

(2011) 04 DEL CK 0147
In the Delhi High Court
Case No : FAO No. 290 of 2010

Vansh Exports Inc. and Another

APPELLANT

Vs

Kripal Import Exports Pvt. Ltd.

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 10, Order 7 Rule 11, 20

Citation : (2011) 04 DEL CK 0147

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : N.K. Khetrapal, for the Appellant; Vikas Sharma, for the Respondent

Judgement

Valmiki J Mehta, J.—The challenge by means of this first appeal is to the impugned order dated 20.4.2010 whereby the trial court has held that the courts at Delhi had no territorial jurisdiction, and consequently, the plaint was returned for presentation to the court of competent jurisdiction at District Ghaziabad, UP.

2. I may note that the impugned order has been passed not after leading of evidence, but it has been held that the courts have no territorial jurisdiction on an application of the Defendant No. 1/Respondent No. 1 filed under Order 7 Rules 10 and 11 of the Code of Civil Procedure, 1908 (CPC).

3. In order to appreciate as to whether the impugned order ought to have decided the case without evidence on an application under Order 7 Rules 10 and 11 CPC, it is necessary to refer to para 20 of the plaint and which reads as under:

20. That the Hon'ble Court has jurisdiction to undertake the present matter, as the order for delivery of goods have been made at Delhi, the terms of the contract were settled at Delhi, the goods have been supplied from the office of the Plaintiff at Delhi, the goods were manufactured and procured at Delhi, the consideration amount has been paid in the form of cheques presented at Delhi at Canara Bank, Rajouri Garden. The bills were issued from Delhi. The notice

seeking demand of the aforesaid amount has been made at Delhi. The Defendant is also working for gain at Baljeet Nagar, N. Delhi. The criminal complaint pertaining to the aforesaid matter is being tried at Delhi. Hence Hon''ble Court has jurisdiction to entertain the present matter.

(Emphasis added)

4. The first line of the aforesaid paragraph 20 of the plaint shows that the contract was said to have been arrived at Delhi because order was placed at Delhi and the terms of contract were settled at Delhi. Leaving apart any other averments in the aforesaid para 20 by which territorial jurisdiction of the courts at Delhi was claimed, the very fact that the averment was that the contract was entered into at Delhi means that part of cause of action had accrued at Delhi and therefore by virtue of Section 20(c) of CPC, the courts at Delhi were averred to have territorial jurisdiction. This aspect was a disputed question of fact which required trial and therefore could not be disposed of as a preliminary issue and which has in fact been done by deciding the application under Order 7 Rules 10 and 11 CPC. Before the provision of Order 7 Rules 10 and 11 CPC apply, it is necessary that the averments in the plaint have to be accepted as corrected. Disputed questions of fact cannot be decided on an application under Order 7 Rules 10 and 11 CPC. This is also made clear by Order 14 Rule 2 CPC as per which, only questions of law, as opposed to questions of fact or mixed questions of law and fact, can be decided as preliminary issues.

5. The trial court has given the finding that the courts at Delhi had no territorial jurisdiction without referring to the first line in para 20 of the plaint and by going on other facts with respect to the issuance of certain letters and their alleged manipulation. The trial court has further passed the impugned order by holding that the office of the Defendant No. 1 company is at Ghaziabad, UP and in which, the Defendant No. 2 and 3 were Directors whose addresses also situated at Ghaziabad UP. However, it is settled law that different parts of causes of action can arise at different places and any court in which a part of cause of action arises will also get territorial jurisdiction.

6. In view of the above, the appeal is accepted. The impugned order dated 20.4.2010 is set aside. The suit can now be taken up by the trial court and disposed of in accordance with law. It is however clarified that the aspect as to whether the courts at Delhi have territorial jurisdiction, is not being finally decided by this order and this issue will be decided by the trial court after evidence is led by the parties on all issues. The appeal is disposed of accordingly with the aforesaid observations.