

Summary Suit No. 08/2016
Sandip .Vs. Rakeshbhai

Order below Exh. 13

Defendant filed present application for return of plaint under Order 7 Rule 10 of Code of Civil Procedure on the ground that this Court has no jurisdiction to hear the present suit. As per the defendant the plaintiff remitted money from Jalna by R.T.G.S. to defendant and taken delivery at Bharuch by its own transportation and as per invoice the jurisdiction is laying with Bharuch Court. Hence, he prayed for return of plaint.

2 Plaintiff filed say at Exh.15. As per plaintiff Court of Jalna is having jurisdiction as payment is made by R.T.G.S. from Jalna. The scrap was to be delivered at Jalna and therefore, this Court has got jurisdiction.

3 I heard learned counsel for plaintiff. Advocate for the defendant is absent on 06/06/2017, 10/07/2017 and on 07/09/2017. On 29/09/2017 advocate Kale filed V.P. on behalf of defendant. At that time he submitted that he is going argue the matter. Hence, today's date is fixed. However, today he filed adjournment application citing illhealth of the advocate. However, advocate Kale is present in the Court. He failed to argue the matter. Matter is stuck on this application for so many dates. Hence, I proceed to decide the matter on merit.

4 It is pertinent to note that this is summary suit filed under Order 37 of Code of Civil Procedure, 1908. As per the said Order, summon of the suit has to be sent in form no.4 in appendix b. After service of summons defendant has to appear and file appearance in person or through advocate and shall file address memo for service of notice on him. Prior to appearance he has to give notice to plaintiff or his advocate. When defendant enters an appearance, the plaintiff shall thereafter, serve on the defendant a summon for judgment. After service of such summons defendant again has to appear in the Court and file application for leave to defend. Only after grant of such application defendant can file his written statement defending the suit. Till grant of leave to defend, defendant has no right to move any application in respect of the suit.

5 In this matter no summons for judgment has been issued to the defendant. Hence, till today there is no occasion for the defendant to seek leave of the Court to defend the suit. Therefore, the defendant has no right to file any application like rejection or return of plaint as per his choice prior to grant of leave to defend. Therefore, this application is premature one.

6 Moreover, only after deciding issue of jurisdiction plaint can be returned. Therefore, there can not be an application under Order 7 Rule 10 of Code of Civil Procedure, 1908 but the application

for deciding the jurisdiction of the Court can be filed if law permits. No preliminary issue can be framed in summary suit prior to leave to defend. Therefore, this application is premature one and not tenable in the eye of law.

7 Therefore, without going into merit of application that whether this Court has got territorial jurisdiction or not which can be decided as per law as and when the issue will be considered by the Court, this application is liable to be rejected on the ground of tenability at this stage.

8 Hence, I proceed to pass following order.

ORDER

- (1) Application is rejected.
- (2) The contentions of the defendant regarding jurisdiction is kept open if leave to defend is granted to him after service of summons of Judgment.
- (3) Cost of this application is in main cause.

Date : 06/11/2017.

Sd/-06-11-2017
(D.B.Mhalatkar)
4th Joint Civil Judge (S.D.)
Jalna

Certificate

I affirm that the contents of this PDF file are word to word as per original order.

Name of Steno : R.R.Jadhav
Name of Court : 4th Jt. CJSD Court.
Date of PDF : 06-11-2017.

Sd/-
Steno