

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JULY, 2021

PRESENT

THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

COMAP. No.14 OF 2021

BETWEEN:

M/S M.P. BROTHERS (MANGALURU)

A REGISTERED PARTNERSHIP FIRM
HAVING THEIR OFFICE AT SHREYAS CHAMBERS
KULUR FERRY ROAD, CHILIMBI
MANGALURU-575006

DULY REPRESENTED REGIONAL HEAD
AND AUTHORISED SIGNATORY
SRI. KETHAN SANGHVI

S/O SRI. DHIRAJ LAL SANGHVI
AGED 52 YEARS

R/AT NO.505

VAJRESHWARI APARTMENTS

V.T. ROAD, MANGALURU-575001

... APPELLANT

(BY SRI. S.N. PRASHANTH CHANDRA, ADVOCATE-VC)

AND:

THE PANDAVAPURA SAHAKARA

SAKKARE KARKHANE LTD.,

A COMPANY INCORPORATED UNDER
THE INDIAN COMPANIES ACT AND
HAVING ITS REGISTERED OFFICE AT
PANDAVAPURA, R.S. MANDYA-571435

DULY REPRESENTED BY ITS AUTHORISED
PERSON AND MANAGING DIRECTOR
SRI. KRISHNEGOWDA

FATHER'S NAME NOT KNOWN TO THE

PLAINTIFF, HINDU ADULT
M/S PANDAVAPURASAHAKARA
SAKKAREKARKHANE LTD
PANDAVAPURA. R.S.MANDYA-571435

... RESPONDENT

(RESPONDENT-SERVED)

THIS APPEAL IS FILED UNDER SECTION 13(1) OF THE COMMERCIAL COURT ACT 2015, PRAYING TO ALLOW THE APPEAL AND THEREBY SET ASIDE THE JUDGMENT AND DECREE IN COM.O.S.NO.400/2020 DATED 15.12.2020 ON THE FILE OF IV ADDITIONAL DISTRICT AND SESSIONS JUDGE (COMMERCIAL COURT) DK, MANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR ADMISSION AND HAVING BEEN RESERVED FOR ORDERS ON 07.06.2021, THIS DAY, **SURAJ GOVINDARAJ J.**, DELIVERED THE FOLLOWING:

JUDGMENT

1. The appellant is before this Court seeking for setting aside the Judgment and decree in COM.OS No.400/2020 dated 15.12.2020 passed by the IV Addl. District and Sessions Judge, D.K., Mangaluru (for short 'trial Court').
2. By virtue of the aforesaid Judgment, the trial Court considered the aspect of jurisdiction as a preliminary issue and dismissed the Suit by holding that the trial

Court did not have the jurisdiction to try the same, as also imposed cost of Rs.20,000/- on the Plaintiff.

3. For convenience, the parties are referred to by their rank before the trial Court.

4. **FACTS:** The material facts for the purpose of consideration of this appeal, in brief, are as under:

4.1. Plaintiff is an authorised distributor of certain products, the Defendant is a factory having its office at Pandavapura, Mandya District. Plaintiff and Defendant have had several business transactions in the past whereunder the Plaintiff supplied certain products to the Defendant.

4.2. The Plaintiff contended that from and out of the said transactions, several amounts are due to the Plaintiff and as such, a suit in O.S. No.279/2018 came to be filed in the year 2018 before the Principal Senior Civil Judge and CJM at

Mangaluru for recovery of Rs.11,28,521/- along with interest at 21% p.a.

4.3. The Defendant entered appearance and filed the written statement denying the claim of the Plaintiff, by relying on clause 14 of the Tender Form contended that all disputes are subject to the jurisdiction of the Court at Pandavapura only and hence, the Senior Civil Judge and CJM, Mangaluru would not have jurisdiction to try the same. Apart therefrom, it was contended that the said Court did not have the jurisdiction, and the Commercial Court would have to try the same.

4.4. Subsequent to the filing of the Suit due to the government notification dated 24.01.2020 the matter came to be transferred from the IV Addl. Civil Judge and JMFC, Mangaluru to the IV Addl. District and Sessions Judge, D.K., Mangaluru and renumbered as COMP. OS. No.400/2020.

4.5. On such transfer, the transferee Court on 29.07.2020 framed the following issues:

1. Whether the Plaintiff proves that, the defendants being regular customer had purchased goods on credit basis worth of Rs. 7,19,580/- (Rupees Seven Lakhs Nineteen Thousand Five Hundred Eighty only)?
2. Whether the Plaintiff proves that, the Defendant has withhold security deposit of Rs. 50,000/- (Rupees Fifty Thousand only)?
3. Whether the Plaintiff further proves that, transaction is commercial in nature and thereby, Defendant is liable to pay interest at the rate of 21% p.a.?
4. Whether the Defendant proves that, in view of clause 14 of the terms and conditions of the Tender Form, this Court has no territorial jurisdiction to try the Suit?
5. Whether the Plaintiff is entitle for the relief sought for?
6. What order or decree?

5. The trial Court considering that issue No.4 relates to the jurisdiction of the Court to try the Suit and being of the opinion that findings can be given thereon in the absence of evidence as it touches the legal aspects, treated the same as a preliminary issue and heard both the parties.

6. By way of the impugned Judgment, the trial Court dismissed the Suit by holding that it had no jurisdiction on the ground that in terms of a tender form issued, the jurisdiction vests exclusively with the Pandavapura Court.
7. To arrive at the said finding, the trial Court has considered the documents, the purport and intent thereof and has concluded that the parties intended to be bound by terms and conditions specified in the tender form out of which the business relationship came into existence and as such, held that its jurisdiction was ousted by the aforesaid terms and conditions of the tender form.
8. The trial Court also came to the conclusion that the Suit was filed before the Civil Judge and CJM, Mangaluru by suppressing true material facts, in a wrong forum as regards which the Defendant suffered loss, as also suffered undue hardship and legal expenses and as

such awarded cost of Rs.20,000/-. It is aggrieved by the same that the Plaintiff is before this Court assailing the said Judgment.

9. Sri.H.N.Prashanth Chandra, learned counsel for the plaintiff-appellant submitted as under:

- 9.1. The order of the trial Court is not sustainable inasmuch as the tender condition was one which was applicable at the time of submitting of tender and the said condition can only be restricted to any dispute arising as regards the tender, the subsequent transactions are commercial transactions. The goods have been supplied from Mangaluru, the payments have been received at Mangaluru, invoices have been raised at Mangaluru and therefore, the Courts at Mangaluru would have jurisdiction.

9.2. The invoices which have been raised do not specify the territorial jurisdiction and therefore it is the general law under Section 20 of the Code of Civil Procedure, 1908 (for short 'CPC') which would come into play for the purpose of determining the jurisdiction of the Court and since a part of the cause of action arose within the jurisdiction of the Courts at Mangaluru, the courts at Mangaluru would have jurisdiction.

9.3. As regards filing of the Suit before the trial Court and not before the Commercial Court, he submitted that there was confusion as regards whether the Suit was to be filed before the Civil Judge or before the Commercial Court. Subsequent to the notification issued by the State Government, the Suit has been transferred to the Commercial Court. Therefore, the same ought not to have played any role in the determination of the matter by the trial Court.

- 9.4. There is no proper appreciation of the contentions raised by Plaintiff during the course of arguments. The trial Court has rendered a finding on fact without evidence being on record. The trial Court ought to have permitted the parties to lead evidence, if not on the entire matter, at least on jurisdiction.
- 9.5. Even otherwise, the trial Court could not have dismissed the Suit on the ground of jurisdiction. If at all the Court did not have jurisdiction, it should have applied the principles of Rule 10 of Order VII, Rule 10-A of Order VII of CPC and transferred the Suit to the Court of proper jurisdiction.
- 9.6. The procedure followed by the trial Court is not proper and therefore, the said impugned Judgment needs to be set aside and the Suit proceeded with.

7. Though the Defendant has been served, none has appeared on behalf of the defendant/respondent.
8. Heard the learned counsel for the appellant and perused papers.
9. On the basis of the submissions, the points that would arise for our determination are:
 - 9.1. **Whether the trial Court could have rendered findings as regards jurisdiction without the parties having lead evidence ?**
 - 9.2. **Whether a suit could be dismissed only on the ground that there is no territorial jurisdiction or is a Court required to after coming to such a finding transfer the Suit to a court having jurisdiction ?**
 - 9.3. **Whether the imposition of cost of Rs.20,000/- is proper and valid ?**
 - 9.4. **What order ?**

10. Before we deal with the above questions, the relevant provisions are extracted hereunder for easy reference:

Order VII Rule 10 of CPC:

10. Return of plaint:- (1) Subject to the provisions of rule 10A, the plaint shall at any stage of the Suit be returned to be presented to the Court in which the Suit should have been instituted.

Explanation.— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint:- On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

Order VII Rule 10A of CPC:

10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return:- (1) Where, in any suit, after the Defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the Plaintiff.

(2) Where an intimation is given to the Plaintiff under sub-rule (1), the Plaintiff may make an application to the Court—

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the Defendant.

(3) Where an application is made by the Plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the Suit,—

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the Plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),—

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the Defendant with a summons for appearance in the Suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the Defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the Plaintiff under sub-rule (2) is allowed by the Court, the Plaintiff shall not be entitled to appeal against the order returning the plaint.

Section 20 of CPC:

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 works for gain, as aforesaid, acquiesce in such institution; or

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

11. **ANSWER TO POINT NO.1: Whether the trial Court could have rendered findings as regards jurisdiction without the parties having lead evidence?**

11.1. The facts relevant to this matter have been mentioned hereinabove.

11.2. The determination of whether a particular Court has jurisdiction or not would depend on the facts of each case as also the law applicable to such a case/suit. In some cases, it might be *ex facie* evident from the records of the plaint itself as to whether the Court has jurisdiction or not by applying the principles of Section 20 of the CPC.

11.3. A perusal of Section 20 of CPC which has been extracted hereinabove would indicate that the said Section is very wide in its amplitude and

would confer jurisdiction on a Court even when a part of the cause of action arises within its jurisdiction. Thus, unless the plaint makes it abundantly clear or *exfacie* clear that the said Court does not have jurisdiction, it would be required for the said Court to give a finding on fact as regards the jurisdictional aspect.

- 11.4. The other relevant provisions which would have to be considered is Rule (2) of Order XIV of CPC which is reproduced hereunder:

“2. Court to pronounce Judgment on all issues- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce Judgment on all issues.

(2) Where issues both of law and of fact arise in the same Suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the Suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the Suit in accordance with the decision on that issue”.

11.5. The aforesaid Rule (2) of Order XIV of CPC would require a Court- to pronounce Judgment on all issues. However, Sub-rule (2) of Rule (2) of Order XIV of CPC empowers a Court to pronounce a Judgment on an issue of law only, if that issue relates to the jurisdiction of the Court or a bar to the Suit created by any law for the time being in force and postpone the settlement of the other issues until after the above issue is determined and may deal with the Suit in accordance with the decision on that issue. Thus, it is clear that in all cases it is not required for the Court to pronounce Judgment on all issues at the same time.

11.6. The Court could pass Judgment on a particular issue relating to jurisdiction of the Court or a bar to the Suit created by any law so long as it is an issue of law only. Sub-rule (2) of Rule (2) of

Order XIV of CPC does not mandate the Court to try the Suit on a preliminary issue, however it may do so, it is ultimately the Court's discretion to pronounce on the jurisdiction issue without going into all the issues which discretion must be exercised in a judicious manner.

11.7. In the event of a Court being of the opinion that a decision on a particular issue would decide the entire Suit, more so when it relates to jurisdiction or the lack of jurisdiction, the maintainability or rather the non-maintainability of the Suit, it would be in the interest of justice for the Court to pass a Judgment on the said issue so as to avoid wastage of precious judicial time.

11.8. It is not that a Court would have to pre-decide before taking up the matter. What is required is only for the Court to be of prima facie opinion

that a decision on a particular issue would come within the purview of Sub-rule (2) of Rule (2) of Order XIV of CPC. It is for this reason that the said Sub-rule also provides that depending on the decision on that issue, the Court may deal with the Suit in accordance with the decision on that issue.

11.9. In our considered opinion, it would be required for the Court to exercise its powers under Sub-rule (2) of Rule (2) of Order XIV of CPC and pass an order as to why the said Court is of the opinion that an order on a particular issue is required to be passed without passing orders on all other issues and thereafter take up the said issue as a preliminary issue.

11.10. The Court can on the basis of the pleadings made in the plaint decide the aspect of territorial jurisdiction as a question of law on the basis of

the pleadings made in the plaint on the principles of demurer or even if there are a few disputes, direct the parties to lead evidence on those limited disputes to pass an order on the aspect of jurisdiction. It would not be in the interest of justice for the Court to pronounce the order or Judgment on all issues but return the Suit for presentation before the appropriate Court if it is found that the Court did not have either territorial or pecuniary jurisdiction.

11.11. There cannot be a straight jacket formula laid down in that respect and this aspect has to be considered under Sub-rule (2) of Rule (2) of Order XIV of CPC. It is best left to the discretion of the concerned Court, which needs to be exercised judicially which of course would be amenable to the writ jurisdiction under Article 227 of the Constitution.

11.12. It is only where the aspect of jurisdiction would require considerable or detailed evidence to be led, that an order under Sub-rule (2) of Rule (2) of Order XIV of CPC cannot be passed. When an order can be passed on the basis of the pleadings on record, as also documents on record and/or with limited evidence on this aspect, the trial Court may or rather the trial Court should pass orders on aspects of jurisdiction both territorial and/or pecuniary by trying the same as a preliminary issue so as to conserve precious judicious time.

11.13. We find support in the above proposition by the decision of the Hon'ble Apex Court in the case of **Union of India vs. Adani Exports (2002) 1 SCC 567** wherein the Apex Court has held that when a party raises a question of territorial jurisdiction, the Court could have passed an order thereon and as such, on an

appeal as regards the Judgment passed on all issues, the Hon'ble Apex Court set-aside the entire Judgment on account of the said Court having no territorial jurisdiction and on an application having been filed for transfer of case, the said case was transferred to the concerned Court.

11.14. The above would also be an example of how a proceeding had travelled up to the Supreme Court and finally the judgment was set-aside on the ground of lack of territorial jurisdiction. It is this aspect which is required to be considered by the trial Court and the power under Sub-rule (2) of Rule (2) of Order XIV of CPC be exercised at the earliest so as to avoid any delay in the matter.

11.15. In the present case, the dispute as relating to territorial jurisdiction is only as regards whether

the terms in the tender notification would continue to apply after the tender is awarded and the supply is made. Though this could not have been decided merely on the pleadings filed, the said issue could be decided with minimum evidence led on that particular aspect so as to ascertain the intention of the parties. The trial Court before treating the same as a preliminary issue ought to have passed an order as to why it is treating the same as a preliminary issue, namely how it goes to the root of the matter and the decision on the said issue would render the entire proceedings before it as redundant or unnecessary.

11.16. In the above background we answer Point No.1 as under:

11.16.1. The trial Court could exercise its powers under Sub-rule (2) of Rule (2) of Order XIV of CPC and

pronounce a Judgment as regards the jurisdiction of the Court or a bar to the Suit created by any law for the time being in force, if possible on the pleadings filed on the principles of demurer or permit the parties to lead evidence on the point in dispute as regard jurisdiction and decide the same.

11.16.2. If the Court were to come to a conclusion that the said Court does not have the jurisdiction, the plaint would be required to be returned in terms of Rule 10 of Order VII of CPC. If the Court were to come to a conclusion that it has the jurisdiction in such an event, the trial Court could proceed with the trial of all other issues.

11.16.3. In the present case, there being certain factual disputes, the trial Court having pronounced its Judgment with regard to jurisdiction without letting the parties lead evidence is improper.

12. **ANSWER TO POINT No.2:** Whether a suit could be dismissed only on the ground that there is no territorial jurisdiction or is a Court required to after coming to such a finding transfer the Suit to a court having jurisdiction ?

12.1. Rule 10 of Order VII and Rule 10-A of Order VII of the CPC deal with this aspect. Rule 10 of Order VII confers powers on a Court to return the plaint presented at any stage of the Suit. In terms of the explanation to the aforesaid Rule 10 of Order VII even the appellate Court or revisional Court could return the plaint for the said reason.

12.2. A reading of the aforesaid provisions would make it clear that the legislature in its wisdom has thought it fit that the plaint has to be returned either by the Court before which the plaint is instituted or even by the appellate or revisional Court when the said Court comes to a conclusion that it did not have the jurisdiction, so as to enable the Plaintiff to present the said plaint before a Court having jurisdiction in which the Suit should have been originally instituted. The said provision is a salutary provision inasmuch as it envisages that a plaintiff is not made to suffer on account of filing of the Suit or presentation of plaint in a Court which does not have jurisdiction.

12.3. A return of the plaint can be ordered at any stage so as to enable the Plaintiff to present the same to the Court in which the said Suit should have been instituted. Rule 10 of Order VII of

CPC therefore makes it clear that in the event of a suit being instituted before a wrong court, that is a Court not having a territorial jurisdiction and/or pecuniary jurisdiction the plaint is to be returned to the Plaintiff.

12.4. The aspect of pecuniary and territorial jurisdiction has been brought in to define the jurisdiction of the Court. Though the Court would have the power to adjudicate the issue, it is prevented from adjudicating the matter which does not come within its territorial or pecuniary jurisdiction.

12.5. This is a matter of convenience. In terms of Rule 10(2) of Order VII of CPC at the time of returning a plaint it is required for the Judge to endorse thereon the date of its presentation and return, name of the party who presented it and a brief statement of the reasons for returning it.

This would also make it abundantly clear that the Court not having either territorial or pecuniary jurisdiction cannot dismiss a suit but can only return the plaint.

12.6. The apex court in ***RSDV Finance Co. Pvt. Ltd. vs. Shree Vallabh Glass Works Ltd.,*** reported in (1993) 2 SCC 130 has held that when there is a finding of lack of jurisdiction, the only recourse that must be adopted is to the return the plaint for presentation to the proper Court and not to dismiss the Suit. The relevant paragraph being paragraph 7 is extracted hereunder for easy reference:

"7. We have heard learned counsel for the parties and have perused the record. In our view the learned Division Bench was wrong in holding that in the facts and circumstances of this case the Bombay High Court had no jurisdiction to entertain the Suit. The amount of Rs 10,00,000 itself was paid by a cheque dated July 5, 1983 drawn on the Canara Bank and the said amount was deposited in the bank account of the Defendant at the Bank of Baroda, Nariman Point, Bombay. On July 11, 1983 the Defendant issued a deposit receipt and the said

deposit receipt contained an endorsement of 'Subject to Anand jurisdiction'. The date of maturity was mentioned as October 3, 1983. It is also not in dispute that the amount of Rs 10,00,000 along with interest was not paid on the due date and the Defendant wrote a letter to the Plaintiff on October 19, 1983 stating therein that in view of certain problems they were not in a position to repay the deposit amount on the due date and thereby requested the Plaintiff to allow the Defendant to keep the deposit till the end of November 1983 with interest at 19% per annum on the delayed payment as well. The Defendant also issued the five post-dated cheques for Rs 2,00,000 each drawn on Bank of Baroda, Nariman Point, Bombay dated November 23, 24, 25, 29 and 30, 1983 respectively. It is also an admitted position that the leave to defend the Suit was obtained by the Defendant from the Bombay High Court itself. The learned Division Bench in our opinion was clearly wrong in holding that the Suit was not based on the five post-dated cheques and that the Bombay High Court had no jurisdiction to try the Suit as the deposit receipt contained an endorsement of 'Subject to Anand jurisdiction'. The entire reading of the plaint clearly shows that the Suit was based not only on the basis of the deposit receipt of Rs 10,00,000 but also on the basis of the five post-dated cheques. Even if there was any doubt in the mind of the Division Bench, the learned counsel for the Plaintiff had made a request for allowing him to amend the plaint but such request was wrongly refused by the learned Division Bench. The Division Bench was totally wrong in passing an order of dismissal of Suit itself when it had arrived to the conclusion that the Bombay Court had no jurisdiction to try the Suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the proper Court and not to dismiss the Suit. It may be further noted that the learned Single Judge trying the Suit had recorded a finding that the Bombay

Court had jurisdiction to entertain and decide the Suit. Sub-section (1) of Section 21 of the Code of Civil Procedure provides that no objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been consequent failure of justice. The above provision clearly lays down that such objection as to the place of suing shall be allowed by the appellate or revisional Court subject to the following conditions:

- (i) That such objection was taken in the Court of first instance at the earliest possible opportunity;*
- (ii) in all cases where issues are settled then at or before such settlement of issues;*
- (iii) there has been a consequent failure of justice."*

12.7. This return of the plaint is also to be made subject to following the principles under Rule 10-A of Order VII of CPC which has been extracted hereinabove. While deciding on the issue of jurisdiction, the Court must pronounce its finding on the same and intimate the decision to the plaintiff.

- 12.8. On such intimation, the Plaintiff can file an application specifying the Court in which he proposes to present the plaint after its return, requesting the Court to fix the date for appearance of the parties in the said Court and requesting for a notice of the said date to be given to the Plaintiff and the Defendant.
- 12.9. On such an application being made, the Court could fix the date of appearance of the parties, give notice to the Plaintiff and Defendant to appear on the said date, endorse on the plaint the aforesaid requirements and permit the Plaintiff to present the Suit before the appropriate Court. This would also avoid wastage of time in issuance of fresh summons.
- 12.10. In the event of the Plaintiff not availing the remedy under Rule 10A of Order VII of CPC, then the Court by itself can return the plaint

under Rule 10(2) of Order VII by passing an order to that effect.

12.11. The above process and procedure would indicate that an opportunity is required to be given to the Plaintiff to make his submission on the proposed order to be passed by the Court for return of the plaint. The Court cannot directly return the plaint without affording an opportunity to the Plaintiff to file necessary application under Rule 10-A(2) of Order VII of CPC. It is only if the opportunity is not availed that an order could be passed under Rule 10(2) of Order VII of CPC.

12.12. In view of the aforesaid procedure which has been prescribed, we are of the considered opinion that the trial Court cannot dismiss the Suit but ought to follow the rigour of Rule 10 of Order VII and Rule 10-A of Order VII of CPC, if

it were to come to a conclusion that it does not have either the pecuniary or territorial jurisdiction. In the present case, the trial Court has dismissed the Suit which it could not do and as such, the same is bad in law.

12.13. We answer point no.2 by holding that a suit can not be dismissed only on the ground that there is no territorial jurisdiction, on coming to a finding as regards lack of jurisdiction the Court is required to return the plaint to the Plaintiff to present the same before a court having jurisdiction by following the procedure prescribed and laid down in Rule 10 and/or 10A of Order VII of CPC, as the case may be.

13. ANSWER TO POINT NO.3: Whether the imposition of cost of Rs.20,000/- is proper and valid ?

13.1. As regards imposition of cost in the above matter. The trial Court has not permitted the

parties to lead their evidence and for the parties to cross-examine each other so as to establish their case. In the absence thereof, on the basis of oral arguments, the trial Court could not have come to a conclusion that the Suit had been filed suppressing true and material facts requiring imposition of cost.

13.2. We, however, make it clear that in the event of the evidence on record being sufficient to establish that the suit was deliberately filed in a Court having no jurisdiction so as to harass the Defendant, then the Court would be well within its right to impose such costs as may be required including exemplary costs.

13.3. In the present case, we are of the considered opinion that in the absence of evidence on record, it cannot be said that there was a case made out to impose costs of Rs.20,000/-.

Hence, the said order imposing cost of Rs.20,000/- is set-aside.

14. ANSWER TO POINT NO.4: What order ?

14.1. In the above circumstances, for the reasons and findings given above, the appeal is **partly allowed** as we are not deciding the issue of jurisdiction.

14.2. The Judgment dated 15.12.2020 passed by the IV Additional District and Sessions Judge, D.K., Mangaluru in Commercial Original Suit No.400/2020 is set-aside.

14.3. The matter is remanded to the trial Court to consider the said preliminary issue after affording an opportunity to the Plaintiff and Defendant to lead evidence, both oral and documentary.

14.4. In the event of the trial Court coming to a conclusion that it has necessary jurisdiction, the Court could proceed with the trial of the matter on other issues.

14.5. In the event of the trial Court coming to a conclusion that it does not have the territorial jurisdiction, then the trial Court would have to follow the rigour of Rule 10 and Rule 10-A of Order VII of the CPC.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

In