

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Civil Revision Application No.157 of 2021

Applicants : Kotri Roller Flour Mills,
through Mr. Sunder Das, Advocate

Respondent : Haji Mehfooz

Dates of hearing: : 03.02.2025

Date of Decision: : 22.04.2025

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- The instant Civil Revision Application has been filed against the Judgment dated 05.05.2021 passed by the learned Additional District Judge-II Jamshoro whereby Civil Miscellaneous Appeal No.04 of 2021 was dismissed and upholding the Order dated 10.02.2021 passed by the learned Senior Civil Judge-II at Kotri, whereby plaint in F.C.Suit No.44 of 2020 '*Kotri Roller Flour Mills Limited v. Haji Mehfooz*', was returned to the Plaintiff, under Order VII rule 10 Civil Procedure Code 1908 (**CPC**).

2. Brief facts as stated in the plaint are that, the parties had an old arrangement under market practices regarding sale of wheat flour by the applicant to the Respondent. Against the default in payments therefor, F.C.Suit No. 44 of 2020 was filed by the Applicant against the Respondent for recovery of Rs.63,02,641/- before the learned Senior Civil Judge-II at Kotri. The Respondent filed written statement and also filed an application under Order VII rule 10 CPC., claiming therein that the Defendant works for gain at Tando Allahyar, which fact is also admitted in the plaint, and therefore the learned Senior Civil Judge-II at Kotri did not have the territorial jurisdiction to entertain and try the suit. After hearing the parties, the learned Judge allowed the application vide Order dated 10.02.2021 and returned the plaint to the plaintiff for presentation before the Court having territorial jurisdiction. The said Order was assailed by the Applicant in Civil Miscellaneous Appeal No.4 of 2021 before the learned Additional District Judge-II Jamshoro, which upheld the Order, hence the present Revision Application.

3. Learned counsel for the applicant has argued that the applicant is a registered partnership firm which has been selling wheat flour and bran to the

Respondent; that although the Respondent works for gain at a shop at Chamber Road, District Tando Allahyar, however the mill of the Applicant is situated at Kotri, which is also the head office of the plaintiff, from where the goods are delivered to the respondent and where the invoices/ bills against such supply of goods were prepared by the plaintiff, hence part of cause of action has accrued at Kotri as provided under section 20(c) CPC is applicable to the facts of the present case; therefore, learned Senior Civil Judge-II Kotri is very much competent to try the suit; and that the plaint was wrongly returned by the Courts below. He also relied upon 2003 CLC 163 Karachi, PLD 2016 SC 174, 2015 CLC303 and 2011 CLC 449 Peshawar.

4. Conversely, case of the Respondent is that admittedly, the Defendant works for gain at Tando Allahyar, and therefore in terms of sections 16 to 20 CPC, the learned Senior Civil Judge-II at Kotri did not have the territorial jurisdiction to try the subject suit; that the plaint was rightly returned.

5. Heard learned counsel and perused the record. The existence of transactions of sale and purchase of wheat flour and bran between the parties since past many years is not disputed by the parties. On one hand, the fact that the Respondent works for gain at Tando Allahyar is not denied by the applicant side while on the other hand, the location of the Mill of the Applicant company at Kotri is not disputed by the Respondent side. It is also not disputed that, no written agreement or contract exists between the parties since such business transactions between the parties are based upon verbal agreement, as per market practices. The dispute at hand between the parties is, with respect to the claim of the applicant regarding the invoices/ bills raised in the plaint, and the place for lodging of such claims by the applicant. Section 20 CPC. provides as follows:

"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

(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 work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I---Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.---A corporation shall be deemed to carry on business at its sole or principal office in [Pakistan] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

6. A quick review of the case law on the subject of part of cause of action in such cases draws attention to the first case of *'Messrs Apollo Textiles Mills Ltd. through Chief Financial Officer v. Mian Farhat Iqbal'*¹ wherein it was held that issuance of alleged notices to the defendant and preparation of delivery/gate pass from registered office of the plaintiff at place K, could not be considered as the place of accrual of cause of action within the territorial limits of the Court at place K. In *'Haji Fida Ali v. Chowdary Muhammad Younas and another'*², the place where verbal agreement for sending bags of potatoes to the defendant, was not considered as the place where part of course of action accrued and it was concluded that the civil court at such place would have no jurisdiction to adjudicate the controversy upon the subject matter. In *'Lafarge Pakistan Cement Ltd. through Attorney v. Messrs Decent Coal Company through Managing Director'*³ it was held that, for initiating a suit for recovery for payment of goods, the relevant place under section 20 CPC., read with section 4 of the Contract Act 1872, would not be the place where the parties had entered into a contract for sale-purchase through correspondence; nor where the offer was made; or from where the Purchase Order was faxed by the plaintiff to the defendant; nor where the factory of the plaintiff is located; nor from where the legal notice was sent; nor the place where business was being conducted by the plaintiff. The relevant place was held to be, where the offer of sale-purchase was accepted through correspondence. In *'Messrs Habib Sugar Mills Ltd. through Chief Executive and another v. Province Of Sindh through Secretary, Agriculture Department and another'*⁴ the place where the concerned statute was amended, was held as, not relevant for the purposes of section 20 CPC, but the place where the statute affected the rights of the plaintiff so as to give him a cause of action to sue, was held to be the relevant place. *'Zafar Iqbal and 3 others v. Nasreen Ahmed and 8 others'*⁵ was a case for recovery of money for sale of machinery wherein it was held that for the purposes of section 20, the place where the machinery will land (Karachi port) will not be relevant because landing of machinery will not infringe any right of the plaintiff. it was decided that the relevant place would be, where the rights of the plaintiff are actually infringed. In *'Messrs Mairaj Sons Ltd. and another v. Rural Water Corporation, Government of Democratic Republic Sudan,*

*Khartoum and 2 others*⁶, the place where price of goods was ultimately to be received by the plaintiff, was not accepted as the relevant place in the context of section 20 CPC. In '*Muhammad Kashif and another v. Talat Najeel Ranjha*'⁷, for determining territorial jurisdiction under section 20 CPC., the place where the offer for transaction was made, was not accepted as the place where part of the cause of action accrued.

7. Applying the above *dictum* to the facts of the present case, it appears that the plaint clearly mentions the address of the defendant as at Tando Allahyar and it is also admitted that the defendant is doing business there, whereas no document or material has been filed with the plaint which could establish that any infringement of rights of the plaintiff has occurred at the place where mill or head office of the plaintiff is situated, to allow him to claim part of cause of action at such place. Applicant's complete reliance is upon the bunch of invoices/ Bills filed with the plaint, which is not infringement of its rights. The above decisions also depict that the place from where delivery of goods was being initiated, would also not bring such place as having part of cause of action. I am therefore clear in my mind that for the purposes of section 20(c) CPC. for filing of a suit for recovery for payment of goods in the facts of this case, the learned Senior Civil Judge at Kotri did not have the territorial jurisdiction to try the subject suit since no cause of action or any part thereof has accrued within its jurisdiction. The case law relied on behalf of the Applicant is either irrelevant or inapplicable and distinguishable to the facts of the present case, in view of the principles and Judgments discussed above. As for instance, 2003 CLC 163 was with respect to some immovable property; PLD 2016 SC 174 was with respect to issue of immovable property located outside Pakistan; the subject in 2015 CLC 303 was in respect of damages and compensation by the employees against their employer/ bank; whereas 2011 CLC 449 Peshawar was a case under section 19 CPC., for wrong caused to person or property.

8. In addition to the above aspects, it is further pointed out that this instant Civil Revision Application has been filed under section 115 CPC. against concurrent findings by two Courts below, for which the basic rule is that such

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1. 2010 C LC 389
 2. 2019 M L D 1160
 3. PLD 2017 Balochistan 11
 4. PLD 20204 Sindh 446
 5. 2014 CLD 1039
 6. 2002 YLR 2988
 7. 2008 YLR 56

jurisdiction is limited to the extent of jurisdictional error, or an illegality in the Judgment of the nature which may have material effect on the result of the case, or if the conclusion drawn therein is perverse or is in conflict with law. Such exceptional and necessary power has been intended to secure effective exercise of its superintendence and visitorial powers of correction, unhindered by technicalities. Such is the ratio laid down by the Supreme Court in the case of *'Ikhlaq Ahmed'*⁸. The Court could only interfere under section 115 CPC., when concurrent findings so recorded, are based on erroneous assumptions of fact or patent errors of law or reveal arbitrary exercise of power or abuse of jurisdiction or where the view taken is demonstrably unreasonable as held in the cases of *"Asmatullah v. Amanat Ullah through Legal Representatives"*⁹, *"Abdul Sattar v. Mst. Anar Bibi and others"*¹⁰ and *"Mst. Naziran Begum through Legal Heirs v. Mst. Khurshid Begum through Legal Heirs"*¹¹. As already discussed in detail in the preceding paragraph, no illegality in both the impugned Orders could be pointed out by the Applicant side, hence no case for exercise of revisional jurisdiction under section 115 CPC. is made out, and consequently, the Orders of both the Courts below impugned herein, are upheld, and the instant Revision application is dismissed along with all pending applications, with no order as to costs.

9. Before parting with this case, a note of appreciation for the young learned counsel for the Applicant, for his commendable professional and disciplined conduct throughout, while presenting all his cases before this Bench.

J U D G E

8. 2014 SCMR 161
9. PLD 2008 SC 155
10. PLD 2007 SC 609
11. 1999 SCMR 117