

SUPREME COURT OF INDIA

Auto Engineering Works

Vs.

Bansal Trading Company

(A Anand, S R Babu and N S Hegde JJ.)

10.12.1999

ORDER

S. RAJENDRA BABU, J.

1. Heard learned Counsel for the parties on I.A. Nos.1 and 2. Delay in filing the application (I.A.No.2) to bring on record the legal representatives of the sole proprietor of the petitioner firm is condoned. Learned Counsel for the respondents has no objection to the legal representatives being brought on record. The application (I.A.No.1) is accordingly, allowed. The Index shall be corrected.

2. Leave granted.

3. The appellant filed a suit in the Court of the learned Additional District Judge, West Tripura (Agartala). It was a money suit. The trial court held that it had no territorial jurisdiction to entertain the plaint. The trial court, however, declined to exercise power under Order VII Rule 10 of the Civil Procedure Code and did not return the plaint to the appellant for presentation to the proper forum. The appeal filed by the appellant before the High Court failed on 28th November, 1997. Hence, this appeal by special leave.

4. After hearing learned Counsel for the parties, we are of the opinion that the trial court fell in error in not directing the return of the plaint to the appellant for presentation to the proper forum and the High Court also likewise fell in the same error. The terms of Order VII Rule 10 of the Civil Procedure Code are clear and specific. After having found that it had no territorial jurisdiction to entertain the plaint, the trial court ought to have returned the plaint to the appellant for presentation to the proper forum. We, therefore, set aside the order of the trial court to the extent it refused to return the plaint to the appellant for presentation to the proper forum and direct that the plaint shall

be returned to the appellant for its presentation to the proper forum. After the plaint is so presented to the court having jurisdiction, the case shall be decided by the trial court in accordance with law on its own merits.

5. We record the submission of learned Counsel for the appellant that the plaint shall be presented to the District Court at Alipore, West Bengal and direct the parties to appear before the said District Court on 28th January, 2000.

6. The trial court shall proceed with the trial of the suit uninfluenced by any observations made by the trial court or the High Court. We express no opinion on the merits of the case.

7. The appeal is accordingly allowed in the above terms. There will be no order as to costs.