

**IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL  
PRADESH)**

**ITANAGAR PERMANENT BENCH**

**CRP. No.01(AP)2017**

**1. Smti. Lamdema Tsering,**  
W/o Mr. Tarik Talom,  
R/o V1 block No.-3 Rukmini greens,  
Apartment, Rukmini Gaon,  
P.O.,P.S. Dispur  
District-Kamrup, Assam  
M. No. 9436699227

**2. Sri Lam Norbu Tsering,**  
S/o Late Lamwaru Tsering,  
R/o Flat No.-6 G, SKRES Harmony  
VIP Road,  
P.O/P.S. Dispur, District Kamrup  
Guwahati-36, Assam.

**.....Petitioners/Defendants**

**-VERSUS-**

**1.Shri Pema Chige**  
S/o Late Dorjee Tashi  
R/o Samphung Village,  
P.O./P.S. Kalaktang,  
District West Kameng, Arunachal Pradesh.  
Proprietor of M/S Brai-Phu  
Kiwi Orchard, Samphung Village,  
P.O/P.S Kalaktang,  
District -West Kameng, Arunachal Pradesh.

**.....Respondent/Plaintiff**

**By Advocates:**

For the **petitioner:**

N.Saikia  
A.Saikia  
L.Borgohain  
P.Goswami  
M.Kato

For the **respondents:**

G.T.Gonpapa  
L.Tsering  
T.Penjom

**::BEFORE::**  
**THE HON'BLE MR. JUSTICE AJIT BORTHAKUR**

Date of hearing : **05.03.2018**

Date of Judgment : **05.03.2018.**

**JUDGMENT & ORDER (ORAL)**

This is a revision petition under Section 115 of the Code of Civil Procedure read with Article 227 of the Constitution of India preferred against the order, dated 06.10.2016, passed by the learned Addl. District Judge, West Sessions Division, Bomdila, Arunachal Pradesh, in MS No. 01 of 2014.

2. The petitioner/defendants' case, in a nutshell, is that the petitioner/defendant No.1 in the said MS No.01/2014, who is a resident of village Shyo, Tawang District of Arunachal Pradesh, is the proprietor of M/S Oriental Fresh, Tawang District and respondent/plaintiff, is the proprietor of M/S Brai-Phu Kiwi Orchard, West Kameng District, Arunachal Pradesh. Sometime, in the month of October, 2011, the petitioners No.1 and 2 had approached the plaintiff/respondent at his native place at Samphung village, Kalaktang with a request to supply of Kiwi fruits to them at the rate of Rs. 43 per KG. In the written statement, a specific stand has been taken that the defendants on the request of plaintiff at Guwahati, had accepted the supply of Kiwi. It is the case of the petitioners/defendant that the cause of action for this claim of the plaintiff had actually arisen at Guwahati not at Kalaktang. Accordingly, a preliminary objection was raised by the defendant challenging the territorial jurisdiction of the learned Addl. District and Sessions Judge, Bomdila and by its order, dated 22.03.2016, after hearing the learned counsel for the parties, and having gone through the documents was of the view that the business might have taken place at Kalaktang. Accordingly, by the said order, dated 22.03.2016, the learned Court was not inclined to dismiss the petition, as the burden would lie upon the plaintiff to prove that the business transactions had taken place at Kalaktang and thereby the cause of action has arisen within the jurisdiction of the said Court. Accordingly, the learned court held that the burden to discharge the proof that business transactions had taken place at Kalaktang in order to justify that the

cause of action has arisen within the jurisdiction of the said Court would be considered at a later stage. Accordingly, 13.05.2016 was fixed for submission of the written statement.

**3.** The respondent/plaintiff, by filing an affidavit-in-opposition averred that a part of cause of action arose in her native place as the oral agreements in regard to demand and supply of the Kiwi fruit consignments were made at his native place, that is, Samphung village, Kalaktang, West Kameng District, Arunachal Pradesh. It has been further averred that the petitioners/defendant had approached her at his aforesaid native place and visited his Kiwi fruit garden site and requested for supply of Kiwi fruits to them at the rate of Rs. 43 per kg as per mutual oral agreement. As per oral agreement, entered into between the petitioner No.1/defendant, the respondent/plaintiff herein supplied the fruits through Challan by different vehicles from his native place and the petitioners/defendant agreed to make payments against the supply at her native place. It is also averred that the petitioner No.1/defendant, who is the proprietor of Oriental Fresh, in her visiting card indicated that their principal office is situated at Tawang, Arunachal Pradesh, showing further the village Shyo, District Tawang, Arunachal Pradesh. Section 20 (C) of the Code of Civil Procedure, provides as 'the cause of action, wholly or in part, arises', meaning thereby, where money is expressly or impliedly payable under a contract. The respondent/plaintiff has referred to the established principle that the debtor has to discharge his obligations to the creditor at the latter's place and consequently, the Court of learned Addl. District Judge, Bomdila, West Kameng District has the territorial jurisdiction to try the suit.

**4.** The petitioners/defendant by filing an affidavit-in-reply averred that neither cause of action arose at the native place of the respondent/plaintiff located within the jurisdiction of Bomdila Court nor they are resident within the jurisdiction of the said Court. In para 4, the petitioners/defendant have averred as herein below extracted-

*"Since, neither the petitioners/defendants stay within the jurisdiction of Bomdila Court nor any business transaction took place within the local jurisdiction of the learned Court except the Kiwis were grown and the petitioners resides within the Jurisdiction of the Bomdila Court. Therefore, as per CPC the suit should not have been filed or entertained by the Bomdila Court and allowed to take advantage by the respondent who resides within the local jurisdiction of Bomdila Court."*

**5.** The petitioners/defendant have averred that the petitioner No. 1 has been permanently residing at Guwahati since 2008 and the petitioner No. 2 also

resided at Guwahati during the year 2010-11. It has been further averred that Section 20 of the Code of Civil Procedure says that other suits to be instituted where defendants reside or cause of action arises. It is also averred that till 06.10.2016, the learned Court below did not dispose of the maintainability petition instead thereof he proceeded with the suit directing the defendant to file the written statement by order, dated 13.05.2016, and again on 18.07.2016, the learned Court directed to file issues, which is contrary to the provisions of law.

**6.** Ms. N. Saikia, the learned counsel appearing for the petitioners/defendant in support of the contentions made in the petition has referred to the following decisions-

1. *Mohannakumaran Nair Vs. Vijayakumaran Nair*, reported in (2007) 14 SCC 426, wherein the Supreme Court held that plaintiff is the domain litus, but he can file a suit only in accordance with the CPC and not at any place where he desires.
2. *Harshad Chimani Lal Modi Vs. DLF Universal Ltd. & Anr.*, reported in (2005) 7 SCC 791, wherein the Supreme Court held that under Section 21 of the Code of Civil Procedure objection as to jurisdiction of Courts, territorial and pecuniary, have to be taken at the earliest possible opportunity and in any case before settlement of issues and cannot be allowed to be taken at a subsequent stage.
3. *Hema Chhetri Vs. Pompha Chhetri*, reported in (2012) 1 NEJ 651, wherein this High Court held that decree passed by court without jurisdiction is a nullity and objection as to jurisdiction may be raised even at the stage of execution or in collateral proceedings as and when such decree is sought to be enforced or relied upon.
4. *Bahrein Petroleum Co. Ltd. Vs. P. J. Pappu*, reported in AIR 1966 SC 634, wherein the Supreme Court held that where the defendants neither resided nor carry on business, nor any part of the cause of action arises within the local limits of the jurisdiction of the Court, such Court has no territorial jurisdiction to try the suit under Section 20 of the Code of Civil Procedure, 1908, however, it is open to the defendants to waive this objection and if they do so, they cannot subsequently take the objection.
5. *Dhodha House Vs. S. K. Maingi*, reported in (2006) 9 SCC 41 (Para-19, 20 & 21), wherein the Supreme Court held that a court shall not readily presume the existence of jurisdiction of a court which has not been conferred by the statute.

7. Mr. L. Tsering, learned counsel appearing for the plaintiff /respondent has reiterated the grounds of denial of the case of the plaintiffs/ defendant cited in the affidavit-in-opposition.

8. I have gone through the above decisions of the Apex Court and this Court. I have also perused the relevant records.

9. The impugned order, dated 06.10.2016, passed by the learned Addl. District Judge, Bomdila, West Kameng District is extracted herein below –

**“06.10.2016.**

*This case is fixed for framing of issues. Both the counsels have submitted their issues. Parties are not present but they are represented their counsels. Counsel for the respondent H. K. Gogoi has submitted that on dated 22.03.2016 this court heard the preliminary objection raised by the respondent and has said that the plaint filed by the plaintiff shall not be dismissed on the ground raised by the respondent in his preliminary objection but according to respondent this court has nowhere said in the said order that the said preliminary objection is dismissed. He therefore prays that this court may pass a specific order.*

*After hearing the respondent, this court has passed this order today where it is specifically order that the said preliminary objection is dismissed and disposed of.*

*With this the issues as submitted by both the parties will be finalized on next date of hearing. With this, this case adjourned till 23.11.2016.”*

10. This Court finds it necessary to extract the order of the learned Court below, dated 22.03.2016, for better appreciation of the disputed facts-

**“22.03.2016**

**This money suit is fixed today. Both I'd counsel are present though neither the plaintiff nor the respondents are present. Preliminary objection filed by the respondents are taken up today. The submission of the counsel for the respondent is that cause of action has arose neither at West Kameng nor at Tawang. More so, in the plaint the plaintiff has mentioned that the respondents are at present residing at Naharlagun. Hence, counsel for the respondent has submitted that this plaint cannot be filed here at West Kameng as per Section 20 of CPC.**

**Counsel for the plaintiff is also heard at length. He has submitted that he has a Kiwi garden at Kalaktang, West Kameng District and the respondent has come to his garden where he has dealt with the business by giving his signature on challan Memo. This is how the plaintiff has submitted that since the business has been done at Kalaktang of West Kameng District and since the**

**respondent is permanently residing at Tawang the cause of action has arose within the jurisdiction of the court.**

**So, after hearing the counsel for the plaintiff and after having gone through this document this court is convinced at this stage that business might have taken place at Kalaktang. So, this Court is not inclined to dismiss the petition on the ground claimed by the respondent at this stage. With this, this court is of the view that burden lies on the plaintiff to prove that the business has taken place at Kalaktang and cause of action has arose within the jurisdiction of the court at later stage.**

**Hence, the respondent is directed to file their W/S on next date of hearing which is fixed on 13/05/2016. The W/S be filed before this Court 15 days before the next date of hearing.**

**With this, this case is adjourned till 13.05.2016."**

**11.** On bare reading of the above impugned order, dated 06.10.2016, it appears that the learned court below dismissed the preliminary issue, raised by the petitioners/defendant, on the territorial jurisdiction to try the suit. Perusal of the suit record, of course, does not reveal that any preliminary issue on territorial jurisdiction was formally framed. However, the impugned order has a reference to the earlier order, dated 22.03.2016, extracted above, whereby the learned court in the backdrop of facts averred by the parties could not decide whether pursuant to the oral agreement between the parties, the business of Kiwi fruit selling and purchase had taken place at Kalaktang, Arunachal Pradesh, and as such, having regard to the burden of the plaintiff/respondent to prove the claim of arising of the cause of action within the jurisdiction of the said court at Bomdila, asked the petitioners/defendant to file the written statement, which, the record shows, is yet to be filed. Therefore, no fault is found with the impugned order of the learned Court below as the issue involves mixed questions of law and fact, in the absence of expressed terms of a written contract between the parties.

**12.** Resultantly, the revision stands partly allowed and remanded back to the learned court below to decide the issue afresh framing a formal issue on the point of jurisdiction of the court, along with the other issues.

**13.** Accordingly, the revision is **disposed of**.

**14.** Send back the LCR along with a copy of this order.

**JUDGE**

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