

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **F.A.O. No.317 of 2013**

Decided on : 7th August, 2013

M/S. APOSTLE INSTITUTE FOR TECHNOLOGY FOR
WOMEN & ANR.

..... Appellants

Through: Mr. Rajiv K. Garg & Ms. Kavita Rawat,
Advocates.

Versus

MOHAN DAS

..... Respondent

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

C.M. No.12161/2013 (for exemption)

Exemption allowed, subject to the deficiency being rectified.

The application stands disposed of.

F.A.O. No.317/2013 & C.M. No.12160/2013 (for stay)

1. This is an appeal filed by the appellants under Order 43 Rule 1 CPC against the order dated 6.7.2013 passed by the learned Additional District Judge in C.S. No.203/2011 by virtue of which the application of the appellants under Order VII Rule 10 read with Section 151 CPC for rejection of the plaint, was dismissed.

2. I have heard Mr. Rajiv Garg, learned counsel for the appellants and have gone through the record. The main contention of the learned counsel for the appellants is that no part of cause of action has arisen in Delhi as the appellant is a proprietor of a firm having its office in Dwarka. The appellant, who had entered into an agreement, is a society duly registered at Dehradun having hostel facilities for students studying in Institute at Greater Noida. It is alleged that no services were ever provided by the respondent to the Institution of the appellant in Delhi. The job was to be done at Greater Noida and no part of cause of action had arisen in Delhi. The agreement was signed in Greater Noida and, therefore, Delhi court does not have the jurisdiction. The appellant/defendant's application under Order VII Rule 10 CPC was dismissed by the trial court. The learned counsel in support of his submissions has also placed reliance on a Division Bench judgment of this court passed in case titled *Arinits Sales Pvt. Ltd. vs. Rockwell Plastic Pvt. Ltd. & Ors.*; 149 (2008) DLT 123 (DB) wherein the order returning the plaint has been upheld. On the basis of the said judgment the learned counsel has contended that the facts of the case are same and accordingly in the present case also the application ought to have been allowed.

3. I have gone through the impugned order as well as the record and the aforesaid judgment. There is no dispute about the fact that under Order VII Rule 10 CPC the court has ample power to return the plaint in case it does not have the jurisdiction to try the same. The jurisdiction to entertain the plaint is given in Section 20 of the Evidence Act which reads as under :-

“20 Admissions by persons expressly referred to by party to suit.- Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.”

4. A perusal of the aforesaid Section would clearly show that in order to have the territorial jurisdiction, the plaintiff must aver in his plaint that either the defendant is residing within the territorial jurisdiction of the court concerned or is working for gain or the cause of action either in part or in full has arisen within the jurisdiction of the said court.

5. In the instant case, the respondent/plaintiff had filed a suit for recovery of ₹15 lacs approximately against the appellants/defendants on account of certain services having been provided. Paragraph 18 of the

plaint is very material wherein the averments regarding the territorial jurisdiction have been made, which reads as under :-

“18. That the defendant No.1 had its corporate and principal office at Malviya Nagar, Delhi at the time of execution of the Memorandum of Understanding. All the payments towards the services availed by the defendants was made payable at New Delhi. Part payment received by the plaintiff has been deposited in its Delhi account. Both the plaintiff and the defendants have their respective offices at Delhi. In view of the above, this Hon’ble Court has the requisite territorial jurisdiction to try and entertain the present suit.”

6. At the stage of rejection of the plaint, the court has to see only the averments made in the plaint and the documents relied upon. It does not have to see any other document filed by the defendants for the purpose of deciding the credibility and genuineness of the averments or the documents which have been placed on record by the opposite side. If this exercise is done then para 18 of the plaint would clearly show that the Delhi court had the jurisdiction because the respondent is specifically saying that the appellant/defendant No.1 has its corporate and principal office at Malviya Nagar at the time of execution of the memorandum of understanding. The payments towards the services availed of by the

appellant/defendant were made payable at New Delhi. Part payment was received by the respondent/plaintiff and deposited in Delhi, therefore, it can by no stretch of imagination be said that neither the part of cause of action had arisen in Delhi nor the appellant/defendant was having a corporate or principal office at Malviya Nagar at the time when the suit was being filed. This is the defence of the appellant/defendant that its corporate office is in Dehradun which has to be proved during the course of trial. The learned trial court has rightly rejected the application and observed that these are only tentative findings and the question of the court having territorial jurisdiction is a mixed question of fact and law which can be decided only after parties are given an opportunity to adduce their respective evidence. It has also been observed that this finding which has been arrived at by the trial court *prima facie* should not be treated as a finding returned on merits. All these facts which have been observed by the learned trial court clearly show that the trial court is cognizant of its duties while dealing with the question which is sought to be raised by the appellant/defendant with regard to the return of the plaint. The appellant is trying to take this court on a voyage to determine the genuineness, correctness and the falsity of the averments made in para

18 of the plaint with regard to the territorial jurisdiction which cannot be permitted to be done.

7. I accordingly, feel that there is no merit in the appeal filed by the appellants; therefore, the appeal is dismissed.

AUGUST 07, 2013
'AA'

V.K. SHALI, J.