



2024:DHC:5732



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

% **Date of Order: 16th July, 2024**

+ **C.R.P. 192/2024**

PRAKASH SINGH RAJPUROHITPetitioner

Through: Appearance not given
versus

M/S OP AND SONS TRADER PVT. LTD.Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRADHARISINGH, J (Oral)

CM APPL. 36932/2024 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

C.R.P. 192/2024

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 ("Code" hereinafter) has been filed on behalf of the petitioner seeking setting aside of the impugned order dated 29th February, 2024 passed by the learned Civil Judge, Shahdara District, Karkardoma Courts, Delhi in Civil Suit bearing no. 998/2023.

2. The relevant facts leading to the filing of the instant revision petition are as follows:

- a. The petitioner is a sole proprietor engaged in the business of ready-made clothing. The respondent is a private limited company engaged in the manufacturing and trading of clothes including shirts, jeans, trousers and fabrics and operates as a cloth



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merchant/commission agent of clothing items, and has branches in several states of India.

- b. In the year 2017-2018, the petitioner and the respondent agreed on the terms and conditions for supply of clothes in exchange of payment by the petitioner. Upon failure of the petitioner to make the payment in terms of the aforesaid agreement, the respondent filed a civil suit bearing no. 998/2023 before the learned Trial Court on 25th September, 2023 for recovery of money to the tune of Rs. 1,62, 538/-.
 - c. Subsequently, the petitioner filed an application under Order VII Rule 11 of the Code on 5th February, 2024 before the learned Trial Court which was dismissed vide the impugned order dated 29th February, 2024.
 - d. Aggrieved by the aforesaid order of the learned Trial Court, the petitioner has filed the instant civil revision petition seeking setting aside of the same.
3. Learned counsel appearing on behalf of the petitioner/revisionist submitted that the learned Trial Court failed to appreciate the facts and circumstances of the case and passed the impugned order against the settled principles of law.
4. It is submitted that the learned Trial Court failed to appreciate that it lacks territorial jurisdiction to adjudicate the suit. It is further submitted that whilst passing the impugned order, the learned Trial Court superseded its jurisdiction which is in contravention to the law.
5. It is submitted that as per the invoices filed by the petitioner, the goods were supplied from Tirupur address of the company to the



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registered address of the respondent in Hyderabad. Therefore, there is no cause of action, either in whole or in part which arose within the jurisdiction of the learned Trial Court.

6. It is submitted that the head office of the petitioner company situated in Delhi is where the terms and conditions of the agreement were negotiated between the petitioner and the respondent. It is further submitted that the payments for earlier transaction made by the respondent have been made in the account of the petitioner which is also maintained in Delhi.

7. It is submitted that the branch office of the respondent lies in Tirupur and the money had been disbursed from the said branch office and therefore, the learned Trial Court had no jurisdiction to adjudicate the suit.

8. It is submitted that the learned Trial Court failed to take into consideration the objections raised by the petitioner in his application filed under order VII Rule 11 of the Code wherein it is shown that the learned Trial Court does not have the jurisdiction to try the aforementioned civil suit, however, the learned Court below erroneously dismissed the petitioner's application.

9. Hence, in view of the foregoing submissions, it is prayed on behalf of the petitioner that the impugned order passed by the learned Trial Court may be set aside.

10. Heard the learned counsel for the petitioner and perused the record.

11. It is the case of the petitioner that the learned Trial Court erred in passing the impugned order as it did not have the territorial jurisdiction to entertain the suit and that it exceeded its jurisdiction by failing to



appreciate that the transaction and agreement between the parties were beyond its territorial limits since the same took place in Tirupur.

12. At this stage, it is apposite to peruse the impugned order passed by the learned Trial Court. The relevant paragraphs of the same are reproduced hereinbelow:

"..5. Arguments heard. File perused. It is to observe that though the defendant has filed application under Order VII Rule 11 for rejection of the plaint, however, he has prayed in the said application that the plaint may be rejected/returned for want of territorial jurisdiction. Order VII Rule 11 CPC, though not being exhaustive about grounds of rejection, provides certain cases where the plaint may be rejected and for want of territorial jurisdiction, a plaint cannot be rejected under either of those cases. In the present case, it has been specifically averred by the plaintiff in his plaint that the defendant had visited the Delhi office of the plaintiff company for negotiating terms and conditions of the business transactions and that for the purpose of convenience only the goods were delivered from Tirupur address. The documents attached with the plaint also show that the registered address of the company as per record available in Registrar of companies is the Delhi address only which lies within the jurisdiction of this court. Thus, it shows that the issue of territorial jurisdiction, as raised in the present suit is a mixed question of fact and law, which can be only decided by the trial on the basis of evidences led by both the parties. Thus, no ground for even returning the plaint at this stage is made out..."

13. Upon perusal of the aforementioned extracts, it is made out that the learned Trial Court observed that the plaint disclosed the cause of action at Delhi and therefore, the learned Trial Court reached to the conclusion that whatever objection has been taken by the learned counsel appearing on behalf of the revisionist herein is a matter of mixed question of law



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and facts and therefore, this is not a fit case for rejecting the suit at this stage as the said objections can be raised during the stage of trial. It was further observed by the learned Trial Court that although Order VII Rule 11 of the Code does not provide an exhaustive list of grounds for rejection of a plaint, a plaint cannot be rejected for the want for territorial jurisdiction itself at the stage of deciding the said application.

14. Here, it is imperative to discuss the scope of revision under Section 115 of the Code. It is well settled that the scope of revision is limited and it was enacted with a view to enable the Courts to correct certain errors of jurisdiction committed by the subordinate Courts. It is evident that the High Court may only intervene in the decisions of the Subordinate Court if there has been an illegality or significant irregularity in the exercise of its jurisdiction. Under its revisional powers, the High Court cannot adjudicate upon the factual findings of the Subordinate Court, rather, it can only interfere if there are issues with the Court's jurisdiction.

15. The issue in the instant case is with regard to the alleged erroneous adjudication of the application filed under Order VII Rule 11 of the Code, therefore, it is imperative to briefly state the settled position of law with respect to the same.

16. In the case of *Eldeco Housing & Industries Ltd. v. Ashok Vidyarthi*, **2023 SCC OnLine SC 1612**, the Hon'ble Supreme Court held that in case parties approach the Court under Order VII Rule 11 of the Code, the Court is not entitled to consider any evidence or enter into a disputed question of fact or law, rather the Court can decide the application only on the basis of the averments made in the plaint. Thus, it is pertinent to note that Courts are not empowered to adjudicate upon



questions of law and fact under Order VII Rule 11 of the Code. The relevant portion of the said judgment is reproduced below:

"17. In Kamala v. K. T. Eshwara Sa, this Court opined that for invoking clause (d) of Order VII Rule 11 CPC, only the averments in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merits of the matter would not be within the realm of the Court at that stage. The Court at that stage would not consider any evidence or enter a disputed question of fact of law. Relevant paragraphs thereof are extracted below:

"21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the



plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained."

17. In light of the facts of the instant case, this Court is of the view that in order to adjudicate the issue of territorial jurisdiction of a Court, it is crucial to assess where the cause of action arose. The factors that determine the cause of action include the residence or place of business of the parties, and any other relevant factors that determine the appropriate territorial jurisdiction. These factors coupled with considerations regarding the cause of action constitute a mixed question of law and fact since the same require meticulous examination of evidence.

18. As per the settled position of law, it is pertinent to note that a mixed question of law and facts cannot be adjudicated at the stage of deciding an application filed under Order VII Rule 11 of the Code, as the Court can only examine the contents of the plaint to determine whether a case of rejecting the plaint is being made out, and that the determination of a question of law and facts requires a complete trial. The same was



also observed by the Hon'ble Supreme Court in *C. Natrajan v. Ashim Bai*, (2007) 14 SCC 183. The relevant paragraph of the same is as under:

"5. The learned Principal Subordinate Judge, Chengalpet, by reason of his judgment and order dated 31-3-2006 rejected the said application of the respondent, opining:

"The suit property as shown in the schedule to OS No. 502 of 2001 is found to be same as described in the sale deed dated 14-9-1979 in favour of the plaintiff and its patent documents of title. Now the plaintiff has described and suit property in the schedule to the present plaint as per present lie on the ground on the averments that the boundaries of the property purchased by him under the sale deed dated 14-9-1979 were wrongly mentioned for a larger extent, as the mistake crept patent title deed dated 13-3-1964 and that the mistake came to his knowledge only on 2-11-1998. As held by the Supreme Court in Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510 : (2005) 4 CTC 489] averments in the plaint alone would be looked into while considering an application for rejection of plaint under Order 7 Rule 11 CPC and that the plea raised in the written statement are irrelevant at such stage. In the present case the plea of the plaintiff that he came to know about the mistake regarding the boundary description in the sale deed dated 14-9-1979 only on whether he had knowledge earlier is question of fact to be considered during the trial in the suit. As such the plaint on ... is a mixed question of fact and law to be considered during the trial by casting the issue suitably. Hence the present petition for rejecting the plaint is balance to be dismissed. The point is answered accordingly."

19. This Court is of the considered view that in order to address a question of law and facts, a proper trial is needed wherein evidences are required to be submitted and examined by the concerned parties, and the concerned parties are given sufficient opportunities to present their case



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including examining the testimonies and statements of the relevant witnesses.

20. This Court has perused the impugned order as well as the averments made in the plaint. As per paragraph no. 4 of the plaint, it is stated that the officials of the petitioner visited the office of the respondent at Delhi to negotiate the terms and conditions regarding the purchasing of clothing items. Further, as per paragraph no. 5 of the plaint, it is stated therein that, at certain instances, the respondent delivered the goods to the petitioner at its principal office in Delhi and that all the payments have been received in the petitioner's head office in Delhi. In paragraph no. 20, the plaintiff has stated the series of events which led to the filing of the suit. In the said paragraph, it has been specifically pleaded that as to when the visit was made by the parties at each other's office, sale and purchase of goods, transactions etc. Moreover, at paragraph no. 21 of the plaint, the respondent has stated that its registered office and sales office is in Delhi and also, that the letters and orders were received by the respondent in Delhi. The relevant paragraphs of the plaint are reproduced herein below:

"4) That, the plaintiff concern is having a clothing business wherein they are having business of manufacturing, trading, whole-selling business of cloth and cloths merchant/ commission agent of the clothing items and deals with the other clothing related items, etc. under the name and style of M/s OP and Sons Traders Pvt. Ltd. That in the year 2017-2018, the officials of the defendant visited the office of the plaintiff company and talked to their officers and negotiated the terms and conditions regarding the purchasing of clothing items. The defendant assured the plaintiff that he will make the timely payment without any delay. Needless to



mention here that, at the time of negotiating the terms of the payment, it was agreed between the parties that the defendant shall pay all the amount due against him in ½ monthly (15 days) basic from the date of the invoice and in case any default in the payment and shall make him liable to pay interest @ 18% per annum as per the trade practice, which is being acknowledged by the defendant.

5) That during the course of dealings, the defendant were booked some fabrics and the plaintiff duly delivered those goods in safe and sound condition to the required destination of the defendant. Needless to mention here that sometimes the plaintiff has delivered the goods booked by the defendant from its principal office in Delhi or sometimes from its branch office, but all the payments have been received in the plaintiff's head office in New Delhi...

...20) The cause of action first arose in favor of the plaintiff and against the defendant when the defendant and her officers visited the office/shop of the plaintiff for business. It further arose in favor of the plaintiff and against the defendant when the officer of the defendant approached the plaintiff for the purchase and supply of the plaintiff's goods. It further arose in favor of the plaintiff and against the defendant when the defendant booked and purchased goods on different dates and times with the plaintiff, and the plaintiff provided these goods to the defendant on credit. It further arose when the defendant purchased goods from the plaintiff on credit on different dates and via different invoices, and the plaintiff sent all the goods to the defendant at the required destination. It further arose when the defendant admitted its liability and made partial payments on different occasions. It further arose on each and every date when the plaintiff approached the defendant and officers for the payment of the dues via WhatsApp communication, calls, and personal visits. It further subsisted when the plaintiff sent the legal notice dated 15/06/2023 to the defendant through speed post on 16/06/2023. It further arose on each and every date when the plaintiff requested the defendant for the performance of



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the contract and payment of all the dues, which is still continuing.

21) The plaintiff has its registered office and conducts business within the territorial jurisdiction of this Hon'ble (Honorable) court. The plaintiff's regional/sales office is located in Delhi. All letters and communications from the defendant company have been issued from their Delhi office. Furthermore, all correspondence with the defendant has been conducted in Delhi. The orders have been received by the plaintiff in Delhi, and all part payments from the defendant have also been received by the plaintiff in Delhi. Therefore, this Hon'ble Court has the jurisdiction to entertain and decide the present suit."

21. Upon perusal of the aforementioned extracts of the impugned order, it is made out that in the present case, the place of business of the petitioner, the place of negotiation of the terms and conditions regarding the purchase of clothing goods, the delivery of goods and the receipt of payments and the place of receipt of correspondence was all in Delhi. Further, the agreement and its terms and conditions were negotiated in the office of the petitioner at Delhi. It is also pertinent to note that the part payments were made in the account maintained in Delhi.

22. In light of the aforesaid facts and circumstances, it is observed that upon perusal of the averments made in the plaint, no case is made out to reject the respondent no. 1's plaint due to lack of territorial jurisdiction of the learned Trial Court. Further, as discussed in the foregoing paragraphs, the issue of cause of action is a mixed question of law and facts, and the same cannot be decided at the stage of deciding an application under Order VII Rule 11 of the Code since the same requires proper trial, i.e., leading evidence and examination of witnesses.



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23. Taking the observations made by this Court in the preceding paragraphs, this Court is of the considered view that there is no illegality in the impugned order and the same has been passed in accordance with settled position of law. It is held that the learned Trial Court has correctly observed that the issue of lack of cause of action is a mixed question of law and facts and the same cannot be decided at such an initial stage. Upon reading paragraph nos. 4, 5, 20 and 21 of the plaint, it is apparent that there exists a cause of action to file the suit before the learned Trial Court.

24. In view of the above discussions and circumstances, this Court does not find any reasons to interfere in the impugned order dated 29th February, 2024 passed by the learned Civil Judge, Shahdara District, Karkardoma Courts, Delhi in Civil Suit no. 998/2023 and the same is hereby upheld.

25. Accordingly, the instant petition stands dismissed.

26. Pending applications, if any, also stands dismissed.

27. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 16, 2024
gs/aa/ryp

Click here to check corrigendum, if any