
(2023) 08 DEL CK 0030
In the Delhi High Court
Case No : MAC.APP. No. 568 Of 2018

Nisha & Anr

APPELLANT

Vs

Vikram Singh & Anr

RESPONDENT

Date of Decision : 03-08-2023

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 10

Citation : (2023) 08 DEL CK 0030

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Anshuman Bal, Shadab Khan

Final Decision : Allowed

Judgement

Navin Chawla, J

1. The present appeal has been filed challenging the order dated 01.02.2018 (hereinafter referred to as the 'Impugned Order') passed by the learned Motor Accidents Claims Tribunal (Pilot Court), North-East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 319/2017 titled Nisha & Ors. v. Vikram Singh (hereinafter referred to as the 'Claim Petition'), returning the Claim Petition filed by the appellant herein, to be presented before the competent Court having jurisdiction, on the ground that the appellants, despite repeated opportunities and even after the remand-back of the matter from this Court, have failed to show that they are residing in Delhi at the address that they have mentioned in the Claim Petition.

2. In the Claim Petition, the appellants had stated that they are the residents of Bhajanpura, Delhi.

3. Section 166 (2) of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') states that an application seeking compensation can be filed, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of

whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides.

4. In the present case, the appellants had invoked the jurisdiction of the learned Tribunal claiming that they are residing within its jurisdiction. Admittedly, the accident arising out of which the Claim Petition has been filed, had occurred at Gram Kishanpur, Near Rajinder Ka Makan, District Baghpat, U.P.

5. The learned Tribunal had returned the Claim Petition by its earlier order dated 24.07.2017. The appellants challenged the said order by way of an appeal, being MAC.APP. 961/2017. This Court vide its judgment and order dated 06.11.2017 passed in the said appeal, observed as under:-

"4. In the opinion of this Court, the approach of the tribunal was erroneous. It should have called upon the claimants to bring further evidence, if the documents filed with the petition were deficient in any which way.

5. The appeal is, therefore, allowed. The impugned judgment is set aside. The claim petition is revived and restored on the file of the tribunal for appropriate further proceedings in accordance with law. The claimants are directed to appear before the tribunal on 5th December, 2017."

6. On the said remand, the learned Tribunal, by the Impugned Order, has again returned the Claim Petition filed by the appellants, observing therein that the appellants, except for the Aadhaar Card, have filed only one additional document issued by one proprietor and the credibility of the said document appears to be doubtful. The learned Tribunal further observed that the said document is not a Government document nor does it contain any registration number or a Sales Tax number or a registration certificate; it also does not bear any stamp. The learned Tribunal held that, therefore, the said document cannot be relied upon as proof to confer jurisdiction on the learned Tribunal. The learned Tribunal holding that as the appellants had failed to produce any credible material on record in support of their claims that they are residing in Delhi or are carrying on business within the local jurisdiction of the learned Tribunal, returned the Claim Petition.

7. Aggrieved of the said order, the appellants have challenged the same by way of the present appeal.

8. I may note herein that in the present appeal, the appellants have filed an affidavit of one Shri Sunil Kumar, who states that the appellant no.2 herein is residing as a tenant since many years in his building at D-815, Gali No.20, Bhajanpura, Garhi Mendu, Delhi-110053. This Court by its order dated 17.04.2023, recorded the submission of the learned counsel for the respondent no.2 that on an inquiry it was found that neither the appellants reside at the above address nor the appellant no.2 was ever an employee with Malik Doodh Mahal. The learned counsel for the respondent no.2 reiterates that even on further inquiry, it has been revealed that the appellants are not residing at the given address. This is disputed by the learned counsel for the appellants.

9. Be that as it may, in my opinion, the procedure adopted by the learned Tribunal in determining the question of jurisdiction cannot be accepted. Though it is correct that the learned Tribunal is not to conduct a Civil Trial but only inquiry into a Claim Petition, at the same time, at the initial stage, the question of territorial jurisdiction is to be determined only on the basis of the averments made in the Claim Petition. In the present case, the Claim Petition asserts that the Claimants are the residents of Delhi. The appellants have filed the Aadhaar Card in support of this claim of residence. They have also filed a certificate of employment and an affidavit now of their tenancy. These documents and their assertion of their residing and working for gain in Delhi, can be tested only on the evidence led, which opportunity has been denied by the learned Tribunal by proceeding in a summary manner. One may, in this regard, also take the analogy from the principles applicable to the consideration of an application filed under Order VII Rule 10 of the Code of Civil Procedure, 1908

10. In *Chandra Kishore Chaurasia v. R. A. Perfumery Works Private Ltd.* 2022 SCC OnLine Del 3529, a Division Bench of this Court has held as under:

"20. At the stage of considering an application under Order VII Rule 10 of the CPC, the court is not required to examine the merits of the averments made and to evaluate whether the plaintiff would be able to prove or establish the same. As noted above, for the purpose of an application under Order VII Rule 10 of the CPC, the averments made in the plaint are required to be considered as correct."

11. In *Machinenfabrik Rieter AG v. Tex Tech Industries (India) (P) Ltd.*, 2021 SCC OnLine Del 1825, it was held as under:

"8. The settled legal position is that while considering an application under Order 7 Rule 10 CPC, only averments made in the plaint and the documents filed along with the plaint need to be seen. In this context reference may be made to the judgment of the Division Bench of this Court in *RSPL Ltd. v. Mukesh Sharma*, 2016 SCC OnLine Del 4285 where the court held as follows:

"11. It must be stated that it is a settled proposition of law that the objection to territorial jurisdiction in an application under Order 7 Rule 10CPC is by way of a demurrer. This means that the objection to territorial jurisdiction has to be construed after taking all the averments in the plaint to be correct. In *Exphar SA v. Eupharma Laboratories Ltd.*, (2004) 3 SCC 688, the Supreme Court observed that when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts, as pleaded by the initiator of the impugned procedure, are true. The Supreme Court further observed that the objection as to jurisdiction in order to succeed must demonstrate that granted those facts, the court does not have jurisdiction as a matter of law. It is also a settled proposition of law that while considering a plaint from the standpoint of Order 7 Rule 10CPC, it is only the plaint and the documents filed along with it, that need to be seen. The written statement is not to be looked into at all."

9. Reference may also be had to a judgment of a Coordinate Bench of this Court in *Boston Scientific International B.V. v. Metro Hospital*, 2007 SCC OnLine Del 6 where the court held as follows:

"6. Having obtained unconditional leave to defend the suit, the defendant has filed the present application under Order 7 Rule 10 for return of the plaint on the ground of lack of territorial jurisdiction. Now, on the one hand we have an order of this Court granting unconditional leave to defend on the ground that a "triable issue" arises qua the plea of territorial jurisdiction and, on the other, we have the present application wherein the defendant seeks return of plaint without the issue being tried. This, to me, seems a somewhat incongruous situation. A "triable issue" means that the same requires to be decided after leading of evidence. Whereas, the parameters of disposing of an application under Order 7 Rule 10CPC, at the initial stage without going into evidence, requires the court to only look at the averments contained in the plaint."

10. Hence, this Court has only to look at the averments made in the plaint and the accompanying documents to adjudicate the present application filed under Order 7 Rule 10 CPC....."

12. I may note that the respondents in the Claim Petition were yet to enter appearance. The objection of lack of territorial jurisdiction should, therefore, have been left open to be considered at a later appropriate stage, once the parties lead their respective evidence. At this stage, the question of jurisdiction has to be determined on a demurrer, that is, the plea of the appellants/claimants in the Claim Petition before the learned Tribunal has to be taken as correct.

13. In view of the above, the Impugned Order cannot be sustained and is set aside. The Claim Petition is remanded to the learned Tribunal to be determined afresh.

14. The present appeal is allowed in the above terms. There shall be no order as to costs. It is made clear that all objections of the respondents, including on the question of the learned Tribunal not having jurisdiction over the Claim Petition, are left open and no observation of this Court shall be treated as binding by the learned Tribunal in this regard.

15. The appellants and the respondent no.2 shall appear before the learned Tribunal on 11th September, 2023.