



2025:DHC:10095-DB



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

% *Reserved on : 29th October 2025*
Pronounced on : 17th November 2025
+ **FAO (COMM) 214/2025**

MTS PAPERS INDIA LIMITEDAppellant

Through: Mr. Bharat Bhushan, Adv.

versus

SPENTO PAPERS INDIA LLPRespondent

Through: Ms. Niyati Kohli & Mr. Rishabh
Parikh, Advs.

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. The instant appeal has been filed by the appellant/plaintiff under Section 13(1A) of the Commercial Courts Act, 2015 read with Order XLIII and Section 151 of the Civil Procedure, 1908 ('**CPC**') against the order dated 22nd March 2025 passed by the learned District Judge, Commercial Court-02, North District, Rohini Court in CS(COMM) No. 519/2022, whereby the learned District Judge had allowed the application of the respondent/defendant under Order VII Rule 10 of CPC on the ground that the plaint does not disclose as to how the courts of Delhi have territorial jurisdiction to entertain and decide suit



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instituted by the appellant for recovery of Rs. 44,88,961/- (hereinafter referred as '*impugned order*').

Factual Matrix

2. Appellant/plaintiff is engaged in the business of trading of various paperboards. Appellant/plaintiff had a customer based in Vietnam with whom he had brokered a deal with the defendant to supply duplex board grey back (*subject goods*) with the understanding that all the goods supplied to that customer the defendant shall pay a pre-agreed commission to the plaintiff.

3. The role of the appellant was to communicate with respondent in respect of such supply of goods to the client including raising purchase orders, negotiating and finalizing price of goods, seeking proforma invoices, communicating the payment terms and issuance of letter of credit *qua* such supply to the respondent. Therefore, the respondent was never put in direct contact with the client and communication was carried out through the appellant.

4. The appellant addressed emails dated 30th March 2021, and 13th July 2021 to the respondent requesting respondent to clear the payment towards the pre-agreed commission; however, the same remain unpaid.

5. Appellant on 18th September 2021, issued a legal notice to the respondent, in response to which *vide* reply dated 13th October 2021, the respondent denied liability to pay outstanding dues towards the pre-agreed commission. Appellant addressed a final communique dated 18th November



2021 to respondent whereby final opportunity was given to respondent to clear the dues of appellant. However, the same were not cleared by respondent.

6. Thereafter, appellant initiated legal action against the respondent by filing for pre-institution mediation under Section 12A of the *Commercial Courts Act, 2015* on 07th February 2022. However, the respondent failed to appear for the pre-institution mediation.

7. Upon non-fruition of pre-institution mediation, appellant filed commercial suit bearing no. CS(COMM) No. 519/2022 under the Commercial Courts Act for recovery of Rs. 44,88,961/- along with interest @ 12% per annum.

8. On 22nd July 2023, Trial Court noted that the written statement along with application for return of plaint under order VII Rule 10 of CPC are on record.

9. On 06th April 2024, the Trial Court *prima facie* noted that the plaint does not appear to contain detailed analysis regarding jurisdiction of Delhi Courts.

10. Subsequently, an application for amendment of plaint under Order VI Rule 17 of CPC was moved by appellant on 19th June 2024. Upon hearing arguments of both the parties, District Judge rejected the application for amendment of plaint relying *inter alia* upon the judgment of ***HSIL Limited v. Imperial Ceramic***, 2018 SCC OnLine Del 7185.



11. The Trial Court decided the application of respondent under Order VII Rule 10 of CPC and returned the plaint of the appellant/plaintiff *vide* impugned order dated 22nd March 2025.

12. In the impugned order, it was noted that appellant/plaintiff had moved the application under Order VI Rule 17 of CPC for amendment of plaint to demonstrate that the Court had territorial jurisdiction, during the pendency of the application under Order VII Rule 10.

13. The Court, while deciding the application for amendment of the plaint under Order VI Rule 17 of the CPC, relied on the decisions in ***HSIL Limited v. Imperial Ceramic and Others*** (*supra*), ***Archie Comic Publications Inc. v. Purple Creation Pvt. Ltd. and Others***, 172 (2010) DLT 234 (DB). The Court observed that when a plaint lacks pleadings establishing the necessary jurisdictional facts, the Court does not have jurisdiction to proceed with the suit or even to entertain an application for amendment.

14. In the present case, upon examining *paragraph 23* of the plaint, the Trial Court noted that under *Section 20* of the CPC, a suit may be instituted either at the place where the defendant carries on business or where any part of the cause of action arises. However, plaintiff in *paragraph 23* solely claimed jurisdiction on the ground that the plaintiff carries on business for profit in Delhi and was silent on whether any part of the cause of action arose within the territorial jurisdiction of the Trial Court. Consequently, the plaint was devoid of facts



establishing territorial jurisdiction, and therefore, the Court was not competent to hear the application under Order VI Rule 17 of CPC.

15. Trial Court also noted in the impugned order that “*it has not been disclosed in the plaint how this court has territorial jurisdiction to entertain and decide the case.*” In light of the above the Trial Court allowed the application of the respondent/defendant and retuned the plaint to plaintiff as per procedure.

Submissions of counsel for appellant

16. It was submitted that the Trial Court has failed to take into account replication and reply filed by appellant to respondent’s application under Order VII Rule 10 CPC. It was contended that both these documents, form part of the record, contained categorical averments demonstrating that part of the cause of action had arisen within the territorial jurisdiction of the Delhi Court in terms of Section 20(c) CPC.

17. Counsel contended that once the replication is taken on record, it forms an integral part of the pleadings under Order VI Rule 1 CPC, and therefore must be considered by the Court while adjudicating respondent’s application. Reliance was placed on ***Kuldeep Singh Pathania v. Bikram Singh Jaryal*** (2017) 5 SCC 345, wherein the Hon’ble Supreme Court held that replication may be looked into under Order XIV Rule 2(2) to see whether the court has jurisdiction and whether there is a bar for entertaining the suit.



18. It was further argued that although Order VII Rule 10 empowers a Court to return a plaint at any stage, such discretion must be exercised in light of the stage of the proceedings and the record available at that time. Since in the present case, replication had been filed and taken on record prior to adjudication of respondent's application, the Trial Court ought to have considered the same instead of restricting its gaze only to the plaint.

19. Appellant submitted that while Order VII Rule 11 confines the Court to the plaint alone, an application under Rule 10 stands on a different footing, being maintainable at any stage. Therefore, when additional material such as replication forms part of the record, it cannot be ignored while deciding the question of territorial jurisdiction.

20. Appellant contended that pleadings clearly disclosed that enquiries for purchase of goods were initiated from New Delhi, the offer of the respondent/defendant was accepted in New Delhi, purchase orders and commission invoices were issued from New Delhi, and payments were to be made at New Delhi. Thus, a substantial part of the cause of action arose within Delhi, bringing the suit within the ambit of Section 20(c) CPC.

21. It was argued that even though the plaint did not contain a dedicated paragraph specifically asserting jurisdiction, when read holistically, it adequately and implicitly demonstrated that the Trial Court had territorial jurisdiction. Furthermore, this position was expressly clarified and



supplemented by the appellant in its replication and reply, which the Trial Court failed to consider.

22. It was further contended that in absence of a specific mention of jurisdiction, the common law principle that '*the debtor must find the creditor*' applies, thereby conferring jurisdiction upon the court within whose territorial limits the creditor resides.

23. Respondent, in its application under Order VII Rule 10 CPC, did not allege that the plaint lacked jurisdictional facts, but only questioned the vesting of territorial jurisdiction, an issue that is a mixed question of fact and law and ought to have been tried as such. The Trial Court, however, *suo motu* decided the issue of jurisdiction while considering the Respondent's application, which was beyond the scope of the pleadings and unwarranted.

Submissions of counsel for respondent

24. It was submitted by counsel for respondent that as per the plaint the territorial jurisdiction of Court in Delhi is being claimed by the appellant/plaintiff on ground that plaintiff works for profit in Delhi. As per *Section 20* of CPC, the place of business or residence of only the respondent/defendant is to be seen for the purpose of territorial jurisdiction. Admittedly, the respondent/defendant resides and carries out its business in Gujarat.

25. As regards part of cause of action, the plaint is silent on any cause of action arising within the jurisdiction of this Court. The plaint is, therefore,



bereft of any pleading constituting jurisdictional facts for the Courts at Delhi to entertain the present suit.

26. As per the respondent, documents annexed with the plaint i.e. proforma invoice also show that invoices were issued by defendant in Gujrat for the goods supplied to customer in Vietnam. The products were shipped to Vietnamese customer from Gujrat. Payment was received from Vietnamese customer to the bank of the defendant/respondent in Gujrat. So, the whole cause of action had arisen in Gujrat therefore, the suit should have been instituted in Gujrat.

27. Moreover, the appellant/plaintiff has not mentioned a single word in the plaint how the Delhi Courts has jurisdiction. The only averment with respect to territorial jurisdiction is made out in *paragraph 23* of the plaint, is that appellant/plaintiff works for profit in Delhi and therefore, the Courts of Delhi have jurisdiction.

28. As regards the question whether for adjudication of an application under Order VII Rule 10 only the plaint can be seen, the respondent argued that application under Order VII Rule 10 CPC has to be decided on demurrer looking into the plaint originally filed by the Plaintiff and the documents therewith.

29. To buttress his submissions, the respondent relied on the judgment of ***HSIL Limited v. Imperial Ceramic and Others*** (*supra*) wherein it was held that if the plaint, as it exists, does not disclose how this Court has territorial



jurisdiction, the only option for this Court is to return/reject the plaint and this Court would not have jurisdiction to even consider the application of the plaintiff for amendment of the plaint.

30. Further, reliance was placed by respondent on the judgment of *Archie Comic Publications Inc. v. Purple Creation Pvt. Ltd. and Others* (*supra*) wherein it was held that a completely unconscionable plaint which does not reveal any fact which confers jurisdiction on a Civil Court to act may not vest the jurisdiction with the Civil Court to even allow the amendment of the same.

Analysis

31. Let us first examine the case put up by plaintiff (appellant herein) in its plaint relating to issue of territorial jurisdiction. This is imperative since it is settled law that objection to territorial jurisdiction in an application under Order VII Rule 10 of CPC is by way of demurrer and objections are to be considered taking all averments in the plaint to be correct. Reliance in this regard may be placed on *Exphar SA and Another v. Eupharma Laboratories Ltd. and Another*, (2004) 3 SCC 688, wherein the Supreme Court held:

“9. Besides, when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that granted those facts the court does not have jurisdiction as a matter of law. In rejecting a plaint on the ground of jurisdiction, the Division Bench should have taken the allegations contained in the plaint to be correct.



However, the Division Bench examined the written statement filed by the respondents in which it was claimed that the goods were not at all sold within the territorial jurisdiction of the Delhi High Court and also that Respondent 2 did not carry on business within the jurisdiction of the Delhi High Court. Having recorded the appellants' objections to these factual statements by the respondents, surprisingly the Division Bench said:

“Admittedly, the goods are being traded outside India and not being traded in India and as such there is no question of infringement of trade mark within the territorial limits of any court in India what to say of Delhi.”

10. Apart from the ex facie contradiction of this statement in the judgment itself, the Division Bench erred in going beyond the statements contained in the plaint.”

(emphasis supplied)

32. The Division Bench of this Court, in ***M/s RSPL Limited v. Mukesh Sharma & Anr.***, 2016:DHC:5482-DB, reiterated the same principle. Relevant portions are reproduced below:

“23. Upon a consideration of the law as explained by the Supreme Court, it is evident that Order 6 Rule 2 requires every pleading, which includes a plaint, to contain, “and contain only”, a statement in concise form of the material facts on which the party pleading relies for his claim, but not the evidence by which they are to be proved.

24. Coming back to the facts of the present case, the plaintiff/ appellant in paragraph 36 set out the nature of the cause of action, namely, the defendants/respondents were engaged in providing services under the impugned



trade name 'GHARI TRADEMARK COMPANY'. In paragraph 37 of the plaint, it has been averred, first of all, that this Court has the territorial jurisdiction to try and adjudicate the present suit. But, this by itself, would not be sufficient because merely quoting the words of a section or the ingredients of a provision like the chanting of a mantra would not amount to stating material facts as noted by the Supreme Court in Hari Shanker Jain (supra). The material facts would, inter alia, have to include positive statement of facts. In the present case, paragraph 37 of the plaint contains the positive statement of fact that the defendants are committing the impugned acts within the jurisdiction of this Court by conducting, soliciting, rendering the impugned services under the impugned trade name'. Further statements are made in the very same paragraph that the plaintiff has its corporate office in Delhi and carries out its business activity in Delhi under its trade mark/label through its dealers/ distributors located in Delhi. A specific averment has also been made that the plaintiff's goodwill and reputation is being tarnished by the alleged activities of the defendants, particularly in North-East Delhi as also in other parts of the country and that the plaintiff/appellant's proprietary rights are being prejudicially affected in the Delhi area due to the said activities. While considering an application under Order 7 Rule 10 CPC, these statements would have to be taken as correct. This would mean that this Court would have jurisdiction to try and adjudicate the present suit by virtue of Section 134(2) of the Trade Marks Act, 1999 read with Section 20 CPC. The material fact that has been pleaded by the plaintiff is that the defendants/ respondents are conducting, soliciting, rendering the impugned services under the trade name – GHARI



TRADEMARK COMPANY – within the jurisdiction of this Court. In case the defendants/ respondents deny this averment (as they have done in their written statement but, which cannot be looked into at the stage of Order 7 Rule 10 CPC), the issue would arise as to whether the respondents/defendants are conducting, soliciting, rendering the impugned services under the trade name– GHARI TRADEMARK COMPANY–within the jurisdiction of this Court? Obviously, the onus of proof would lie on the appellant/ plaintiff and at the stage of trial, evidence would have to be placed to substantiate this plea. But, at this stage, in our view, it is not necessary as Lord Denman, C.J. in Williams v. Wilcox (supra), to set out the subordinate facts which are the means of proving the material fact or the evidence to sustain the allegation contained in the material fact. We, therefore, do not agree with the view taken by the learned Single Judge that the plaint is bereft of any particulars with regard to territorial jurisdiction. We may observe that the learned Single Judge has also looked at the written statement and even at the replication in the course of arriving at his decision. This, in the context of an Order 7 Rule 10 CPC application, cannot be done as already pointed out by us above. Taking the objection of territorial jurisdiction raised in the Order 7 Rule 10 CPC application, by way of a demurrer, as it must, the facts pleaded by the appellant/plaintiff must be taken to be true. Therefore, if we take the statement of the appellant/plaintiff in paragraph 37 to the effect that the defendants/respondents are committing the impugned acts within the jurisdiction of this Court by conducting, soliciting, rendering the impugned services under the impugned trade name to be correct, then, it follows that this Court would have to proceed with the trial of the



suit and cannot return the plaint under Order 7 Rule 10 CPC.

25. Once we hold that on the basis of the averments contained in the plaint, a part of cause of action has arisen in the territory over which this Court exercises jurisdiction, the condition prescribed in Section 20(c) CPC stands satisfied. In addition, the condition stipulated in Section 134(2) of the Trade Marks Act, 1999 is also satisfied because the plaintiff has averred that it has a corporate office in Delhi and part of the cause of action has allegedly also arisen in Delhi. Therefore, either way, this Court, in our view, would have jurisdiction to entertain the present suit. observations and the findings of the learned Single Judge to the contrary, are wrong and are set aside.”

(emphasis supplied)

33. Plaintiff has a registered office in Delhi while the defendant (respondent herein) has its registered office in Rajkot, Gujarat. The following elements are evident from a reading of the plaint:

- i. Plaintiff approached the defendant for supply of goods to plaintiff's customer in Vietnam.
- ii. Agreement was arrived at through email and the defendant shared a proforma invoice on 4th March 2021.
- iii. Plaintiff issued Order Form dated 05th March 2021, claiming agreed commission from defendant.
- iv. Defendant shipped the first lot on 13th March 2021 to be delivered in Vietnam, basis letter of credit.



- v. Plaintiff's customers had quality issues and registered a complaint with the plaintiff. This, the plaintiff communicated to the defendant *via* email on 19th April 2021.
- vi. Resolution was attempted through a conference call and through various communications exchanged between the parties through email.
- vii. Second lot was cleared on 05th May 2021. However, there was still a problem relating to the quality of goods. Yet another communication was exchanged between the parties for compensation along with demurrage and detention charges.
- viii. Legal notice was issued by plaintiff on 18th September 2021 which was responded to by defendant on 13th October 2021.
- ix. In *paragraph 23* of the plaint, the following was stated: “*That this Hon’ble Court has got territorial jurisdiction to entertain and try the present suit as the Plaintiff works for profit in Delhi.*”

34. Apart from the above, there is no other averment or justification in the plaint explaining how the Courts at Delhi would have jurisdiction to entertain the suit. The learned Trial Court, in accordance with the settled law outlined above, confined itself to the averments in the plaint while deciding the application under Order VII Rule 10 of CPC. As is evident from the impugned order, the Trial Court did not examine the written submissions or the replication for this purpose. The Court allowed the application under Order VII Rule 10 CPC and returned the plaint solely on the basis of the pleadings contained therein. It observed that the plaintiff had invoked the jurisdiction of the Delhi



Courts on ground of *paragraph 23* of the plaint, which merely stated that the plaintiff “worked for profit” in Delhi. The plaint, however, did not disclose the material facts necessary to establish the territorial jurisdiction of the Delhi Courts. In the absence of such jurisdictional facts, the Trial Court correctly concluded that the plaint did not disclose how the Court of Delhi could entertain the suit.

35. Upon a plain reading and assessment of the plaint, it is evident that no part of the cause of action is shown to have arisen within Delhi, and jurisdiction cannot be conferred merely on the basis of the plaintiff’s place of business in Delhi.

36. Such a plea is contrary to the statutory scheme embodied in Sections 15 to 20 of the Code of Civil Procedure, 1908. No part of the cause of action is shown to have arisen in Delhi. The supply of goods admittedly took place from Gujarat, and the goods were received in Vietnam. The mere fact that plaintiff coordinated the transaction from its office in Delhi would not, by itself, confer territorial jurisdiction upon the Delhi Courts. In such circumstances, Section 20(a) of CPC would clearly mandate that the suit ought to have been instituted in Gujarat, where the defendant carries on business.

37. The plaintiff, however, sought to overcome this objection in their replication in *parawise reply (vi)* by asserting that the inquiry for the purchase of goods had been initiated from New Delhi, that the offer was accepted at New Delhi, and that both the purchase order and invoice for commission were issued from New Delhi. It was further contended that the payment was to be made to



the plaintiff at New Delhi and, therefore, a substantial part of the cause of action had arisen within the territorial jurisdiction of Delhi Courts.

38. Yet another attempt by the plaintiff to amend the plaint was rejected by the Trial Court *vide* order dated 17th December 2024. In doing so, the Trial Court relied upon the decisions in ***HSIL Limited*** (*supra*) and ***Archie Comic Publications Inc.*** (*supra*), holding that an amendment to the plaint cannot be permitted where the averments in the plaint, as originally filed, do not disclose any facts conferring territorial jurisdiction upon the Court. The Trial Court observed that jurisdiction must be determined on the basis of the averments contained in the plaint as presented, and once it is found that the Court lacks territorial jurisdiction based on the plaint, such a defect cannot be cured by way of an amendment.

39. In ***HSIL Limited*** (*supra*), the suit had been instituted seeking a decree of permanent injunction restraining the defendants from using the plaintiff's trademark. The defendants filed applications under Order VII Rule 10 of the CPC, seeking return of the plaint on the ground that it did not disclose any facts conferring territorial jurisdiction upon the Court.

40. Thereafter, plaintiff filed an application seeking amendment of the plaint to introduce additional paragraphs intended to establish the existence of a cause of action within the territorial jurisdiction of the Court. This amendment was opposed by the defendants therein. Reliance by the defendants was placed on ***Marvel Ceramics*** 2017 SCC OnLine Delhi 11571 (DB and on ***Archie Comic Publications Inc*** (*supra*) and ***Just Lifestyle Pvt. Ltd. v. Advance Magazine***



Publishers Inc. (2013) 198 DLT 306 (DB). The defendant also relied upon *Pandit Rudranath Mishir v. Pandit Sheo Shankar Missir*, AIR 1983 Patna 53 DB and *Mst. Zohra Khatoon v. Janab Mohammad Jane Alam*, AIR 1978 Calcutta 133 (DB).

41. Assessing these decisions, the Court in *HSIL Limited* (*supra*) observed as under:

“14. The Division Bench of the Calcutta High Court in Mst. Zohra Khatoon supra held that granting an amendment postulates an authority of the Court to entertain the suit and making an order for amendment therein; but where the Court inherently lacks jurisdiction to entertain the suit, it cannot make any order for amendment to bring the suit within its jurisdiction; in that case, the court will be exercising jurisdiction which it has not. Reliance was placed on earlier judgment of Madras, Nagpur, Assam and Allahabad High Courts. The Division Bench of the High Court of Patna in Pandit Rudranath Mishir supra also held to the same effect and further held that in such a case, the Court is bound to return the plaint to be presented to the proper Court in which the suit ought to have been instituted and after the plaint is returned for presentation to the proper Court, the plaintiff can amend the plaint and represent it to the same Court. Reliance was also placed on earlier judgments of the Calcutta High Court.

15. The Division Bench of this Court in Archie Comic Publications Inc. supra held that if a plaint is completely bereft of any pleading which are the jurisdictional facts, the Court will not have jurisdiction to proceed in that suit or even to allow an application seeking amendment;



thus, a completely unconscionable plaint which does not reveal any fact which confers a jurisdiction on a Court may not vest the jurisdiction with the Court to even allow an amendment of the same. It was however further held that if it is a case of unclear or ambiguous pleading, the same may be allowed to be amended to clarify the earlier pleaded facts till the same does not give rise to addition of a new cause of action or pleading new facts. In Just Lifestyle Pvt. Ltd. supra also, amendment of the plaint inter alia to vest the Courts at Delhi with territorial jurisdiction was refused inter alia holding that the issue of jurisdiction of the Court, as per Mohannakumaran Nair v. Vijayakumaran Nair (2007) 14 SCC 426, is required to be determined with reference to the date on which the suit is filed and entertained and not with reference to a future date and that the amendment sought would not clothe the Court with territorial jurisdiction to try the suit; the counsel for the plaintiff is however right in his contention that other reasons for denying the amendment were also stated.”

(emphasis supplied)

42. The Court went on to draw a distinction between an application under Order VII Rule 10 CPC, on the grounds of territorial jurisdiction and under Order VII Rule 11 CPC, on the grounds of claims not disclosing a cause action or some other technical defect. In *HSIL Limited* (supra), the Court further considered whether a Court lacking territorial jurisdiction on basis of the averments made in the plaint as originally filed, could entertain an application for amendment of the plaint. On this issue, the Court held as under:

“20. I have however wondered whether an application under Order VII Rule 11 of the CPC on the ground of



the plaint not disclosing a cause of action or suffering from some other technical defect viz. of valuation, court fee paid or the claim therein being barred by any law, can be equated with an application under Order VII Rule 10 of the CPC on the ground of the Court not having territorial jurisdiction. This becomes important because of the consistent view of the High Courts mentioned above including of this Court that when the Court lacks territorial jurisdiction, it cannot even entertain an application for amendment of the plaint and which amendment would vest territorial jurisdiction in the Court. Reference may also be made to Hans Raj Kalra v. Kishan Lal Kalra ILR (1976) II Delhi 745 and Anil Goel v. Sardari Lal (1998) 75 DLT 641 though in the context of pecuniary jurisdiction.

21. Having considered the matter, I am of the opinion that the judgments holding that application for amendment of plaint, even if filed to defeat the pending application under Order VII Rule 11 of the CPC, has to be heard first, will not extend to a case where averments contained in the plaint as existing does not disclose the Court to be having territorial jurisdiction and amendment is sought to incorporate the pleas to disclose the Court to be having territorial jurisdiction. I have reached the said conclusion relying on the dicta of the Supreme Court in Harshad Chiman Lal Modi v. DLF Universal Ltd. (2005) 7 SCC 791 holding that a Court has no jurisdiction over a dispute in which it cannot give an effective judgment and even an agreement between the parties vesting jurisdiction in the Court which it otherwise does not have, is void as being against public policy. It was further held that where a Court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, it cannot take up the cause or the matter and an order



passed by a Court having no jurisdiction is a nullity. It was yet further held that neither waiver nor acquiescence can confer jurisdiction upon a Court, otherwise incompetent to try the suit. It was yet further held that where a Court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing and a decree passed by a Court having no jurisdiction, is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings; a decree passed by a Court, without jurisdiction is a coram non iudice.

22. Thus, if the plaint in these suits as it exists, does not disclose this Court to be having territorial jurisdiction, then the only option for this Court is to return/reject the plaint and this Court would not have jurisdiction to even consider the application of the plaintiff for amendment of the plaint and which amendment, if allowed, would disclose the plaint as having the necessary averments for this Court to have jurisdiction to entertain the suit.”

(emphasis supplied)

43. While the decision in **HSIL Limited** (*supra*) was rendered by a Single Judge of this Court, since reliance had been placed on **Archie Comic Publications Inc.** (*supra*) rendered by Division Bench, it would be apposite to examine that judgment as well.

44. In **Archie Comic Publications Inc.** (*supra*), a challenge was made to the dismissal of Order VI Rule 17 CPC application for amendment of the plaint, while an application under Order VII to 11 CPC moved by the defendant had been allowed for return of plaint. The application had been moved for rejection



of plaint on account of no jurisdiction and subsequent application under order VI Rule 17 CPC for amendment had been moved it.

45. The Court arrived to the following conclusion, as opined in the following paragraphs:

“23... in our view if a plaint is completely bereft of any pleading which are the ‘jurisdictional facts’, the civil Court in that case will not have the jurisdiction to proceed in that suit or even to allow an application seeking amendment under Order 6 Rule 12, CPC. Thus a completely unconscionable plaint which does not reveal any fact which confers a jurisdiction on a civil Court to act may not vest the jurisdiction with the Civil Court to even allow an amendment of the same....

24... In our view, if the plaint discloses some facts, which may however, be incomplete to vest territorial jurisdiction in the Court, the Court would entertain an Application for amendment of the pleadings. This is more so, as such an amendment would not set up a new case. However, if no facts are disclosed qua territorial jurisdiction then the defect cannot be even cured by amendment and in such a case an Application for amendment cannot be entertained.”

46. In the opinion of this Court, there cannot be any doubt with regards to the settled position of law as interpreted by both Single and Division Benches of this Court. The plaint, as presented, was bereft of any facts and circumstances that would confer jurisdiction upon the Courts in Delhi. To hold otherwise would be to disregard the express provisions contained in Sections 15 to 20 of the CPC and would effectively permit a plaintiff to drag a defendant



before any Court merely on the basis of the plaintiff's residence or place of work which is impermissible in law.

47. It is axiomatic that, while considering whether a plaint is maintainable, the Trial Court must necessarily examine whether it has territorial jurisdiction. For this purpose, the Court is required to look only at the averments made in the plaint. Where the plaint is bereft of any material facts or assertions that could justify the assumption of territorial jurisdiction, the Court would be justified in declining to entertain the plaint. Such an approach would, in fact, be in consonance with settled law.

48. Reliance of appellant on ***Kuldeep Singh Pathania*** (*supra*) would not be relevant since it applies to issue under Order XIV for settlement of issues and the scope of a preliminary issue under Order XIV Rule 2 (2) of CPC. In ***Kuldeep Singh Pathania*** (*supra*), Supreme Court held that the Court can look into entire pleadings and materials available on record for the purpose of deciding a preliminary issue on jurisdiction.

49. Reliance placed by appellant on this decision is, therefore, misplaced. The issue under consideration therein was distinct and does not pertain to the question presently before this Court, namely, the competence of the Trial Court to take into account subsequent pleadings for the purpose of determining its territorial jurisdiction, when the plaint itself is bereft of requisite material facts in that regard.



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50. Other judgments relied upon by the appellant namely *Arun Khanna v. Vinod Kumar Khanna.*, 2011: DHC:1684., *Dabur India Ltd. v. Alka Ayurvedic Pvt. Ltd.*, 240(2017) DLT 703, *Moti Ram vs Baldev Krishnan.*, 15(1979) DLT 90 and *Sugandhi (Dead) by L.Rs. and Ors. vs P Rajkumar.*, (2020) 10 SCC 706, also do not relate to the issue at hand and are decisions regarding accommodating of a replication, which is altogether a different context.

51. In this view of the matter, the Court is not inclined to entertain this appeal and, therefore, the same stands dismissed. Pending applications, if any, are rendered infructuous.

52. Judgement be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

NOVEMBER 17, 2025/RK/ZB