



2026:AHC:28946

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 94 of 2026

K.P. Pankaj (Keshav Prasad Pankaj) Government
Contactor And Suppliers

.....Appellant(s)

Versus

Chairman, District Urban Development Authority
And 5 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Ashwani Kumar Pathak
Counsel for Respondent(s)	:	Ugrasen Kumar Pandey

A.F.R.

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. Heard the learned counsel for the parties.

2. The instant first appeal under Section 96 C.P.C. has been preferred by the plaintiff-appellant in Original Suit No. 244 of 2018 (K.P. Pankaj @ Keshav Prasad Pankaj vs. Chairman, District Urban Development Authority, Kushinagar and others) against the impugned judgment and decree dated 02.04.2025 passed by the Court of Additional Civil Judge (Senior Division), Court No. 3, Gorakhpur, whereby the plaint has been rejected under Order VII Rule 11 C.P.C. on the ground that, as per the terms of the tender, the disputes were to be adjudicated by the competent court at Kushinagar, whereas the plaintiff has filed the suit before the Court at Gorakhpur, which was legally not maintainable.

3. The factual matrix of the case is that a tender was published by the defendants in local newspapers of Gorakhpur on 09.12.2013 and 10.12.2013 for the supply of construction materials for road construction. The plaintiff firm applied pursuant to the said tender which was accepted, and consequently, 13 work orders were awarded to the plaintiff from time to time. On 30.06.2014, the defendants awarded a work order to the plaintiff for the supply of certain construction materials, valued at Rs. 22.31 lakhs.

4. In pursuance of the said work order, the plaintiff firm supplied the construction materials to the defendants strictly in accordance with the

terms of the work order.

5. It is the specific case of the plaintiff that a contract was not duly executed between the plaintiff and the defendants in respect of the said work order, and that, from time to time, the plaintiff firm supplied the construction materials in due fulfillment of the obligations arising out of the work order, so awarded.

6. It was further averred that a payment of Rs. 85.94 lakhs was required to be made to the plaintiff firm by defendant no. 1, but only an amount of Rs.18,54,155/- was paid. Hence, a dispute arose as the defendants failed to pay an amount of Rs. 67,39,845/- towards the construction material supplied by the plaintiff firm in pursuance of work orders awarded to it from time to time. The plaintiff firm claimed that it was also entitled to compound interest at the rate of 18% quarterly on the said outstanding amount. It was further alleged that Mr. P.K. Gupta, acting on behalf of defendant no. 4, demanded a commission of 25%, and since the said commission was not paid, the aforesaid amount was wrongfully withheld from the plaintiff firm.

7. Ultimately, when the amount due to the plaintiff was not paid by the defendants, the plaintiffs have filed this suit for the relief of declaration that they are entitled to get an amount of Rs.67,39,845/- along with 18% quarterly interest from the defendants.

8. During the pendency of the suit, an application no.19-A under Order 7 Rule 11 CPC was filed by defendant nos. 4 to 6 on the ground that the plaintiff has filed a suit for the recovery of Rs.67,39,845/- alongwith interest at the rate of 18% per month. It was averred that the defendant nos.1, 3 and 4 are working in official capacity in District Kushinagar, whereas defendant no.2 is a Government Officer working in Lucknow and defendant nos. 5 and 6 are residents of District Kushinagar. It was averred that defendant no.3 has awarded work orders to the plaintiff, from his office situated in Collectorate, at District Kushinagar and the construction material was also to be supplied in Nagar Panchayat, Hata, District Kushinagar and the cheque paying for the aforesaid material supplied by the plaintiff, was also issued by the above office of defendant no.3, as such, no cause of action ever arose in District Gorakhpur. It was submitted that due to this no cause of action has arisen within the

territorial jurisdiction of this Court, hence, the plaint be rejected under Order 7 Rule 11 C.P.C.

9. The plaintiff submitted its objection 21-C to the defendants above application and averred that the plaintiff firm is situated in Gorakhpur and the construction material was also supplied from Gorakhpur, and the payment was also made to the plaintiff firm at Gorakhpur, which was also accepted by defendant nos.4 to 6, as such, the Gorakhpur Court has jurisdiction to hear and decide the suit. It was further averred that the payment made by the defendants have also been received by the plaintiff's bank in Gorakhpur. It was averred that since the cause of action for filing the suit arose within the jurisdiction of District Court Gorakhpur, as such, the suit was legally maintainable.

10. The trial court by impugned order dated 02.04.2025 has concluded that the tender for supplying construction material was published on 09.12.2013 and 10.12.2013 in newspapers, which were published from Gorakhpur, the work order for supplying the construction material dated 30.06.2014 was issued by the defendants from District Kushinagar, the payment of Rs.22.31 lakhs was also sanctioned by Chairman/District Magistrate (DUDA), Kushinagar on 04.03.2014, the plaintiff firm in compliance of work order dated 20.06.2014 supplied material, which was issued by defendant no.4, another work order nos. 32, 33 and 35 were issued to the plaintiff firm by the Project Officer (DUDA), Kushinagar. The trial court concluded that from time to time work orders were issued to the plaintiff firm for supplying construction material to the defendants.

11. The trial court concluded that as per the terms of the tender, which was accepted by the plaintiff in District Kushinagar, there was a condition that if any dispute arose regarding the terms of the tender, then the jurisdiction for deciding that dispute vested in the Court at Kushinagar. The trial court concluded that the work order was issued to the plaintiff by the Project Director, District Urban Development Authority, Kushinagar and the payment was also to be made by the same authority, and as per terms of the tender, the dispute was only maintainable before the District Court, Kushinagar, hence, the trial court concluded that as per Section 20 of the C.P.C., the District Court at Gorakhpur lacked territorial jurisdiction, as such, the defendants' application under Order 7 Rule 11

CPC was allowed, and consequentially, the plaint was rejected.

12. Learned counsel for the plaintiff-appellant submitted that the tender was published in local newspapers of Gorakhpur, the plaintiff firm is also situated in Gorakhpur, the plaintiff submitted his bid from Gorakhpur, the construction materials were supplied by the plaintiff from Gorakhpur and the part payment by defendants for the construction materials supplied by the plaintiff was also made in the plaintiff's bank account in Gorakhpur, hence, the court at Gorakhpur had the jurisdiction to hear and decide the suit and as such, the trial court has committed error in rejecting the plaint. It was further submitted that instead of rejecting the plaint, it should have been returned for presentation to the competent court under Order 7 Rule 10 CPC, since, the court cannot reject the plaint, for want of jurisdiction under Order 7 Rule 11 CPC. With these submissions, it was prayed that the appeal be admitted and allowed.

13. Per-contra, learned counsel for the defendants-respondents submitted that no cause of action ever arose within the jurisdiction of the District Court at Gorakhpur, as such, the trial court has not committed any illegality in rejecting the plaint under Order 7 Rule 11 CPC.

14. It was submitted that the tender was awarded to the plaintiff firm by the defendants at District Kushinagar. The work order was granted from District Kushinagar, and the construction material in pursuance of the work order, was also supplied by the plaintiff firm at District Kushinagar and the payment was also made by the defendants from District Kushinagar, as such, the dispute was maintainable only before the District Court, Kushinagar.

15. With these submissions, it was prayed that the appeal is meritless and be dismissed at the admission stage.

16. I have heard learned counsel for both the sides, perused the impugned judgment and documents submitted with the appeal.

17. Appeal is admitted.

18. From the documents submitted with the appeal, it is evident that the tender was floated by the defendant no.3 Project Director, District Urban Development Authority (DUDA), District Kushinagar, and the plaintiff

firm made a bid for the tender which was accepted at District Kushinagar and thereafter, from time to time certain work orders were granted to the plaintiff firm by defendant no.3, in compliance of which construction material was supplied at District Kushinagar and when certain payment was not made by the defendants, then the plaintiff has filed the instant suit for the recovery of the balance amount. It is further apparent that except defendant no.2, all the other defendants are resident of District Kushinagar.

19. It is apparent that as per the terms and conditions of the tender, the dispute was only entertainable by the District Court, Kushinagar, as such, the suit was not maintainable before the District Court, Gorakhpur. Neither the office of defendant no.3 was situated in District Gorakhpur, nor any cause of action ever arose within the territorial jurisdiction of District Court Gorakhpur, as such, the trial court has not erred insofar as concluding that the District Court, Gorakhpur had no jurisdiction to hear and decide the suit, but the trial court has erred in not returning the plaint to the plaintiff under Order 7 Rule 10 CPC for presenting before the competent court of jurisdiction. The trial court has certainly erred in rejecting the plaint under Order 7 Rule 11CPC, which was not at all attracted in the facts and circumstances of the case.

20. The Apex Court in the case of ***Exl Careers and another vs Frankfinn Aviation Services Private Limited (2020) 12 SCC 667 (By 3 Judges)***, while considering the procedure to be adopted by the Court in case of lack of jurisdiction, held as under:-

"15. Modern Construction [ONGC v. Modern Construction & Co., (2014) 1 SCC 648 : (2014) 1 SCC (Civ) 617] , referred to the consistent position in law by reference to Ramdutt Ramkissen Dass v. E.D. Sassoon & Co. [Ramdutt Ramkissen Dass v. E.D. Sassoon & Co., 1929 SCC OnLine PC 3 : (1928-29) 56 IA 128 : AIR 1929 PC 103] , Amar Chand Inani v. Union of India [Amar Chand Inani v. Union of India, (1973) 1 SCC 115] , Hanamanthappa v. Chandrashekharappa [Hanamanthappa v. Chandrashekharappa, (1997) 9 SCC 688] , Harshad Chimanlal Modi (2) [Harshad Chimanlal Modi (2) v. DLF Universal Ltd., (2006) 1 SCC 364] and after also noticing Joginder Tuli [Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502] , arrived at the conclusion as follows: (Modern Construction

case [ONGC v. Modern Construction & Co., (2014) 1 SCC 648 : (2014) 1 SCC (Civ) 617] , SCC p. 654, para 17)

“17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.”

Joginder Tuli was also noticed in Harshad Chimanlal Modi but distinguished on its own facts.

16. We find no contradiction in the law as laid down in Modern Construction pronounced after consideration of the law and precedents requiring reconsideration in view of any conflict with Joginder Tuli . Modern Construction lays down the correct law. We answer the reference accordingly."

21. It is well settled that if the Court is not having a jurisdiction to hear and decide the suit, the plaint cannot be rejected under Order 7 Rule 11 CPC and it has to be accordingly returned to the plaintiff for presentation to the competent court of jurisdiction.

22. It is also apparent that under Explanation to Order 7 Rule 10(1) CPC, the appellate or revisional court can also direct, after setting aside the decree passed in a suit, the return of the plaint for presentation before the competent court of jurisdiction.

23. In view of this, the trial court instead of rejecting the plaint, should have returned it to the plaintiff for presentation to the competent court of jurisdiction under Order 7 Rule 10 CPC.

24. Accordingly, the appeal is partly allowed.

25. Consequently, the impugned judgment and decree dated 02.04.2025 insofar as the conclusion of the trial court that it has no territorial jurisdiction to hear and decide the suit, is affirmed but the decision of rejecting the plaint is set aside. The original suit No.244 of 2018 is restored to its original number and the trial court is hereby directed to return the original plaint to the plaintiff in accordance with the provisions of Order 7 Rule 10 CPC, for presentation before the competent Court of jurisdiction.

(Sandeep Jain,J.)

February 10, 2026

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