

GJMH010021702025



Received on	30-04-2025
Registered on	26-06-2025
Decided on	18-03-2026
Duration	00-08-20
Exh.	10

BEFORE THE COMMERCIAL APPELLATE COURT

AT : MAHESANA.

COMMERCIAL APPEAL NO.2 OF 2025

Appellant:-

(Orig. Plaintiff)

Rahul Kumar Tiwari
Hindu, Male, Age: Adult,
Proprietor of Maruti Trading, through
his Power of Attorney Holder
Rajeshkumar Kantibhai Patel
Having its office at: Safal Complex,
G-16, Modhera Circle, Mahesana, Gujarat.

Versus

Respondent:-

(Orig. Defendant)

Birinchi Ghosh
Proprietor of M/s. Trader of Jatadhari Dry &
Liquid Milk Supplier,
Having its office at: Nil, Kharsa, Kharsa,
Mursidabad, West Bengal-742137.

Subject:- **Appeal under Section 96 read with order 41 of the code of Civil Procedure, 1908 challenging the order dated 12.02.2025 passed by learned Principal Senior civil Judge, Mahesana in Commercial Civil Suit No.09 of 2024 rejecting the plaint.**

Appearance:-

Ms. N.K. Vaidankar on behalf of appellant.

Mr. J.B. Chavada on behalf of the respondent.

JUDGMENT

1. The appellant - original plaintiff has preferred present Commercial Appeal under Section 96 read with Order 41 of the Code of Civil Procedure, 1908 challenging the order dated 12.02.2025 passed below Exh.10 by the learned Principal Senior Civil Judge, Mahesana in Commercial Civil Suit No.09 of 2024, whereby learned Judge was pleased to pass an order below Exh.10 and returned the Suit under Order- VII Rule 10 of Civil Procedure Code, 1908 for want of jurisdiction, read with Section 20 and 9 of Civil Procedure Code, 1908.
2. Present appellant herein is original plaintiff, whereas respondent herein is the original defendant to the Commercial Civil Suit No.9 of 2024, and therefore, they are referred to their original status as 'plaintiff' and 'defendant' for the sake of brevity and convenience.

3. The facts leading to file present appeal, in nutshell, are that the plaintiff used to supply the goods as per the requirements of the respondent vide various invoices. That the plaintiff is a trader and procures the goods from various manufacturers/ vendors across India and supplies them to his customers in various State of India. That for the business convenience, the plaintiff has obtained separate GST registration numbers in the State of Gujarat, Assam and West Bengal. The plaintiff also maintains separate ledgers of the parties as per the goods supplied from the particular State. The identification of the supply of the goods is from the Invoices raised by the plaintiff which carries the GST number of that particular State and also carries the address of the plaintiff in that particular State. In the present matter, the plaintiff had sold and supplied various goods to the defendant from Assam, West Bengal and Gujarat. Therefore, the plaintiff had maintained separate ledgers for these three States. The defendant has never raised any dispute as to quality and/or quantity of the goods supplied. As a matter of fact, the defendant had made some lumpsum/ on account payments towards the goods supplied. The plaintiff has given credit of the payments received from the defendants from time to time. That, the plaintiff has adjusted and credited the amounts received from the defendant in the ledger of Assam and West Bengal and after giving effect of some amounts received, there is no outstanding balance in the

ledgers of the Assam and West Bengal. That subsequently, the defendant made further part payments which are given due credit by the plaintiff in its ledger of Gujarat State. It is pertinent to note here that while making part payments, the defendant never informed the plaintiff against which invoices or ledgers he is making payments. Similarly, when the plaintiff adjusted the part payments against its ledgers of Assam, West Bengal and Gujarat State, the defendant never objected to the same.

- 4 . The plaintiff supplied total material worth Rs.6,27,24,662/- to the defendant from Mahesana, Gujarat State, the details of invoices mentioned in Para.3.3 of the appeal memo. As per the terms of the invoices of the invoices of the plaintiff, the payment towards the goods supplied was to be done within 7 days from the date of the invoices. That, the defendant had made some part payment towards the said outstanding amount. However, the sum of Rs.2,27,86,541/- still remained outstanding and payable by the defendant to the plaintiff. Thus, the plaintiff made several follow ups by way of email communications and the defendant promised to make payment. However, the defendant had raised a false claim of deduction to the tune of Rs.39,93,000/- which the plaintiff refused to entertain. Except that after thought claim for deduction, the defendant has not raised any dispute in respect of the remaining outstanding amount. Rather the defendant specifically promised to clear the outstanding in the email communications between the parties.

5. As the defendant failed and neglected to clear the outstanding amount, the plaintiff was constrained to initiate proceedings for recovery against the defendant. The plaintiff filed pre-institution Mediation Case No.108/2023 against the defendant Form 12-A of the Commercial Court Act. The defendant was served with the Notice, but opted not to remain present. Therefore, the Non-Starter Report issued by DLSA, Mahesana and the Commercial Civil Suit No.9 of 2024 came to be filed against the defendant on 04/03/2024. Thereafter, the Commercial Court issued summons to the defendant, which was served upon him on 09/02/2024. The defendant appeared in the Suit through his council on 03/04/2024, but failed to file any Written Statement within prescribed time limit and filed an Application Exh.10 under Order 7 Rule 11 on 03/05/2024 for rejection of plaint. As such, defendant failed to file his Written Statement, the appellant submitted an application dated 18/07/2024 for drawing the decree in favour of the appellant under the provisions of Order 8 Rule 1 & 10 of CPC. However, learned Trial Court didn't pass any order thereon. Thereafter on 12.02.2025, learned Trial Court passed the impugned order, which is patently perverse and arbitrary.
6. The appellant, inter-alia, contended and argued in line of appeal memo that the impugned order passed by the learned Trial Court is prima-facie arbitrary, illegal and not maintainable in the eyes of law. Impugned order passed by the learned Trial Court is contrary to the records as well as

settled principle of law. Learned Trial Court has erred in misinterpreting Section 20 of the Code of Civil Procedure, 1908 and the judicial precedents in this regard. Learned Trial Court has erred in holding that it doesn't have territorial jurisdiction to hear and decide the Suit. Learned Trial Court failed to appreciate the scope and ambit of Section 20 of Civil Procedure Code. Learned Trial Court rejected the suit primarily on the ground that the defendant resides and carries on business at West Bengal and hence, suit is not maintainable at Mahesana. Learned Trial Court has erred in observing that there is no agreement produced where it is mentioned that Mahesana will be the place of jurisdiction if the dispute arises. This observation of learned Trial Court is self-contradictory as the trial court itself has observed in the impugned order that the invoices contained the jurisdiction clause which specifically states that invoices are subject to jurisdiction at Mahesana, Gujarat. Learned Trial Court failed in not appreciating that as per the well established and common business practice that trader having his place of business in Gujarat and having GST registration in Gujarat State may procure goods from anywhere in India and deliver them to his customers at any place in India. The physical movements of the goods is relevant only for the purpose of preparing e-way bills. The e-way bill contained specific columns to fill in the details of transportation of goods from one place to another place, the details of the supplier, the GST number etc. However, the learned Trial Court, while

passing the impugned order, failed to appreciate that the plaintiff has prepaid invoices from his Mehsana Office and has applied I-GST on the invoices. Thus, the goods are deemed to be supplied from Mahesana, irrespective of the fact if the goods are actually lifted from Baramati, Ahmedabad, Pune, Ghaziabad or any other place in India. Learned Trial Court failed to appreciate that if the invoices are prepaid from the Office from West Bengal and if the goods are supplied in West Bengal then only GST would be applicable and no I-GST. The I-GST is applicable when the sale is inter-state sale. In case of Intra-State sale, only GST is applicable. Learned Trial Court erred in observing that "it is admitted fact that the ledger and accounts are merged". It is neither case of the plaintiff nor it is pleaded by the defendant that the ledger and accounts are merged. In the application Exh.10, the defendant himself admitted that goods were supplied by the plaintiff to him from Assam, West Bengal and Gujarat. It has been further admitted that the plaintiff maintained separate ledgers for goods supplied from Assam, West Bengal and Gujarat. The GST number for all three states are different and hence, there is no question of merging the invoices and accounts. Learned Trial Court failed to appreciate that the only dispute raised by the defendant is that he has adjusted the part payment against Gujarat ledger, whereas the plaintiff adjusted the part payment against Assam and West Bengal ledger. Thus, the only dispute raised by the defendant is that the plaintiff unilaterally adjusted the part payment

without consent of the defendant. Thus, in view of the aforementioned grounds and the grounds that may be argued at the time of hearing, present appeal is required to be allowed in the larger interest of justice.

7. The respondent duly served with the process and appeared through his learned Advocate Mr. J.B. Chavada. The respondent has not filed his Reply/ Written Statement to the present appeal. Mr. Chavada has argued orally that this Court has no jurisdiction to try and entertain present appeal. Only, the Hon'ble High Court has jurisdiction to entertain present appeal. It has been further argued that the appellant failed to show that his principal place of business is at Mahesana district. The appellant is not having any office at Mahesana district of Gujarat State. No agreement has been entered into between the appellant and respondent at Mahesana . Moreover, no payment has been made at Mahesana. It has been further argued that the order passed by the court below is just, proper and as per the provisions of law, and therefore, not required to be interfered.
8. Considering the oral arguments canvassed by learned Advocates appeared on behalf of the parties and considering the appeal memo and record of the case, the following Issues have arisen for determination of this appeal.

ISSUES

1. Whether order dated 12/02/2025 passed by learned

Principal Senior Civil Judge, Mahesana below Exh.10 in Commercial Civil Suit No.09 of 2024 is illegal, perverse, against the principle of law and required to be set aside?

2. What order?

9. Answers to the aforesaid issues are as under.

1. In negative.
2. As per final order.

-:: REASONS ::-

Issues No.1:-

10. Perusing the record of the case, it appears that on the basis, the pecuniary jurisdiction of the Trial Court was beyond its jurisdiction and accordingly the plaint was returned under Order-VII Rule 10 of Civil Procedure Code for want of jurisdiction read with Section 20 and 9 of Civil Procedure Code. Bare reading of the plaint, the plaintiff didn't plead a single fact showing that any part of the cause of action arose in Mahesana. Moreover, only maintaining books of accounts at its office at Mahesana and invoices did not constitute cause of action without clear pleading. On perusal of the plaint as well as documents produced therewith, the plaintiff failed to show that his principal place of business is at Mahesana. Moreover, the plaintiff has averred that he is maintaining book of accounts at its office at Mahesana. However, in support of the said averments, the plaintiff has not produced any document, which shows that he is maintaining his book of accounts at

Mahesana. The plaintiff also failed to produce any written contract / agreement executed between the plaintiff and defendant regarding issuance of Invoice at Mahesana district. In the pleading of Suit as well as in the memo of appeal, the plaintiff has admitted that he has adjusted ledgers as per his convenience. However, the plaintiff has not shown that he had ever obtained consent of defendant before adjusting the ledgers. The defendant has specifically argued that the plaintiff is not having any registered office at Mahesana District and they have not entered any contract at Mahesana, and therefore, the Mahesana District is not territorial jurisdiction. The plaintiff has averred that he is supplying goods through his Assam, West Bengal and Gujarat Depots. It has been further averred that he is maintaining separate ledgers for these depots. The plaintiff has also averred that the part payment received by him at Mahesana and the Invoices are the written contract between the plaintiff and defendant because the goods supplied by the plaintiff through those invoices. The invoices contain the jurisdiction clause "subject to Mahesana, Gujarat jurisdiction". Thus, cause of action arisen within the territorial jurisdiction of this Court. It is pertinent to note here that, the plaintiff has not produced any agreement / contract containing that both the parties agreed with the jurisdiction contract. Moreover, the plaintiff has not produced any document, which shows that he is having his registered office at Mahesana District and the principal place of his business. The respondent

submitted that under Section 20 CPC, jurisdiction flows from where the appellant resides or carries on business, or where the cause of action arises. In this case, looking to the Invoices, the appellant had delivered the goods from Baramati, Gangavaram in Chittoor (Andhra Pradesh), Parner (Maharashtra), Ahmadnagar (Maharashtra), Daund in Pune (Maharashtra), Rahuri (Maharashtra) and Ghaziabad (Uttar Pradesh) to the defendant at a place Murshidabad (West Bengal). As discussed above, the appellant himself has admitted that the ledgers and book of accounts are being maintained by him at his own convenience and invoices issued from Mahesana, but in absence of any contract or agreement between the parties with regard to jurisdiction contract, the court below has no jurisdiction to try and entertain the Suit. The cause of action consists of making of the contract and its breach so that the suit may be filed either at a place where the contract was made or at a place where it should have been performed and the breach occurred. Here, in the present case, the plaintiff failed to produce any contract showing that contract was made at Mahesana. It is always open to the parties to agree on any exclusive forum for settlement of dispute, but such an agreement must be cleared which spells out either by expressed or by necessary implication ouster of jurisdiction of the Court. The ouster of Court's jurisdiction cannot be lightly assumed and if there is a concluded agreement, it will surely operate as estoppel against the parties to the contract. If it merely a unilateral

statement or affirmation made by one of the parties, unless shown that the other party has accepted such term or condition, it cannot be held that there is an agreement to confer exclusive jurisdiction on any Court where the printed form is by one of the parties forwarded by way of a letter / invoices to the other which contains the words conferring exclusive jurisdiction on a court at any particular place or ousting the jurisdiction of the Court. It may not be difficult to hold that parties have agreed on such a term. The Court also must be conscious at that juncture to note that many printed forms are in a routine manner signed by the parties. If a printed by one party is dispatched and is signed only by that party and if delivered to the other party without expressing anything more, consensus with regard to the particular jurisdiction is difficult to be gathered. Here, in the present case, the plaintiff has not produced any document showing that defendant agreed on the terms and conditions of any agreement or contract containing the words conferring exclusive jurisdiction on a court at any particular place or ousting the jurisdiction of the Court. Consequently, this Court is of the view that learned Trial Court does not have territorial jurisdiction to entertain the present suit. Accordingly, the plaints are liable to be returned under Order VII Rule 10 of Civil Procedure Code for want of jurisdiction read with Section 20 and 9 of Civil Procedure Code. Moreover, the appellant has preferred present appeal under Order 41 read with Section 96 of Civil Procedure

Code challenging the order dated 12/02/2025 passed below Exh.10 by the learned Principal Senior Civil Judge, Mahesana in Commercial Civil Suit No.09 of 2024. Learned Trial Court was pleased to allow the application Exh.10 and ordered to return the plaint under Order 7 Rule 10 read with Section 20 and 9 of Civil Procedure Code. Now considering the Order 43 Rule 1 (a) of the Code, the said order can be challenged under Order 43 Rule 1 (a) of the Code read with Section 104 of Civil Procedure Code. However, the appellant has filed present appeal under Order 41 read with Section 96 of the Civil Procedure code, and therefore also, present appeal is not tenable.

11. In view of the above facts and circumstances of the case, learned Trial Court has not committed any illegality and perversity in passing the impugned order.

ISSUE No.2 :-

12. In view of the above discussions, findings arrived at, reasons recorded and observations made above, the present appeal is not required to be interfered. To decide Issue No.2, I, do hereby pass the following final order in the interest of justice.

:- ORDER :-

1. Present Commercial Appeal No.02 of 2025 preferred by the appellant is hereby **dismissed** with no order as to cost.

2. The order dated 12.02.2025 passed below Exh.10 by the learned Principal Senior Civil Judge, Mahesana in Commercial Civil Suit No.09 of 2024 is hereby confirmed and upheld.
3. Record and proceedings be sent to concerned Trial Court along with copy of this order.
4. Interim relief, if any, granted earlier stands vacated.
5. Decree be drawn accordingly.

Signed and pronounced in the open Court on this
18th day of March, 2026 at Mahesana.

Date : 18.03.2026.
Place: Mahesana.

(Amrish Laljibhai Vyas)
Principal District Judge,
Mahesana.
Code No.GJ00508.