(2011) 03 P&H CK 0533

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 47 of 2011 (O and M)

Atma Tube Products Limited APPELLANT

Vs

Hero Cycles Limited RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 20
Constitution of India, 1950 — Article 227
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 164 PLR 27

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ram Chand Gupta, J.—The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 30.11.2010, Annexure P1, passed by learned Additional Civil Judge, Senior Division, Ludhiana, vide which application filed by Petitioner-Defendant under Order VII Rule 10 of the Code of CPC (hereinafter to be referred as `the Code'') has been dismissed.

2. I have heard learned Counsel for the parties and have gone through the whole record carefully including the impugned order passed by learned trial Court.

3. Facts relevant for the decision of present revision petition are that a petition under Order 37 of the Code for recovery of Rs. 1,15,75,000/- on the basis of part payment out of principal amount vide cheque dated 24.3.2005 for Rs. 1.00 crore issued by present Petitioner-Defendant in favour of Respondent-Plaintiff was filed by Respondent-Plaintiff.

4. It has been averred that Petitioner-Defendant approached Respondent-Plaintiff with an offer that they are buyers of C R Sheets/Strips manufactured by the Plaintiff and agreed to make payment of each bill within a period of 30 days from

the receipt of each bill, failing which, it was agreed that they would make the payment along with interest @ 18% per annum. It was also agreed that all disputes arising out of transaction between the parties to the suit would be subject to Ludhiana jurisdiction only. The said terms and conditions were duly incorporated and printed on the invoice itself pertaining to the goods supplied to the Defendant. As per agreement, the goods were supplied by Plaintiff to Defendant on credit basis vide different bills and invoices, hence, it is pleaded that invoices/bills are written contracts, as contemplated under Order 37 of the Code. It is further averred that Defendant did not make payment as per the terms within 30 days, hence, an amount of Rs. 7,65,17,874/- was due towards Defendant as on August 2005. On persistent demand of Plaintiff, Defendant issued eight cheques for Rs. 1.00 crore each to Plaintiff, details of which has been given in para No. 5 of the plaint. All the cheques were drawn on State Bank of Patiala, Dariya, Chandigarh. The cheques were presented for collection by Plaintiff with its bank, however, all the cheques were dishonored and returned unpaid by the bank. Hence, it is pleaded that the cheques were issued regarding part payment of the price of the goods purchased from time to time and the amount so received by the Plaintiff from time to time has also been mentioned in the account books. All the entries of credits and debits have also been reflected in the account books and the same has been made part of the plaint. Plea has been taken that Courts at Ludhiana is having jurisdiction to try the present suit as the goods were purchased by the Defendant from the Plaintiff at Ludhiana, and they had also agreed to make the payment at Ludhiana and hence, part of cause of action accrued at Ludhiana.

5. Petitioner-Defendant appeared and instead of filing written statement, filed an application under Order VII Rule 10 of the Code for returning of plaint on the plea that Courts at Ludhiana are having no jurisdiction to entertain and decide the controversy between the parties, which was declined by learned trial Court vide impugned order by observing as under:

5. After going through the thoughtful consideration of both the sides and going through the record of this case, I am of the considered view that the Plaintiff has specifically alleged that the goods were supplied from Ludhiana and the suit is based on the supply of goods as well as cheques in dispute. The cheques were allegedly issued towards part payment of the goods supplied by the Plaintiff. I am of the considered view that cheques were issued by the Defendant towards discharge of their legal liability of the C.R. Strips supplied to them at Ludhiana and the said cheques were also presented for clearance by the Plaintiff at Ludhiana to their banker Corporation Bank, Ludhiana. In view of the citations M/s M.M. Rubber Co. Ltd. v. M/s Vinod Partners and Furniture Industry 2000 (2) SCC 198 (Delhi) and M/s. Instruments incorporated, Bangalore v. Industrial Cables (India) Ltd. 1997(1) Civ.C.C.108, Karnataka, relied upon by ld. Counsel for the Respondent/Plaintiff supra, I am of the considered view that suit can be filed in a court in whose jurisdiction the cause of action has accrued. The citations relied upon by the ld. Counsel for the Respondent/Plaintiff is fully applicable to the facts

of the case in hand. To examine the question of territorial jurisdiction, the Court has to consider as to whether whole of the cause of action or part of the cause of action has accrued in the territory where the plaint is presented. In this case there is no dispute that the goods were supplied from Ludhiana to the Defendants. There is also no dispute that the cheques issued by the Defendants were dishonoured, therefore, part of the cause of action has accrued at Ludhiana, as such, the Courts at Ludhiana have territorial jurisdiction to try and entertain the present suit. Moreover, the authorities relied upon by learned Counsel for the Respondent/Plaintiff, i.e., M/s M.M. Rubber Co. Ltd. v. M/s Vinod Partners and furniture Industry 2000(2) CCC 198 (Delhi) and M/s Instruments Incorporated, Bangalore v. M/s Industrial Cables (India) Ltd. 1997(1) Civ.C.C. 108 Karnataka, supra are fully applicable to the facts of the present case and the authorities relied upon by ld. Counsel for the applicant/Defendant, i.e., Chanana Steel Tubes Pvt. Ltd. Vs. Jaitu Steel Tubes Pvt. Ltd. and Another, , and Mr. S.S.V. Prasad Vs. Mr. Y. Suresh Kumar Dass and Mr. Y. Agasteen Swamy Dass, are not applicable to the facts of the present case and are distinguishable from the facts of the present case. I am convinced with the submissions made by learned Counsel for the Respondent/Plaintiff.

6. In view of my discussion made above, the question of jurisdiction stands decided in favour of the Respondent/Plaintiff.

6. It has been contended by learned Counsel for the Petitioner that suit is based on cheques allegedly issued by Petitioner-Defendant, which is a negotiable instrument and hence, question of jurisdiction would be governed by Negotiable Instruments Act (hereinafter to be called as `the Act'') and not by Section 20 of the Code. It is further contended that as the cheques were presented to the banker of Petitioner at Chandigarh, and the same were dishonoured at Chandigarh and as Petitioner resides and having his business at Chandigarh, the only Courts at Chandigarh have the jurisdiction and that Courts at Ludhiana have no jurisdiction to entertain and try the present suit. He has also placed reliance upon a number of judgments rendered in Firm Ms. Bodh Raj Mahesh Kumar v. Earl Chawla and company (Private) Limited and Anr. 1972 IL P&H 69, Chanana Steel Tubes Private Limited v. Jaitu Steel Tubes Private Limited and Anr. 1999 INDLAW HP 52, S.S.V. Prasad v. Y. Suresh Kumar and Anr. 2004 INDLAW AP 287, Somisetty Subbarao v. Mynampati Ramakrishna Rao 2007 INDLAW AP 747, M/s Dhodha House v.S.K. Maingi JT 2006(1) SC 123, Hasham Abbas Sayyad v. Usman Abbas Sayyad and Ors. JT 2007 (1) SC 616, Union of India v. Adani Exports Ltd. and Anr. 2002(1) Apex Court Judgments 229 (S.C.) and Abdulla Bin Ali and Others Vs. Galappa and Others, .

7. On the other hand, it has been contended by learned Counsel for the Respondent-Plaintiff that as already pleaded in the plaint, a separate complaint u/s 138 of the Act has also been filed by Respondent Plaintiff against the present Petitioner at Ludhiana. It is further contended that the cause of action for filing present suit has not arisen merely on the dishonour of cheques and that rather

the contract was entered into between the parties at Ludhiana, goods were also supplied at Ludhiana, payment was also to be made at Ludhiana and that part payments had also been received by Respondent-Plaintiff at Ludhiana from time to time as is clear from the statement of accounts maintained by Respondent-Plaintiff and, hence, it is contended that question of jurisdiction in this case is to be decided u/s 20 of the Code and not under the provision of Negotiable Instruments Act and hence, none of the authorities relied upon on behalf of the Petitioner is applicable to the facts of present case. It has also been contended that now the suit is being tried as an ordinary suit and not suit under Order 37 of the Code, as per order of learned trial Court.

8. As is clear from the plaint, Annexure P2, filed by Respondent Plaintiff, which is now being tried as an ordinary suit, there was a contract between the parties for supplying the goods. Order was received by Respondent-Plaintiff at Ludhiana. Goods were also manufactured and supplied from Ludhiana. Payments from time to time were also received by Respondent-Plaintiff at Ludhiana. Impugned cheques were also given as part payment of the price of goods outstanding as per the account maintained by Respondent-Plaintiff.

9. Hence, there is force in the argument of learned Counsel for the Respondent that question of jurisdiction be decided as per Section 20 of the Code and not as per the provisions of Negotiable Instruments Act. Hence, none of the authorities, on which reliance has been placed on behalf of the Petitioner-Defendant, is applicable to the facts of this case. As part of cause of action accrued at Ludhiana, Courts at Ludhiana have the territorial jurisdiction to entertain the suit. Moreover, parties also agreed that all the disputes would be subject to jurisdiction before the Courts at Ludhiana.

10. In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in passing the impugned order and that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

11. Moreover, law is well settled in Surya Dev Rai v. Ram Chander Rai and Ors. 2004(1) RCR (Civil) 147 that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby.

12. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.

