

CS No. 476609/2015
Balar Mkt Pvt. Ltd. Vs. Lokesh Tyal

18.05.2024

Present : Sh. Vibhor Sethi, Ld. Counsel for plaintiff.
Sh. Ritesh Kumar, Ld. Proxy counsel for defendant.

Fresh vakalatnama filed on behalf of plaintiff. Same be taken on record.

An application under section 151 CPC has already been moved on behalf of plaintiff. It is stated in the application that vide order, dated 23.03.2011, Learned Predecessor of this Court had framed the preliminary issue with respect to the territorial jurisdiction and onus of proving the said issue is upon the plaintiff. It is further stated that the evidence was taken from the plaintiff on that issue on various dates but defendant had failed to lead his piece of evidence. It is further stated that the present issue is a mixed question of law and facts and as per the settled law, cannot be decided as preliminary issue. Reliance is placed upon *Marico Limited Vs. Gayatri Sevashram Private Limited & Ors in CS (COMM) No. 114/2016* and *M/s. KRBL Ltd. Vs. PK Overseas Pvt. Ltd.* being TM No. 63/2011, in which it is stated that the territorial jurisdiction becomes a disputed question of fact which can only be decided after the detailed evidence led by both the parties. It is therefore requested that the order, dated 23.03.2011 be recalled.

It is submitted by Ld. Proxy counsel for defendant that the submissions have already been propounded on behalf of defendant and nothing further requires to be said. Accordingly,

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Submissions on behalf of both the parties heard.

It is to be noted that on 23.03.2011, fresh suit was received by way of assignment by the Learned Predecessor Court of North East District. Ld. Counsel for defendant has raised his objections with respect to the territorial jurisdiction to entertain this suit to which Ld. Counsel for plaintiff submits that the address of defendant no. 3 falls within the jurisdiction of Police Station GTB Enclave which is in North East District. Thereafter, matter was put up for consideration on the aspect of territorial jurisdiction for 25.03.2011. On 25.03.2011, on hearing the submissions of Ld. Counsel for defendant and plaintiff with respect to territorial jurisdiction, preliminary issue in that regard was framed. The relevant order is produced herein for the sake of brevity:-

CS No. 23/11

M/s. Balar Marketing Vs. Lokesh Tayal

25.03.2011

Present: Sh. S.K. Bansal, Counsel for plaintiff.
Sh. Amrik Singh, Counsel for defendant.

Today the matter was listed for consideration as to whether this Court i.e. Court of Ld. Additional District Judge, North-East District would be having territorial jurisdiction to entertain the plaint. Counsel for plaintiff has filed an affidavit of Sh. Kamal Naresh, Advocate and counsel for plaintiff in which he has stated that as per telephonic inquiry from Police-Control Room (No. 100), visit to police station, GTB Enclave and Inquiry from Trade Welfare Association, Friends Colony Industrial Area, the D-3 i.e. M/s. Power and Control Cable India is located within North-East Jurisdiction.

Counsel for plaintiff therefore, submits that since D-3 is located within the jurisdiction of PS GTB Enclave which itself is in North-East District, this Court would have the territorial jurisdiction to entertain the

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suit as one of the defendant s is within the territorial jurisdiction of this Court.

Counsel for defendant on the other hand disputes this position. He submits that he be permitted to lead evidence on the aspect of territorial jurisdiction.

Accordingly, the following preliminary issue is framed:

(i) Whether this Court i.e. Court of Ld. Additional District Judge, North-East District would have the territorial jurisdiction to entertain the plaint? OPP.

Put up the matter for leading of evidence for 07.05.2011.

Put up the matter for arguments on application of plaintiff under Order 39 Rules 1 & 2 CPC for 31.03.2011. Till then interim order to continue.

(REETESH SINGH)
ADJ (NE)-0/25.03.2011

In terms of that order, plaintiff has led his evidence on various dates and got examined PW1 Sh. Parasmal Jain, who had relied upon his affidavit of evidence with respect to the address of defendant no. 3 and deposed that the same falls within North East District. PW1 had also relied upon various documents to substantiate his case which are exhibited as Ex.PW1/1 to Ex.PW1/17 are basically the sale bills/invoices of the defendant and Ex.PW1/19 to Ex.PW1/33 relied upon by him are the copies of bills/invoices of the plaintiff. He was cross examined at length by other party and even in his cross examination, nothing contrary as such has been culled out. Plaintiff had also got examined PW2 and PW3, who were LDC at Facilitation Branch and Naib Tehsildar, respectively, with respect to the issue. Despite opportunities given, defendant had not led any evidence in that regard. Thereafter,

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plaintiff has moved the present application. Now, after perusing the preliminary issue in question including the plaint and all the other relevant documents, it seems that the present issue is a mixed question of law and facts as it evident from testimony of PW1 who has relied upon various invoices and bills pertaining to both parties. Basically, if the facts are disputed or different inferences are deducible from undisputed facts, the Court must determine both law and facts. Thus, it seems appropriate in the entirety of circumstances that the aforesaid issue be decided at the final stage after giving opportunities to all the concerned parties to lead the detailed relevant pieces of evidences on their behalf. Accordingly, the application is disposed of. Reliance is placed upon *Ramesh B. Desai & Ors. vs. Bipin Vadilal Mehta & Ors*, AIR 2006 SCC 3672, *M/s. Kalyan Complex vs. Sha Sumermalji*, Civil Revision Petition No. 1724/2026 decided on 18.12.2020 by the Hon'ble Andhra Pradesh High Court and *Nusli Neville Wadia vs. Ivory Properties*, AIR 2019 Supreme Court 5125.

Being an old matter, put up for completion of pleadings and framing of issues on **07.09.2024** without any further delay.

(Manu Vedwan)
District Judge-02/North-East,
KKD Courts, Delhi/18.05.2024