* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 16th September, 2021**

\+ **CM (M) 604/2020, CM APPL. 30745/2020 (by the petitioner u/S 151 CPC for stay)**

M/S. AUTO MOVERS ..... Petitioner
Through: Ms. Deepika Mishra, Advocate

Versus

LUMINOUS POWER TECHNOLOGIES PVT LTD
..... Respondent
Through: Mr. Pallav Saxena, Mr. Deepak Chawla, Mr. Aruj Dhingra and Mr. Neeraj Malik, Advocates

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Article 227 of the Constitution of India impugning the order dated 20th February, 2020 passed by the learned Additional District Judge-03 (West), Tis Hazari Courts, Delhi in CS No.613329/2016.

2. The petitioner is the defendant before the learned Trial Court. The respondent/plaintiff had filed a suit against the petitioner/defendant for recovery of a sum of Rs.28,43,209.68/-. In the suit, the respondent/plaintiff claimed that it was a well-known manufacturer providing portfolio of solutions for packaged power, diversified generation, electrical control and safety and energy optimisation. The

petitioner/defendant was one of its several regional stockists and distributors, who were appointed to procure/buy goods being traded by the respondent/plaintiff and supply them to wholesalers and retailers of the respondent/plaintiff in the market, who, in turn, would sell the same to the consumers.

3. It was stated by the respondent/plaintiff in the plaint that with every supply of requisite number of goods effected by the respondent/plaintiff to the petitioner/defendant, an invoice was raised and on delivery of the goods, the invoice along with the driver's copy of delivery challan was duly signed by the petitioner/defendant, as a mark of satisfaction.

4. The respondent/plaintiff claimed that it had a running current account with the petitioner/defendant against which a statement of account/ledger was regularly maintained by it in the normal course of business. No dispute had so far been raised by the petitioner/defendant against the supply effected by the respondent/plaintiff. On the basis of various invoices issued from 30th November, 2010 till 30th April, 2011, a sum of Rs.55,55,335.10/- had been payable by the petitioner/defendant. The respondent/plaintiff affirmed that till that date, it had received a sum of Rs.24,72,616.42/- along with Rs.15,000/-, which was received by it after a Legal Notice had been issued to the petitioner/defendant for dishonour of cheques. Thus, a sum of Rs.28,43,209.68/- against several invoices was due and payable by the petitioner/defendant. Accordingly, the suit was filed.

5. The petitioner/defendant has not disputed that it used to place orders for supply of goods upon the respondent/plaintiff and that there

were business transactions between the parties. The petitioner/defendant denied owing any amount to the respondent/plaintiff as it had not ordered for inverters, batteries, etc., which the respondent/plaintiff had sent to it and when this was brought to the notice of the respondent/plaintiff, on their instructions, the petitioner/defendant had sent the goods to another distributor of the respondent/plaintiff located at Asansol, West Bengal. However, the preliminary objection raised by the petitioner/defendant was to the jurisdiction of the learned Trial Court to try the suit.

6. It was claimed that the orders were placed by the petitioner/defendant, which was located at Suri, Birbhum, West Bengal, to the regional office at Kolkata, where the respondent/plaintiff took orders for supply of goods, which were then sent from the respondent's godown at Kolkata, to the petitioner/defendant at Suri, District Birbhum, West Bengal. It was further submitted that the cheque stated to have been dishonoured was actually a cheque given towards security and the same had been delivered at the office of the respondent/plaintiff at Kolkata and was also issued from there. Invoices were also issued from the Kolkata office. As such, it was submitted, that as no part of the transaction had taken place in Delhi, and since no part of the cause of action had arisen in Delhi, the suit could not have been filed at Delhi.

7. The learned Trial Court framed a preliminary issue regarding its jurisdiction. After considering the arguments submitted before it by both sides and the judgments cited and relied upon by both sides, the learned Trial Court concluded vide the impugned order that since the plaintiff had categorically pleaded that the payments had been made to it at New Delhi, it had the jurisdiction to try the suit. Accordingly, the preliminary

issue was answered in favour of the plaintiff and against the defendant i.e., the petitioner before this Court.

8. Ms. Deepika Mishra, learned counsel for the petitioner/defendant, submitted that the learned Trial Court had fallen into error in determining its jurisdiction as it relied on an English case law that the 'debtor must seek the creditor', whereas it was bound to follow Section 20 of the Civil Procedure Code, 1908 (**"CPC",** for short). It has also ignored the cited case law which held that the parties could not vest a court with jurisdiction at a place where no part of the cause of action had arisen. In the present case, the orders were placed by the petitioner/defendant, which is admittedly working for gain in West Bengal, upon the Kolkata office of the respondent/plaintiff. The goods were dispatched from Kolkata to Birbhum. 10 blank cheques had been signed and handed over to the respondent/plaintiff as security by the petitioner/defendant at the respondent's office at Kolkata. Payments were released by the petitioner/defendant to the respondent/plaintiff through RTGS from UCO Bank, Suri. Thus, no part of the cause of action has arisen outside West Bengal, not even the payments. Mere mention of Delhi in the invoices would not suffice to vest courts in Delhi with jurisdiction.

9. It was further argued that the judgment in ***Satyapal v. Slick Auto Accessories (P) Ltd.,*** (2014) SCC OnLine Del 998 was not applicable to the facts of the present case, as in that case, goods had been supplied from Shahdara Delhi. In the present case, the goods were despatched from Kolkata. Relying on the judgment in ***Mountain Mist Agro India (P) Ltd. v. S. Subramaniyam*****,** 2008 SCC OnLine Del 39, learned counsel submitted that the jurisdiction lies where the Drawee Bank is located, in

cases where cheques stood dishonoured, as was claimed in the present case. It was submitted that in the present case, the issue of multiple jurisdictions did not arise and so, the general rule that the 'debtor should seek the creditor' was not applicable. Reliance was placed on the decision in ***Shridhar Vyapaar Private Limited v. Gammon India Limited***, 2018 SCC OnLine Cal 11749.

10. Mr. Pallav Saxena, learned counsel for the respondent/plaintiff, on the other hand, raised a preliminary objection to the maintainability of the petition under Article 227 of the Constitution of India, as no palpable error of jurisdiction has been disclosed. Learned counsel submitted that the petitioner/defendant has only expressed a disagreement with the view taken by the learned Trial Court, which was an insufficient ground to challenge the same. Relying on the judgment in ***Surya Dev Rai vs. Ram Chander Rai*****,** (2003) 6 SCC 675**,** it was submitted that none of the conditions existed in the present case calling for any interference with the impugned order. Detailed reasons have been given in the impugned order and the questions raised by the petitioner/defendant entailed disputed questions of facts, which required trial.

11. With regard to the cause of action, it was submitted by the learned counsel for the respondent/plaintiff that the learned Trial Court had rightly considered what constituted cause of action in para 12 of the impugned judgment and had rightly concluded that the courts in Delhi had the jurisdiction to try the case. Learned counsel further submitted that even in the case under Section 138 of the Negotiable Instruments Act, 1881 ("**N.I. Act**", for short), the criminal complaint CC No. 4926/1/12 was filed in Tis Hazari Courts, New Delhi as the cheque had been

presented in Delhi and dishonoured in Delhi. Further, on 25th July, 2013, the petitioner/defendant made a statement before the learned Metropolitan Magistrate to settle the said complaint by paying a sum of Rs. 24 lakhs to the respondent/plaintiff. Now, it could not rake up the issue of jurisdiction. Finally, it was submitted that the learned Trial Court followed the decision in ***Satyapal (supra)***, to hold that that payments were required to be made in Delhi and thus, the court had territorial jurisdiction to try the present suit.

12. It is to be noticed that it was on the basis of the pleadings of the parties that on 27th December, 2018, the learned Trial Court had framed the following issue: -

> *"1. Whether this court has jurisdiction to try the suit? OPD"*

13. This issue was treated as a preliminary issue. The respondent/plaintiff in para No.23 of the plaint averred that the invoices raised by the respondent/plaintiff were *"subject to jurisdiction of court of Delhi only"* and payments were also to be made in the jurisdiction of New Delhi and the cheque, which had been dishonoured was also to be received and realized in New Delhi. It was further stated that in the light of the established rule of law that in case of goods sold and delivered, the suit for its price will lie where the same is to be paid. It is on this basis that the respondent/plaintiff stated that the Delhi courts had jurisdiction to try the suit. In para No.17 of the written statement, however, the petitioner/defendant submitted that the *'doctrine of election'* could not be applied to the present case inasmuch as, no cause of action had arisen in Delhi. According to the petitioner/defendant, the order for supply of the

goods was placed at Kolkata Regional Office of the respondent/plaintiff. Invoices were raised from that office and the blank cheques towards security were received by the Kolkata Office. Further, the goods were supplied by the respondent/plaintiff at Suri, Birbhum, West Bengal. Therefore, the clause *"subject to jurisdiction of court of Delhi only"* was inconsequential.

14. Section 20 of CPC governs the jurisdiction and reads as under: -

> ***"Section 20. Other suits to be instituted where defendants reside or cause of action arises.***
> *Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-*
>
> *(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or*
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> *(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or*
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> *(c) The cause of action, wholly or in part, arises."*

15. Section 20 clearly provides that a court within whose local limits the cause of action, *"wholly or in part",* arises, would have territorial jurisdiction to try the suit. Admittedly, the registered office of the petitioner/defendant is at N.S. Bose Road, Post Suri, Birbhum, West Bengal-731101. The learned counsel for the petitioner/defendant submitted that the invoice itself recorded a Kolkata address. The

warehouse was also stated to be located at Kamahati, Panihati, West Bengal and therefore, the goods were neither dispatched from Delhi nor the invoices were raised at Delhi. On the other hand, learned counsel for the respondent/plaintiff pointed to the *"subject to jurisdiction of court of Delhi only"* clause in the invoices. There does not appear to have been any demurrer by the petitioner/defendant against this clause.

16. Thus, on two counts, under Section 20 of CPC, there is some strength in the contention of the respondent/plaintiff that on the basis of the 'place of work' of the petitioner/defendant, as well as the part cause of action of supply of goods, both reflect jurisdiction of the West Bengal courts. However, the respondent/plaintiff has also claimed that payments were to be received in Delhi and therefore, part cause of action has arisen in Delhi and as such, the clause in the invoices referred to hereinabove did not confer jurisdiction at a place which had no jurisdiction.

17. In its reply to the present petition, the respondent/plaintiff has submitted that in relation to a claim for the price of the goods sold and delivered, the suit is to be filed where the payments were to be made. Further, a debtor had to seek the creditor. It was claimed that the Cheque No.170120 dated 17th May, 2012 for a sum of Rs.28,48,947/- had been delivered by the petitioner/defendant to the respondent/plaintiff at the Delhi office and the petitioner/defendant knew well that the cheque would be deposited by the respondent/plaintiff at the Delhi Branch. The criminal complaint under Section 138 of N.I. Act was filed in Delhi. The bank statements of the respondent/plaintiff also clearly depict that the petitioner/defendant had made direct payments to the respondent/plaintiff into its account with ICICI Bank at J-12/18, Rajouri Garden, New Delhi-

110027. Thus, when on facts and in law, the suit could be filed at Delhi, the learned Trial Court had not committed any error in answering the preliminary issue in favour of the respondent/plaintiff.

18. What is to be noticed here is that these averments of previous payments being made directly into the bank account of the respondent/plaintiff at Delhi, have not been denied by the petitioner/defendant. In its rejoinder, it has dismissed this averment by saying that "accidental" or "even regular deposits of cheques" for "encashment at a branch of respondent's choice cannot clothe the court with territorial jurisdiction". But, this would fortify the claim of the respondent/plaintiff that the invoices did not vest jurisdiction in a court that had no jurisdiction at all.

19. The learned Trial Court has followed the decision of this court in ***Satyapal (supra)*** that where the place of payment has not been fixed, as appears to be the case here, payment was to be made at the place of the creditor i.e., at Delhi in the present case. The learned Trial Court has not misdirected itself in following the said judgment. The contention of the learned counsel for the petitioner/defendant that ***Satyapal (supra)*** was decided in the manner it did, only because the contract was entered into at Delhi and the orders were placed at Delhi, is not wholly correct, inasmuch as this court had quoted with approval, the judgment of the learned Trial Court, which clearly held that in cases where the place of payment was not specified in the contracts/bills/invoices, parties had to follow the general rule that the payment had to be made at the place of the creditor.

20. As held by the Supreme Court in ***Surya Dev Rai (supra),*** the supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate courts within the bounds of their jurisdiction. It is only when the courts below have assumed jurisdiction which they do not have or have failed to exercise the jurisdiction vested in them, that powers under Article 227 of the Constitution of India ought to be exercised. No error is manifest and apparent on the face of the impugned order nor does it cause a grave injustice nor gross failure of justice has been occasioned thereby. There is no occasion, therefore, to interfere with the impugned decision of the learned Trial Court.

21. Before concluding, reference is made to the decisions relied upon by the learned counsel for the petitioner/defendant. The decision of the Karnataka High Court in ***Base Corporation Ltd. v. Amrutha Power Corporation,*** [judgment dated 25th September, 2018 in MFA 6564/2011] is not applicable as it relates to the vesting of jurisdiction in a court which otherwise did not have such jurisdiction. That is not the case here. In ***Shridhar Vyapaar (supra)***, the payments were made through RTGS into the bank at Kolkata whereas, in the present case, such payments were made into the account maintained by the respondent/plaintiff at ICICI Bank at Rajouri Garden, New Delhi. The decision in ***Mountain Mist Agro India (supra)*** was in relation to the N.I. Act and is not relevant for the determination of territorial jurisdiction in civil matters. Similarly, the decision of the Punjab High Court in ***Piyara Singh v. Bhagwan Das,*** 1950 SCC OnLine Punj 108 is limited to the inapplicability of the principle 'debtor seeking the creditor' under the N.I. Act.

22. When, in the present case, the part cause of action has arisen also on account of the payments made by the petitioner/defendant directly into the bank account of the respondent/plaintiff, even if these were not on regular basis, since there is nothing to show that the place of payment had been fixed, even without following the principle that the 'debtor must seek out the creditor', it is clear that the Delhi Courts have jurisdiction to try the suit and the invoice does not vest jurisdiction in a court which had no jurisdiction at all.

23. Thus, in the light of the foregoing discussion, this Court finds no merit in the present petition, which is accordingly dismissed along with the pending application. The interim order dated 19th January, 2021 also stands vacated.

24. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

SEPTEMBER 16, 2021
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