

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

Civil Revision Application No.159 of 2021

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

Respondent : Bheru Mal,  
through Mr. Babar Bohio, Advocate

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 Judgment dated 05.05.2021 passed by the learned Additional District Judge-II Jamshoro has been assailed herein, whereby Civil Miscellaneous Appeal No.03 of 2021 was dismissed and the Order dated 10.02.2021 passed by the learned Senior Civil Judge-II at Kotri was upheld, in consequence whereof, plaint in F.C.Suit No.45 of 2020 '*Kotri Roller Flour Mills Limited v. Bheru Mal*', was returned to the Plaintiff, under Order VII rule 10 Civil Procedure Code 1908 (**CPC**).

2. The parties had an old arrangement under market practices for sale of wheat flour by the applicant to the Respondent and against Respondent's alleged default in payments therefor, F.C.Suit No. 45 of 2020 was initiated for recovery of Rs.72,14,643/- before the learned Senior Civil Judge-II at Kotri by the applicant. Written Statement and an application under Order VII rule 10 CPC. were filed by the respondent, claiming therein that the Defendant works for gain at Shop, opposite Soneri Bank, Badin Road, Matli, 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.

3. 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. Such Order was challenged in Civil Miscellaneous Appeal No.03 of 2021 before the learned Additional District Judge-II Jamshoro, which concurred with the Senior Civil Judge, hence the present Revision Application.

4. It is the case of the applicant that it's a registered partnership, firm selling wheat flour and bran to the Respondent whereas 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. It was further pleaded that location of Respondent shop opposite Soneri Bank, Badin Road, Matli is not relevant and the learned Senior Civil Judge-II Kotri is very much competent to try the suit, whereas the plaint was wrongly returned by the Courts below. Reliance was placed upon 2003 CLC 163 Karachi, PLD 2016 SC 174, 2015 CLC303 and 2011 CLC 449 Peshawar. The short and sweet plea of the Respondent is that admittedly he works for gain at Badin Road, Matli, and therefore the learned Senior Civil Judge-II at Kotri did not have the territorial jurisdiction to try the subject suit in terms of sections 16 to 20 CPC, hence the plaint was rightly returned.

5. Neither of the parties has disputed that, (a) the sale-purchase transactions regarding wheat flour and bran between the parties since past many years; (b) the Respondent works for gain, opposite Soneri Bank at Badin Road, Matli; (c) the location of the head office and Mill of the Applicant company at Kotri. The present dispute 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, hence section 20 CPC would have to be seen, which provides that:

***"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. *'M/s. Apollo Textiles Mills Ltd. through Chief Financial Officer v. Mian Farhat Iqbal'* (2010 CLC 389) was the case 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'* (2019 MLD 1160), 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'* (PLD 2017 Balochistan 11) 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'* (PLD 20204 Sindh 446) 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'* (2014 CLD 1039) 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 *'Messers Mairaj Sons Ltd. and another v. Rural Water Corporation, Government of Democratic Republic Sudan, Khartoum and 2 others'* (2002 YLR 2988), 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*

*Najeeb Ranjha* (2008 YLR 56), 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. When the above discussed principles are applied to the facts of the present case, it shows that the plaintiff clearly admits that the defendant works for gain at opposite Soneri Bank, Badin Road, Matli, while no document or material has been filed with the plaint which could establish that any infringement of rights of the plaintiff has occurred at Kotri, the place where mill or head office of the plaintiff is situated, so as to allow it to claim part of cause of action at such place. Applicant's sole reliance is upon the bunch of invoices filed with the plaint, which does not constitute infringement of any of its rights. As already held in the above Judgments, the place from where delivery of goods is initiated is also not relevant for the purposes of section 20 CPC. Therefore, I have no hesitation in holding 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-1 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 as relied by the Applicant is distinguishable to the facts of the present case, in view of the principles and Judgments discussed above. 2003 CLC 163 is a case was with respect to some immovable property; PLD 2016 SC 174 is 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. I am also conscious that this instant Civil Revision Application has been filed under section 115 CPC. against concurrent findings by two Courts below, and the applicant is required to clear the test of exercise of jurisdiction under such provision, the scope whereof is limited to the extent of jurisdictional error, or a material illegality in the Judgment, or perversity of conclusions drawn there in conflict with some law, as held by the Supreme Court in the case of *'IkhlAQ Ahmed'* (2014 SCMR 161). 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. In this regard the following cases are relied upon viz, "*Asmatullah v. Amanat Ullah through Legal Representatives*" (PLD 2008 SC 155), "*Abdul Sattar v. Mst. Anar Bibi and others*" (PLD 2007 SC 609) and "*Mst. Naziran Begum through*

*Legal Heirs v. Mst. Khurshid Begum through Legal Heirs*" (1999 SCMR 117). 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.

J U D G E