



2024:DHC:7346-DB



\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 03.09.2024*+ **FAO (COMM) 102/2024**

M/S JOIN PACK MACHINES PVT LTDAppellant

Through: Mr Jatin S Sethi, Adv.

versus

M/S BALKRISHNA PAPER MILLS LTDRespondent

Through: Mr Ashok Saraogi with Mr Bhushan
Mahendra Oza, Mr Amber Dwivedi
and Mr Kuldeep Sharma, Advs.**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 judgement and order dated 16.04.2024, passed by the learned District Judge, Commercial Court-08, Central District, Tis Hazari Courts, Delhi.

2. On 05.07.2024, when the appeal came up for hearing, we had recorded, *albeit ex parte*, the broad contours of the matter. For convenience, the relevant parts of the order dated 05.07.2024 are set forth hereafter:

"...2. This appeal is directed against the judgment and order dated 16.04.2024 passed by Mr Amit Kumar, learned District Judge, Commercial Court-08, Central, Tis Hazari Courts Extension Block, Delhi.

3. The learned District Judge has returned the plaint in exercise of its power under Order VII Rule 10 of the Code of Civil Procedure, 1908 [in short, "CPC"].

Signature Not Verified

Digitally Signed By: TARUN
RANASigning Date: 23.09.2024
16:17:42

FAO (COMM) 102/2024

Page 1 of 4



4. Counsel for the appellant says that the unilateral annotation in the invoice suggesting that jurisdiction will lie in Rajkot courts has been relied upon by the learned District Judge while ordering return of the plaint.

5. Counsel for the appellant submits that payments were remitted to a bank account maintained in Central Delhi.

5.1 For this purpose, our attention has been drawn to paragraph seventeen (17) of the plaint.

6. We may note that the annotation relied upon by the learned District Judge, which appears on the face of the subject invoices, reads as follows:

-

“SUBJECT TO RAJKOT JURISDICTION”

7. Prima facie, the annotation is inchoate as it does not speak of the dispute nor does it refer to any forum for adjudication. Furthermore, this is a unilateral annotation which, prima facie, cannot confer jurisdiction to courts in Rajkot.

8. The matter requires examination.

9. Issue notice via all modes including email.

10. List the appeal on 03.09.2024.”

3. Mr Ashok Saraogi, Advocate, enters appearance on behalf of the respondent.

3.1 *Inter alia*, Mr Saraogi submits that since the appellant/plaintiff was located in Gujarat and the goods were supplied to the respondent/defendant from a location in Gujarat, the view taken by the trial court in the impugned judgement ought not to be disturbed.

3.2 In support of his plea, Mr Saraogi has taken us through parts of the plaint.

4. However, Mr Jatin S Sethi, learned counsel, who appears on behalf of the appellant/plaintiff, submitted otherwise.

4.1 Mr Sethi has, *inter alia*, has drawn our attention to paragraph 17 of the plaint, which reads as follows:

“17. That this Hon’ble Court has jurisdiction to try, decide and adjudicate upon the matter between the parties. The cause of action has arisen within the jurisdiction of this Court, as the Defendant had approached the Plaintiff for the purchase of goods and materials at the office of the Plaintiff in Central Delhi. Additionally, the payments for the



purchase of the goods/materials were received in the bank account of the Plaintiff maintained in Central Delhi, as such, the cause of action accrued against the Defendant within the jurisdiction of this Hon'ble Court. Hence, this Hon'ble Court has jurisdiction to try, decide and adjudicate upon the present suit between the parties."

5. A perusal of the aforesaid extract would show that the plaintiff has averred in the plaint that the payments concerning supply of goods and materials were received in the bank account of the appellant/plaintiff maintained in Central Delhi. There is also a reference in the very same paragraph that the respondent/defendant had approached the appellant for purchasing the subject goods at its office located in Central Delhi.
6. Clearly, the averments that the appellant/plaintiff had made in the plaint should not have been ignored by the trial court and that too, at the very threshold.
7. In our view, the trial court's reasoning that since the invoices served by the appellant/plaintiff on the respondent/defendant had an annotation which stated, "SUBJECT TO RAJKOT JURISDICTION", the suit action would not lie, and therefore, the plaint had to be returned, was erroneous.
8. The annotation was clearly inchoate. It did not refer to the expression "disputes" and therefore, could not have invested jurisdiction in the courts in Rajkot, as indicated in the impugned judgement and order.
9. Furthermore, since a part of the cause of action arose in Central Delhi, which was the averment made in the plaint, the matter ought to have been examined further by the trial court.
10. Accordingly, the impugned judgement and order is set aside.
11. The suit action shall stand restored to its original number and position.



2024:DHC:7346-DB



11.1 The parties shall appear before the trial court on 11.10.2024.

12. Liberty is, however, given to the respondent/defendant to file a written statement, wherein it could raise the objections with regard to the territorial jurisdiction.

13. Needless to add, since an issue is framed with regard to the territorial jurisdiction, the trial court will render its decision in that behalf uninfluenced by the observations made by us.

14. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

AMIT BANSAL, J

SEPTEMBER 3, 2024/pmc

Click here to check corrigendum, if any