

**HIGH COURT OF MADHYA PRADESH****BENCH GWALIOR.****S.B : Hon'ble Mr. Justice G.S.Ahluwalia****First Appeal No.170 of 2000.****Ishwar Das Patel and Another.****Vs.****Mahesh Kumar.**

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Shri S.K.Jain, Advocate for the appellants/defendants.  
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**J U D G M E N T**  
**(Delivered on 20th April, 2017)**

This appeal under Section 96 of Code of Civil Procedure has been filed against the judgment dated 7.7.2000 passed by Second Additional District Judge Shivpuri in Civil Suit No.2-B of 1999 by which, the civil suit filed for recovery of Rs.1,59,600/- has been decreed.

Challenging correctness and propriety of the judgment passed by the trial court, it is submitted that by counsel for the appellants that first of all, the trial court has committed material illegality by permitting the plaintiff to file the suit as an indigent person. No report from Revenue Authority was called with regard to the indigency of the appellant and without conducting any inquiry and without obtaining any report from the revenue authorities, the plaintiff was permitted to file the suit as an indigent person. It is further submitted by counsel for the appellants that as no part of cause of action had arisen within the territorial jurisdiction of District Shivpuri, therefore, the suit was not maintainable.

Before considering the submissions made by counsel for the appellants, it would be necessary to

consider the facts of the case.

A civil suit was filed by the plaintiff/respondent for recovery of Rs.1,59,600/- on the ground that on 12.6.1994, the defendants came to Shivpuri and the plaintiff agreed to purchase 26 quintals of cumin at the rate of Rs.47/- per Kg. The defendants demanded an amount of Rs.1,20,000/- in advance and they also promised that they are reputed businessmen of Unjha (Gujrat) and they are the grain merchants for last several years and since their business is based on honesty, therefore, he should not worry about the supply of cumin. Accordingly, the plaintiff got prepared four bank drafts of Rs.5,00,00/-, 25,000/- 20,000/- and 25,000/- respectively from State Bank of India Branch Shivpuri and the defendants have got the bank drafts encashed. It was pleaded that inspite of receipt of the entire amount of Rs.1,20,000/-, the defendants did not supply 26 Quintals of cumin and also did not refund the amount.

A registered notice was sent on 1.6.1997 and the defendants did not pay the amount. As the plaintiff was not in a position to pay the court fee of Rs.19,000/- therefore, he prayed that he be permitted to file the suit as a indigent person. It was further pleaded that the plaintiff is entitled to recover the interest for the 33 months at the rate of 1 Rupee per month. Accordingly, the suit for recovery of 1,20,000+39600 towards interest which was already agreed, was filed and it was further prayed that the interest at the rate of Rs.1.50 per month *pendente lite* be also awarded.

The defendants filed the written statement and denied that the defendants had gone to Shivpuri where

it was agreed to supply 26 Quintals of cumin. It was further pleaded that in fact, the plaintiff had himself come to Unjha and had requested for supply of 26 Quintals of cumin at the rate of Rs.47/- per Kg and had promised that he would send him Rs.25,000/- towards advance payment after going back to Shivpuri. It was further admitted in the written statement that the defendants had received draft of Rs.25,000/- and therefore, it was pleaded that they sent cumin to the plaintiff. It was further stated that in fact, total quantity of 26 Quintals of cumin was supplied by the defendants and it was alleged that the plaintiff had paid only Rs.1,20,000/- but in fact, he was required to pay Rs.1,22,200/-. Total amount of Rs.2200/- is still outstanding against the plaintiff. In the additional pleadings, it was further pleaded that in fact, the plaintiff had come to Unjha (Gujrat) and had collected the entire cumin and thus, it was pleaded that not only the agreement between the parties was executed at Unjha but also, the cumin was also supplied at Unjha.

The trial court framed the issues and after recording evidence and hearing both the parties decreed the suit.

Challenging the correctness and propriety of the judgment passed by the trial Court, it is submitted by counsel for the appellants that in fact, the trial court committed material illegality in permitting the plaintiff to file the suit as an indigent person. No notice was ever issued to the Revenue Authorities and no report was called from them. It was further submitted that no inquiry as required under Order 33 Rule 1A of CPC was

made and therefore, the matter deserves to be remanded from the stage of consideration of application filed under Order 33 Rule 1 of CPC.

During arguments, it is fairly conceded by counsel for the appellants that the order dated 11.1.1999 passed by the trial court by which, the plaintiff was permitted to file the suit as an indigent person was never challenged by the defendants/appellants. Even otherwise, in case, where a person is permitted to file a suit as an indigent person and in case the indigent person succeeds then, as per the provisions of order 33 Rule 10 of CPC, the court shall calculate the amount of court fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person and such amount shall be recoverable by the State Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject matter of the suit.

Undisputedly, the question of court fee is between the State and the plaintiff. In the present case, the trial court after decreeing the suit has directed that the court fee which was to be paid by the plaintiff shall be paid by the defendants. Thus, the provisions of Order 33 Rule 10 of CPC have been complied with by the trial Court. Even otherwise, the counsel for the appellants could not point out as to how the defendants got prejudiced if the plaintiff was permitted to sue as an indigent person and also could not explain as to why the defendants did not challenge the order dated 11.1.1999.

Under these circumstances, this Court is of the view that while entertaining the appeal under Section

96 of CPC, it would not be appropriate to set-aside the order dated 11.1.1999 as well as entire proceedings including the judgment and decree passed by the trial court and to remand the matter to decide the prayer of the plaintiff seeking permission to sue as an indigent person afresh. As the trial court has already permitted plaintiff to file suit as an indigent person and has directed the defendants to pay the court fee to the State Government and the matter of court fee is between the State Government and the plaintiff, therefore, this Court is of the view that the entire proceedings as well as the judgment passed by the trial Court cannot be set-aside only on the ground that the plaintiff was wrongly permitted to be sued as an indigent person.

It is further contended by the counsel for the defendants that the trial court at Shivpuri had no territorial jurisdiction to try the suit as the entire cause of action arose at Unjha (Gujrat) and no part of cause of action arose at Shivpuri.

The cause of action is a bundle of facts and it is well established principle of law that every court will have a territorial jurisdiction to try the suit if even a part of cause of action has arisen within its territorial jurisdiction. In the present case, the case of plaintiff is that the defendant came to Shivpuri with an offer to sell cumin at the rate of Rs.47/- per Kg and the plaintiff prepared the bank drafts at Shivpuri and gave it to defendants but the defendants did not supply cumin. The trial court after recording evidence of the parties, came to the conclusion that as part of the cause of action had arisen within its territorial

jurisdiction, therefore, it has jurisdiction to try the suit. The findings recorded by the trial court do not appear to be perverse.

Jayanti Bhai (DW1) has stated that he had supplied 26 Quintals of cumin at Unjha itself and the plaintiff had received cumin at Unjha itself. From his shop, the plaintiff took to Shubh Laxmi Transport and the fare was also paid by the plaintiff and the bulity was also given to this witness by the plaintiff. He has further stated that after receipt of the notice from the plaintiff, he went to Shivpuri in order to verify that whether cumin supplied by the defendants was stored by the plaintiff or not, then, he came to know that same was stored by the plaintiff in the warehouse belonging to himself. However, the defendants did not examine anybody from Shubhlaxmi Transport to prove that it had transported cumin to Shivpuri.

Jayanti Bhai (DW1) has also produced receipt Ex.D/1 to show that cumin was supplied by him to the plaintiff on 22.3.1995. The entire booklet of the receipt has been produced by him. It appears from the said booklet that it starts from 22.2.1995, and the receipt showing the sell of cumin to the plaintiff on 22.3.1995 is the last receipt and the remaining receipts which runs in more than 50 are blank. This booklet was produced in the year 2000 and the civil suit was filed in the 1997.

Thus, it is clear that the defendants have not clarified that after issuing receipt in favour of the plaintiff on 22.3.1995, why the remaining booklet was not utilized and why the remaining receipt book was allowed to remain blank. Thus, this Court is of the view

that the receipt which has been produced by the defendants as Ex.D/1 does not appear to be genuine document. Otherwise, there was no reason for the defendants not to utilize the remaining booklet containing receipts. Even otherwise, if evidence of the defendants is considered in the light of it's written statement, then, it would be clear that the evidence of the defendants is contrary to their written statement. In the written statement, it was pleaded that the defendants after receipt of a bank draft dated 18.8.1994 of Rs.25,000/- from the plaintiff has supplied cumin whereas, in his evidence, the defendant No.1 has stated that the plaintiff came to Unjha in the year 1995 and purchased cumin and took away supply.

Thus, it is clear that the stand taken by the defendants that the entire transaction took place at Unjha (Gujrat) is not proved from the evidence led by them and in view of the admissions made by the defendants in the written statement, it is clear that the talks between plaintiff and the defendants took place at Shivpuri and accordingly, four bank drafts of different amounts totaling Rs.1,20,000/- were sent from Shivpuri and agreed cumin was not supplied by the defendants. Said part of cause of action had arisen within the territorial jurisdiction of the trial court. Therefore, the trial court did not commit any mistake in deciding the issue regarding territorial jurisdiction against the defendants.

This court after considering the pleadings of the parties as well as the evidence led by them is of the view that as part cause of action had arisen at Shivpuri, therefore, the trial court has jurisdiction to

try the suit.

No other arguments have been advanced by the counsel for the parties.

Accordingly, this appeal fails and is hereby **dismissed.**

Rks.

**(G.S.Ahluwalia)**  
**Judge**