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

Date of decision: 03rd FEBRUARY, 2025

IN THE MATTER OF:

+ **CS(OS) 1662/2015 & I.A. 11888/2015, I.A. 11889/2015**

KRISHNA REAL ESTATE ENTERPRISES PVT LTD.Plaintiff

Through: Mr. Anupam Lal Das, Sr. Advocate
with Mr. Raj Kamal, Mr. Aseem
Atwal, Mr. Anirudh Singh, Ms.
Muskan Sidana, Mr. Akhilesh Kumar
and Ms. Stuti, Advocates.

versus

GURCHARAN SINGH SYAL & ORS.Defendants

Through: Mr. Asheesh Jain, Mr. Gaurav Kumar
and Ms. Pooja Bhardwaj, Advocates
for Defendant Nos. 1 to 3.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

I.A. 10274/2016

1. This is an application under Order VII Rule 10 CPC on behalf of Defendants No.1 to 3 seeking return of plaint filed by the Plaintiff.
2. The present suit is one for recovery of sum of Rs.8,29,82,904/- along with pendente lite and future interest on account of alleged illegal cash withdrawals by the Defendants from the account of the Plaintiff/Company.
3. The facts in brief as stated in the Plaint are that the Plaintiff Company is part of 'MBD group', which consists of various Private Limited companies, Partnership firms, and LLPs, and is one of the major leaders in education, publishing, hospitality sector and has presence in various other sectors of businesses. The MBD Group is owned by Ms. Satish Bala



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Malhotra, Ms. Monica Malhotra, Ms. Sonica Malhotra, and Late Mr. Ashok Kumar Malhotra.

4. The Defendant No. 2 is the father of Defendant No. 1 and grandfather of Defendant No. 3. Defendant No. 2, who is also an Advocate used to represent MBD Group in tax related matters before various competent authorities for numerous years whereas his son i.e. Defendant No. 1 is a chartered accountant by profession and was the statutory auditor of the MBD Group for many years. Further, Defendant No. 3 is actively associated in the professional, executive and administrative activities of Defendant No. 1 and 2.

5. The Plaintiff Company was incorporated and formed in order to construct a hotel project on Delhi-Phagwara Highway at Jalandhar, Punjab ("Hotel") on land admeasuring about 7.44 acres. Initially the paid-up capital of the Plaintiff Company was Rs. 40,000/- divided into 400 shares of Rs. 100/- each which was allotted amongst Late. Sh. Ashok Kumar Malhotra, Mrs. Satish Bala Malhotra, Defendant No. 1, and Defendant No. 2. Though there was an initial allotment of 100 shares each, however, in the year 2002, additional allotment of 1000 shares at Rs. 100/- each was made to Sh. Ashok Kumar Malhotra and Defendant No. 1. Late Sh. Ashok Kumar Malhotra and Mrs. Satish Bala Malhotra continued infusing funds to the tune of Rs. 8.22 crores until death of Sh. Ashok Kumar Malhotra i.e., end of 2009, which was shown as share application money in the audited balance sheet of the company. Defendant No. 1 and 2 brought only about Rs. 20 lakhs as an additional investment till 2003. As Defendant No. 1 and 2 were personally known to Late Sh. Ashok Kumar Malhotra, he had implicit trust on them and thus, Late Mr. Ashok Kumar Malhotra never insisted upon issuing



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additional allotment of shares in proportion to his and Mrs. Satish Bala Malhotra's investment, and Defendant no. 1 and 2 with malafide intent, deliberately manipulated and showed the investment of Shri Ashok Kumar Malhotra and Mrs. Satish Bala Malhotra as share application money in the accounts of the Plaintiff Company.

6. That pursuant to disputes arising between the Plaintiff and Defendants, a Company Petition bearing number C.P. No.48(ND)/2012, titled as "Ms. Sonica Malhotra & Ors. V/s Krishna Real Estate Enterprises (P) Ltd. & Ors." was filed before the Company Law Board, Principal Bench, New Delhi against the Defendant No.1 and 2. The Company Law Board vide Order dated 09.12.2013 declared the resolutions passed by the Defendants as invalid. The Company Law Board, Principal Bench, at New Delhi vide Order dated 09.12.2013 issued directions to Defendant No.1 and 2 to exit the Plaintiff Company and also handover the physical possession of the assets and records of the Plaintiff Company within seven days in presence of the Administer-cum-Facilitator i.e. Hon'ble Justice S.N. Aggarwal (Retd.) at his residence in New Delhi. That it is imperative to mention that the Company Law Board vide order dated 09.12.2013 held that Defendant No. 1 and 2 were actively involved in the management and affairs of Plaintiff Company and accordingly held them to be liable and accountable for the mismanagement and oppression in the company.

7. It is further stated in the Plaint that the siphoning of funds from the account of Plaintiff Company for their own personal use was unearthed by the current Directors of the Plaintiff Company subsequent to the scrutiny of the documents, assets and records of the Plaintiff Company handed over by the Defendants before Hon'ble Justice S.N. Aggarwal (Retd.) at his



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residence in New Delhi. That after discovering about the fraud played upon by the Defendants, the Plaintiff Company took appropriate recourse by filling the present suit for recovery of money.

8. Learned Counsel for the Applicant/Defendants states that on a bare perusal of the averments made in the Plaint and the documents filed by the Plaintiff show that this Court does not have the territorial jurisdiction to entertain the present suit and therefore the plaint in the present suit is liable to be returned.

9. It is stated by the learned Counsel for the Applicant/Defendants that no part of the cause of action has arisen in Delhi and none of the Defendants voluntarily reside within the territorial jurisdiction of this Court. It is further stated that the only averment made in the Plaint regarding the territorial jurisdiction of this Court is reproduced as under:-

"50. That the corporate/Administrative office of the Plaintiff Company is situated at Delhi. The Defendants are also residents of Delhi. The cause of action has arisen in Delhi, therefore, this Hon'ble Court has the territorial and pecuniary jurisdiction to try and entertain the present proceedings. "

10. It is stated that the location of the corporate/administrative office of the Plaintiff will not give this Court the territorial jurisdiction to entertain the present suit. It is further stated that admittedly the registered office of the Non-Applicant/Plaintiff is situated in Jalandhar, Punjab. It is also stated that the Applicant/Defendants actually and voluntarily reside, or carry on business for gain in Jalandhar, Punjab and the mere fact that they may own a residential/family property in Delhi will not have any bearing on the territorial jurisdiction of this Court.



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11. It is also contended that no part of cause of action has arisen within the jurisdiction of this Court, even the subject matter of the present suit to which damage has been caused and the place where funds may have been illegally siphoned off are all situated in Jalandhar, Punjab. It is further stated that the State Bank of Patiala, Syal House, Lajpat Nagar, Jalandhar, Punjab from which the cash was allegedly withdrawn by the Applicant/Defendants is not situated within the jurisdiction of this Court and the hotel which was being constructed by the Plaintiff Company is also situated in Jalandhar, Punjab. It is stated that the only ground taken by the Plaintiff Company to justify the filing of the present suit before this Court is that the documents from which the alleged illegal acts of the Applicant/Defendants were discovered, were handed over to the Plaintiff Company in Delhi, at the residence of the learned Administrator-cum-Facilitator appointed by the Company Law Board *vide* Order dated 09.12.2013 in CP No.48(ND)/2012. It is stated that the place of the residence of the Administrator or the fact that the handing over of documents to the Administrator at a particular place can not constitute a cause of action and could not confer territorial jurisdiction upon this Court to entertain the present suit.

12. It is also stated that the Plaintiff after filing the execution petition for the execution of the aforesaid Company Law Board order, moved an application before the Company Law Board seeking transfer of the execution petition to the Court of District Judge, Jalandhar, Punjab which was allowed by the Company Law Board *vide* Order dated 14.02.2014.

13. Reliance has been placed by the Applicant/Defendants to the documents filed by the Plaintiff along with the plaint. It is stated by the learned Counsel for the Applicant/Defendants that in the original



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Memorandum and Articles Of Association of the Plaintiff Company, the address of the Applicant/Defendants in the list of subscribers is shown to be in Jalandhar, Punjab. It is further stated that even in the amended Memorandum and Articles of Association, the address of the Defendants is shown to be in Jalandhar, Punjab. It is further stated that even in the complaint filed by the Directors of Plaintiff Company in the office of the DCP, North District, PS Civil Lines, New Delhi dated 06.12.2014, and in the FIR dated 16.12.2014, against the Defendants, the address of the Defendants is shown to be that of Jalandhar, Punjab.

14. It is further stated that in the legal notice dated 20.04.2015 sent by the learned Counsel for the Plaintiff, the main address of the Defendants is shown as Jalandhar, Punjab and the address of the Delhi property of the Defendants seems to have been given only to create territorial jurisdiction of this Court.

15. *Per contra*, learned Counsel for the Non-Applicant/Plaintiff Company states that the present suit is for recovery of money against the Defendants on the ground of siphoning of funds of the Plaintiff Company, and use thereof by the Defendants for their own personal gains. It is stated that the entire siphoning off was discovered pursuant to the Defendants handing over the physical records and books of the Plaintiff Company at the office of the Administrator-cum-Facilitator which is within the territorial jurisdiction of this Court. It is further stated that the discovery of siphoning off of the funds from the Plaintiff Company from the perusal of documents handed over in New Delhi are acts that form an integral part of the transactions and therefore it cannot be said that no part of cause of action has arisen in Delhi.

16. It is also stated that the service of summons of the present suit were



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effected upon the Defendants at their residence in New Delhi. It is also pointed out by the learned Counsel for the Non-Applicant/Plaintiff that even the criminal proceedings initiated by the Plaintiff against the Defendant have been simultaneously carried out within the territorial jurisdiction of this Court and the objection of territorial jurisdiction as raised by the Defendants in the criminal proceedings have been time and again dismissed by this Court.

17. It is further contended by the learned Counsel for the Non-Applicant/Plaintiff that the present suit is instituted under Section 20 of the Civil Procedure Code, 1908 and not under Section 16 of the of the Civil Procedure Code, 1908 and therefore it is maintainable since a part of cause of action has accrued within the territorial jurisdiction of this Court.

18. Heard the Counsels for the Parties and perused the material on record.

19. It is well settled that an application under Order VII Rule 10, for return of plaint for lack of territorial jurisdiction is to be decided on a demurrer holding each and every averment made in the Plaint and the contentions raised by the Plaintiff to be true. This is for the reason that the Plaintiff then cannot deny the genuineness of the documents filed by him

20. From a perusal of the Original Memorandum and Articles of Association of the Plaintiff Company, it is evident that the official address of Defendant No.1 and Defendant No. 2 is in Jalandhar, Punjab, which is also the case in the amended Memorandum and Articles of Association. The Service report, marked as Enclosure 1 with the Written Submission filed by the Plaintiffs, state that the Defendants have a residential property in Delhi, but have always lived in Jalandhar.

21. Section 20 of the Civil Procedural Code is reiterated and reads as



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under-

"Section 20. Other suits to be instituted where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

**** *

[Explanation].-- A corporation shall be deemed to carry on business at its sole or principal office in 3 [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian



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Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court."

22. The Apex Court in Begum Sahiba Sultan v. Nawab Mohd. Mansur Ali Kham & Ors., (2007) 4 SCC 343 has held as under:-

" 10. There is no doubt that at the stage of consideration of the return of the plaint under Order 7 Rule 10 of the Code, what is to be looked into is the plaint and the averments therein. At the same time, it is also necessary to read the plaint in a meaningful manner to find out the real intention behind the suit. In Moolji Jaitha and Co. v. Khandesh Spg. and Wvg. Mills Co. Ltd. [AIR 1950 FC 83] the Federal Court observed that : (AIR p. 92, para 24)

"The nature of the suit and its purpose have to be determined by reading the plaint as a whole."

It was further observed : (AIR p. 92, para 25)

"The inclusion or absence of a prayer is not decisive of the true nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments made in the plaint and on which



the reliefs asked in the prayers are based.”

It was further observed : (AIR p. 98, para 59)

“It must be borne in mind that the function of a pleading is only to state material facts and it is for the court to determine the legal result of those facts and to mould the relief in accordance with that result.”

11. This position was reiterated by this Court in T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467 : AIR 1977 SC 2421 : (1978) 1 SCR 742] by stating that what was called for was a meaningful—not formal—reading of the plaint and any illusion created by clever drafting of the plaint should be buried then and there. In Official Trustee, W.B. v. Sachindra Nath Chatterjee [AIR 1969 SC 823 : (1969) 3 SCR 92] this Court approving the statement of the law by Mukherjee, Acting Chief Justice in Hriday Nath Roy v. Ram Chandra Barna Sarma [ILR 48 Cal 138 (FB)] held : (Official Trustee, W.B. case [AIR 1969 SC 823 : (1969) 3 SCR 92] , AIR p. 828, para 15)

“[B]efore a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties.”

23. Material on record discloses that the Plaintiff Company was incorporated to construct a Hotel on Delhi-Phagwara Highway in Jalandhar, Punjab wherein the Defendants were directors. The dispute arose when certain books of the Plaintiff Company were handed over to the Directors of



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the Plaintiff Company by the Defendants at the residence of the Administrator-cum-Facilitator and on perusal of those books it was found out that the Defendants were allegedly siphoning off money from the Plaintiff Company for their own use and pleasure.

24. The fact that there are criminal matters, regarding the same transaction, going on against the Defendants in Delhi will not have any bearing while deciding this application under Order VII Rule 10 CPC.

25. The Apex Court in A.B.C. Laminart (P) Ltd. & Anr. v. A.P. Agencies, Salem, (1989) 2 SCC 163 has held as under:-

" 11. The jurisdiction of the court in the matter of a contract will depend on the situs of the contract and the cause of action arising through connecting factors.

12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

26. On a simple reading of the Plaint and the documents filed with the Plaint, this Court is of the view that the averments made in the Plaint, even if held on a demurrer to be true, do not disclose a valid cause of action arising



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within the territorial jurisdiction of this Court. Therefore, the documents which show the alleged illegal activity of the Defendants, which were handed over to the directors of the Plaintiff Company in Delhi, do not confer territorial jurisdiction on this Court.

27. Hence, the application stands allowed.

28. The Plaint is returned back to the Plaintiff for filing it in the Court of competent jurisdiction.

SUBRAMONIUM PRASAD, J

FEBRUARY 03, 2025

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