers and Manufactures Vs. M/s Basic Equipment Corporation*, AIR 1977 Supreme Court 577, which has been overruled. In this regard, our attention has been drawn to the decision of the Supreme Court in *IDBI Trusteeship Services Ltd. vs Hubtown Ltd.* (2017) 1 SCC 568.



13. On the other hand, Mr Vikas Sehgal, learned counsel, who appears on behalf of the respondent/defendant, relies upon the impugned judgment to defend his position.

13.1 According to him, as far as recovery is concerned, the matter will have to go to trial and therefore, the learned District Judge rightly granted unconditional leave to defend.

13.2 In so far as the aspect involving lack of territorial jurisdiction was concerned, Mr Sehgal submitted that since the principal place of business of the appellant/plaintiff is located in Noida, the learned District Judge rightly concluded that as the invoices bore that address, a part of the cause of action, if at all, had arisen in Noida. It is argued that since an exclusive jurisdiction clause obtained between the parties, the disputes, if any, could be raised only before the concerned Court in Noida.

14. We have heard the learned counsel for the parties and perused the record.

15. At the outset, it must be stated that the learned District Judge has gravely erred in the manner in which he has approached the aspects which have come to the fore.

16. First and foremost, if learned District Judge was of the view that he would not have the jurisdiction to deal with the matter as, in his understanding, a part of the cause of action arose in Noida, and given the exclusive jurisdiction clause the plaint had to be returned, he ought not to have proceeded to decide the other issue concerning the grant of leave to defend the suit.

17. That said, insofar as the aspect concerning the territorial jurisdiction is concerned, the assertions made by the appellant/plaintiff in the plaint, at this



stage, had to be given weight and could not have been brushed aside. With regard to jurisdiction, the appellant/plaintiff has made the following averments:

“22. This Hon'ble Court has territorial and pecuniary jurisdiction to entertain this suit as the cause of action arose in Delhi. The Plaintiff has its branch at Khasra No.734, Gurudwara road, Siraspur, Delhi-110042 from where the goods were procured and supplied to the Defendant and some invoices were also raised accordingly. The part payments have been made by the Defendant in the form of cheque which were handed over to the plaintiff at the branch office of the plaintiff in Delhi and the said cheques were present at Delhi. Hence this Hon'ble court has got the territorial jurisdiction to entertain and try the present suit.”

[Emphasis is ours]

18. Clearly, a plain reading of the assertions made by the appellant/plaintiff would show that according to him, the goods against which recovery was sought were procured and supplied to the respondent/defendant from a place located in Delhi i.e., its branch situated at Khasra No.734, Gurudwara road, Siraspur, Delhi-110042.

19. As would be evident upon perusal of paragraph 22 of the pleadings, the other indices which would furnish a cause of action were also adverted therein.

20. To our minds, the learned District Judge has taken a leap of faith by concluding at the stage of the suit where only the plaint and leave to defend application lay before him that since the plaintiff's principal place of business was located in Noida, goods would have been supplied from said place. The assertions made in the plaint were given a short shrift

21. In our view, territoriality, in this case, is undoubtedly, a mixed question of fact and law which would require trial and therefore, the learned District Judge could not have rejected the plaint at the preliminary stage.



What may be required to be done is, to frame an issue if such a defence is raised by the respondent/defendant in its written statement.

22. Which brings us to the other aspect. As noticed above, the learned District Judge, in our opinion, committed an error in entertaining and delving into the issue concerning grant of leave, when he had already concluded that he had no jurisdiction in the matter.

23. However, to hasten the proceedings in the matter and because the learned District Judge has already taken a view on the issue, we heard the counsel for the parties on this aspect as well.

24. In our view, the defence raised by the respondent/defendant, although improbable, may perhaps be possible. It appears to be a defence of the respondent/defendant that there was some arrangement between the disputants that only paper invoices had to be raised and no effective transaction was required to take place.

25. Although the defence raised seems, at this stage, rather thin, however, since only part payment has been made and the appellant/plaintiff would be required to establish delivery of goods, we are inclined to grant conditional leave to defend to the respondent/defendant.

26. Accordingly, the impugned judgement is set aside and the appeal is allowed in the terms given hereafter:

26.1 The suit will be restored to its original position and number.

26.2 The respondent/defendant is directed to deposit the principal outstanding amount claimed by the appellant/plaintiff i.e., Rs.21,54,576.67/- with the trial court, within the next four (04) weeks.

26.3 If the amount, as indicated above, is deposited by the respondent/defendant, the trial court will give opportunity to the



2024:DHC:865-DB



respondent/defendant to file a written-statement in the matter. In case, the appellant/plaintiff seeks liberty, opportunity will also be granted to file a replication in the matter.

27. Authorized representatives of the parties and their respective counsel will appear before the concerned District Judge on 04.03.2024.

**RAJIV SHAKDHER
(JUDGE)**

**AMIT BANSAL
(JUDGE)**

JANUARY 31, 2024
rt

Signature Not Verified
Digitally Signed By: DINESH
KUMAR
Signing Date: 06.02.2024
18:47:36

FAO (COMM) 113/2023

Page 9 of 9