

**Reserved On : 21/08/2026****Pronounced On : 01/09/2026****IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 2981 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI**

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Approved for Reporting	Yes	No
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SHIVANI FILMS & ANR.

Versus

MARUTI ENTERPRISE THROUGH VIJAYKUMAR DEVABHAI ODEDARA

Appearance:

MR MONARCH PANDYA for MR HRIDAY BUCH(2372) for the Appellants
 MR UTSAV SHAH for MR ASHISH M DAGLI(2203) for the Respondent

CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI**CAV JUDGMENT****PROLOGUE**

1. This appeal u/s 96 r/w Order 41 of the Code of Civil Procedure, 1908 (in short "the Code") is directed against the judgment and decree dated 10th April, 2012 passed below Exh.33 in Special Civil Suit No. 5 of 2006 by the learned Principal Senior Civil Judge, Porbandar, whereby the learned trial court partly decreed the suit of the Respondent (original plaintiff) and directed the Appellant (original defendant) to



pay Rs. 10,00,000/- together with running interest at the rate of 6% interest from the date of filing of the suit till realization.

2. For the sake of convenience and brevity, parties are referred to as per their original status before the learned trial Court.

FACTUAL MATRIX

3. The plaintiff - proprietor of Maruti Enterprise is a film distributor, engaged in film distribution business having its office at Dhoraji and Porbandar, had filed the suit for recovery of Rs. 10,00,000/- with interest at 18% from the defendants. It was alleged that Maruti Enterprise had entered into a contract dated 25th March, 2003 with Shivani Films - defendant firm represented by its partner Mr. Jitubhai K. Shah for the release of the Hindi feature film "Ek Hindustani" in the Saurashtra region, and that, pursuant to this contract, the plaintiff paid Rs. 10,00,000/- in advance to the defendant in installments of Rs. 2,50,000/- each on different dates, for which the defendant issued receipts.

3.1 That, despite repeated requests, the defendant did not handover reels of film for releasing the film and that on 9th February, 2006 the defendant met the plaintiff at the Dreamland Cinema office, Porbandar, and informed him that the film would not be given to him. The plaintiff thereupon claimed the return of the Rs. 10,00,000/- paid to the defendant; the resulting dispute led to a confrontation



between the parties, and ultimately to the filing of a criminal complaint. Subsequently, the plaintiff accordingly filed the suit for recovery of Rs. 10,00,000/- together with interest at 18% per annum.

3.2 Summons was served upon the defendant, who initially did not appear, as a result of which the defendant's right to file a written statement was closed. Subsequently, upon an application filed by the defendant at Exh. 6, the defendant's right to file a written statement was restored, and the written statement was thereafter filed at Exh. 18.

3.3 In the written statement, the defendant, besides denying the allegations of the plaintiff, contended that: (i) the Civil Court at Porbandar had no territorial jurisdiction to entertain the suit; (ii) the receipts relied upon by the plaintiff were bogus and fabricated; (iii) no contract had been executed between the defendant and the plaintiff; (iv) the agreement did not confer upon the plaintiff any right to release the feature film, and that, in any event, the print of the film was never furnished to the defendant by the producer and could accordingly not have been passed on for release; and (v) a complaint in relation to the dispute was pending before the Indian Motion Picture Distributors' Association, and the plaintiff had filed the suit, without awaiting the outcome of that proceeding, in order to pressurize the defendant. All other allegations in the plaint were denied.

3.4 At trial, the plaintiff led documentary and oral evidence;



the defendant did not lead any oral or documentary evidence. The learned trial Court passed the final judgment and decree partly decreeing the suit in favour of the plaintiff.

3.5 Aggrieved thereby, the defendant preferred the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT - DEFENDANT

4. Learned counsel Mr. Monarch Pandya for learned advocate Mr. HC Buch for the appellant - defendant submitted that the agreement in question was signed by the father of the plaintiff and not by the plaintiff himself, and therefore, plaintiff - Vijaykumar Odedara had not derived any right to sue the defendant upon the agreement between the parties.

4.1 Learned counsel for the defendant further relied upon the judgment of the Hon'ble Apex Court in case of **Rakesh Kumar Verma v. HDFC Bank Limited, AIR 2025 SC 1917** as well as section 21 of the Code and submitted that Clause 18 of the agreement executed between the parties provides that the Court of Mumbai City alone has jurisdiction to decide disputes between the parties. On this basis, it was submitted that the decree passed by the learned trial Court is a nullity for want of territorial jurisdiction, and that the appeal ought to be allowed and the judgment and decree of the trial court ought to be quashed and set aside.

4.2 Upon above submissions, learned advocate for the



defendant prays to allow the First Appeal and to quash and set aside the impugned judgment and decree.

SUBMISSIONS ON BEHALF OF THE RESPONDENT - PLAINTIFF

5. Learned counsel Mr. Utsav Shah for the respondent plaintiff submitted, with reference to Section 20(c) of the Code that the cause of action for the recovery suit arose at Porbandar, where the defendant failed and refused to repay the amount received under the agreement between the parties, and that the Court at Porbandar accordingly had territorial jurisdiction to try and decide the suit. He would further submit that in view of Section 21(1) of the Code, an objection as to the place of suing cannot be entertained by an appellate 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 a consequent failure of justice. It was submitted that the defendant, not having raised any objection as to territorial jurisdiction before settlement of the issues at first instance, could not raise the objection for the first time at the appellate stage.

5.1 Learned advocate Mr. Utsav Shah would further submit that applying the test of prejudice, the defendant had failed to establish that passing of the decree by the learned civil Court at Porbandar had prejudiced the defendant's case. Reference was made to the cross-examination of the plaintiff conducted



on behalf of the defendant, and it was submitted that not a single question had been put in that cross-examination suggesting that the Civil Court at Porbandar lacked territorial jurisdiction to try and decide the suit.

5.2 In these circumstances, it was submitted by learned advocate Mr. Shah that the defendant's challenge to the competence of the learned trial court was not permissible at this stage, and that the appeal ought to be dismissed.

POINTS FOR DETERMINATION

6. Having heard rival submissions of learned counsel for both sides and going through the R & P as well as impugned judgment and decree, the following points arose for determination:

“1. Whether the defendant is entitled to raise the objection of lack of territorial jurisdiction at the appellate stage and whether such a plea was available to the defendant even during the trial?

2. Whether, on an application of the test of prejudice, the judgment and decree passed by the learned Principal Senior Civil Judge, Porbandar caused any inconvenience, prejudice, or occasioned failure of justice to the defendant?

3. Whether the learned trial court committed any error in decreeing the suit in favour of the plaintiff?



4. What order?"

FINDINGS AND REASONING OF THE COURT

7. Before I discuss the rival submissions canvassed by learned advocates for both the parties, let me note that the defendant, in the suit proceedings, apart from filing the written statement and cross-examining the plaintiff's evidence, did not otherwise participate in proceedings, and led evidence to prove the pleadings raised in the written statement. It has to be observed that it is a settled principle of law that pleading cannot take the place of proof.

8. Let me refer the issues framed by the learned trial court noting that the suit was ultimately decreed in favour of the plaintiff in absolute terms. The issues framed by the learned trial Court reads as under:-

"1. Whether the plaintiff proves that on 25-03-03, the defendant No. 2 has made an agreement with him regarding the distribution of film "Ek Hindustani"?

2. Whether the plaintiff proves that he has paid Rs. 10,00,000/- to the defendant No. 2 on different dates according to agreement dated 25-03-03?

3. Whether the plaintiff proves that as the defendants have not made specific performance of the contract and therefore, the plaintiff is entitled to get relief prayed for?

4. Whether the plaintiff proves that he is entitled to



get interest a the rate of 18% p.a. from the defendants?

5. Whether the defendant No. 2 proves that on 25-03-03, he has made the suit agreement with the owner of M/s. Maruti Enterprise, Dhoraji and not with the plaintiff?

6. What order and decree?”

9. Issue Nos. 1 and 2 were answered in the affirmative, Issue No. 3 was answered partly in the affirmative, Issue No. 4 was held partly in the affirmative (with the decretal amount held to carry interest at 6%), and Issue No. 5 was answered in the negative. On Issue No. 6, the trial court passed the final order partly decreeing the suit in favour of the plaintiff.

10. The pivotal argument of learned counsel for the defendant was that the learned trial Court lacked inherent/territorial jurisdiction to decide the suit in terms of Clause 18 of the agreement executed between the parties. It is further argument of learned advocate Mr. Monarch Pandya that clause 18 of the agreement executed between the parties states that Court at Mumbai only has jurisdiction to decide the issue of jurisdiction.

11. On examining the written statement filed by the defendant [Exh. 18], it appears that, other than in paragraphs 4 and 10 of the written statement, no contention regarding the jurisdiction of the court was raised, and that even in



paragraphs 4 and 10, the objection was a general and superficial statement that the Court at Porbandar had no jurisdiction to try and decide the suit, without pleading why or how the Civil Court at Porbandar lacked jurisdiction. To be noted that no reference whatsoever to Clause 18 of the agreement was made in the written statement in support of the jurisdictional objection.

12. Let refer section 21(1) of the Code as under:

“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 a consequent failure of justice.

13. Section 21(1) of the Code infers that an objection as to the place of suing shall not 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 a consequent failure of justice. In the present case, the Court found that the defendant had not taken any such objection at the first instance at the earliest possible opportunity or before settlement of the issues, and that no specific application raising the objection was shown to have been made before the trial Court to contend that the learned trial Court has no territorial jurisdiction to try and decide the suit. In view of aforesaid provisions of law, at the



appellate stage, the defendant is not entitled to raise other objection. The second test is that such objection can be allowed only if it resulted into consequent failure of justice.

14. A specific question was put to learned counsel for the defendant as to how the defendant would have been prejudiced by the decree having been passed by the learned trial court at Porbandar instead of a court at Mumbai, and that learned counsel was unable to answer this question.

15. Let me observe that the Code of Civil Procedure draws a distinction between an inherent lack of jurisdiction, which may render a decree passed by that court void, however, an objection to territorial or pecuniary jurisdiction does not automatically render a decree void.

16. The Hon'ble Apex Court in case of **Subhash Mahadevasa Habib Vs. Nemasa Ambasa Dharmadas (Dead) by Lrs and others, (2017) 13 SCC 650**, held in para 33 as under:-

“33. What is relevant in this context is the legal effect of the so-called finding in O.S. No. 4 of 1972 that the decree in O.S. No. 61 of 1971 was passed by a court which had no pecuniary jurisdiction to pass that decree. The Code of Civil Procedure has made a distinction between lack of inherent jurisdiction and objection to territorial jurisdiction and pecuniary jurisdiction. Whereas, an inherent lack of jurisdiction may make a decree passed by that court one without jurisdiction or void in law, a decree passed by a court lacking territorial jurisdiction or pecuniary



jurisdiction does not automatically become void. At best it is voidable in the sense that it could be challenged in appeal therefrom provided the conditions of Sec. 21 of the Code of Civil Procedure are satisfied.”

17. Yet, in another judgment, which is pressed into service, is in case of **Sneh Lata Goel Vs. Pushplata and others, (2019) 3 SCC 594**, the Hon’ble Apex Court surveyed slew of authorities after referring to section 21 of the Code and held in para 14 to 23 as under:-

“14. The learned counsel appearing on behalf of the respondents has submitted that the objection as to the lack of territorial jurisdiction was raised in the written statement before the trial court. But evidently the suit was decreed ex-parte after the respondents failed to participate in the proceedings. The provisions of Section 21(1) contain a clear legislative mandate that an objection of this nature has to be raised at the earliest possible opportunity, before issues are settled. Moreover, no such objection can be allowed to be raised even by an appellate or revisional jurisdiction, unless both sets of conditions are fulfilled.

15. Learned counsel appearing on behalf of the respondent has placed a considerable degree of reliance on the judgment of four Judges of this Court in Kiran Singh (supra). In that case, there was a dispute in regard to the valuation of the suit. The issue would ultimately determine the forum to which the appeal from the judgment of the trial court would lie. If the valuation of the suit as set out in the plaint was to be accepted, the appeal would lie to the district court. On the other hand, if the valuation as determined by the High Court was to be accepted, the appeal would lie before the High Court and not the District Court. It was in this background that this



Court held that as a fundamental principle, a decree passed by a court without jurisdiction is a nullity and that its validity could be set up wherever it is sought to be enforced or relied upon, even at the stage of execution in a collateral proceeding. Moreover, it was held that a defect of jurisdiction, whether pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at the very authority of the court to pass the decree and cannot be cured even by the consent of the parties.

16. *The Court in Kiran Singh case then proceeded to examine the effect of Section 11 of the Suit Valuation Act 1887 on this fundamental principle. This Court held thus:*

"7. Section 11 enacts that notwithstanding anything in Section 578 of the Code of Civil Procedure, an objection that a court which had no jurisdiction over a suit or appeal had exercised it by reason of overvaluation or undervaluation, should not be entertained by an appellate court, except as provided in the section...a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for overvaluation or undervaluation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on overvaluation or undervaluation, should be dealt with under that section and not otherwise.

The reference to Section 578, now Section 99 CPC, in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the courts which passed them lacked jurisdiction as a result of overvaluation or undervaluation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be



entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it.

With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or Revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits." (Emphasis supplied).

17. *Dealing with the question of whether a decree passed on appeal by a court which had jurisdiction to entertain it only by reason of undervaluation or overvaluation can be set aside on the ground that on a true valuation that court was not competent to entertain the appeal, the Court held that a mere change of forum is not 'prejudice' within Section 11 of the Suits Valuation Act. This Court held thus:*

"12...it is impossible on the language of the section to come to a different conclusion. If the fact of an appeal being heard by a Subordinate Court or District Court where the appeal would have lain to the High Court if the correct valuation had been given is itself a matter of prejudice, then the decree passed by the Subordinate Court or the District Court must, without



more, be liable to be set aside, and the words "unless the overvaluation or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits" would become wholly useless. These words clearly show that the decrees passed in such cases are liable to be interfered with in an appellate court, not in all cases and as a matter of course, but only if prejudice such as is mentioned in the section results. And the prejudice envisaged by that section therefore must be something other than the appeal being heard in a different forum. A contrary conclusion will lead to the surprising result that the section was enacted with the object of curing defects of jurisdiction arising by reason of overvaluation or undervaluation, but that, in fact, this object has not been achieved. We are therefore clearly of opinion that the prejudice contemplated by the section is something different from the fact of the appeal having been heard in a forum which would not have been competent to hear it on a correct valuation of the suit as ultimately determined." (Emphasis supplied).

18. *The Court in Kiran Singh case disallowed the objection to jurisdiction on the ground that no objection was raised at the first instance and that the party filing the suit was precluded from raising an objection to jurisdiction of that court at the appellate stage. This Court concluded thus:*

"16. If the law were that the decree of a court which would have had no jurisdiction over the suit or appeal but for the overvaluation or undervaluation should be treated as a nullity, then of course, they would not be stopped from setting up want of jurisdiction in the court by the fact of their having themselves invoked it. That, however, is not the position under Section 11 of the Suits Valuation Act."

Thus, where the defect in jurisdiction is of kind which falls within Section 21 of the CPC or Section 11 of the Suits Valuation Act 1887, an objection to jurisdiction cannot be raised except in the manner and subject to



the conditions mentioned thereunder. Far from helping the case of the respondent, the judgment in Kiran Singh (supra) holds that an objection to territorial jurisdiction and pecuniary jurisdiction is different from an objection to jurisdiction over the subject matter. An objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit.

19. *In Hiralal v Kalinath, AIR 1962 SC 199, a person filed a suit on the original side of the High Court of Judicature at Bombay for recovering commission due to him. The matter was referred to arbitration and it resulted in an award in favour of the Plaintiff. A decree was passed in terms of the award and was eventually incorporated in a decree of the High Court. In execution proceedings, the judgment-debtor resisted it on the ground that no part of the cause of action had arisen in Bombay, and therefore, the High Court had no jurisdiction to try the cause and that all proceedings following thereon were wholly without jurisdiction and thus a nullity. Rejecting this contention, a four judge Bench of this Court held thus:*

"The objection to its [Bombay High Court] territorial jurisdiction is one which does not go to the competence of the court and can, therefore, be waived. In the instant case, when the plaintiff obtained the leave of the Bombay High Court on the original side, under clause 12 of the Letters Patent, the correctness of the procedure or of the order granting the leave could be questioned by the defendant or the objection could be waived by him. When he agreed to refer the matter to arbitration through court, he would be deemed to have waived his objection to the territorial jurisdiction of the court, raised by him in his written statement. It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very



root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure." (Emphasis supplied)."

20. *In Harshad Chiman Lal Modi v DLF Universal Ltd., 2005 7 SCC 791, this Court held that an objection to territorial and pecuniary jurisdiction has to be taken at the earliest possible opportunity. If it is not raised at the earliest, it cannot be allowed to be taken at a subsequent stage. This Court held thus:*

"30. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity."

21. *In Hasham Abbas Sayyad v Usman Abbas Sayyad, 2007 2 SCC 355 a two judge Bench of this Court held thus:*

"24. We may, however, hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure, and a decree passed by a court



having no jurisdiction in regard to the subject-matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with."

22. *Similarly, in Mantoo Sarkar v Oriental Insurance Co. Ltd, 2009 2 SCC 244 a two judge Bench of this Court held thus:*

"20. A distinction, however, must be made between a jurisdiction with regard to the subject-matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject-matter of claim.in our opinion, the court should not have, in the absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal."

23. *The objection which was raised in execution in the present case did not relate to the subject matter of the suit. It was an objection to territorial jurisdiction which does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. An executing court cannot go behind the decree and must execute the decree as it stands. In Vasudev Dhanjibhai Modi v Rajabhai Abdul Rehman, 1970 1 SCC 670 the Petitioner filed a suit in the Court of Small Causes, Ahmedabad for ejecting the Defendant-tenant. The suit was eventually decreed in his favour by this Court. During execution proceedings, the defendant-tenant raised an objection that the Court of Small Causes had no jurisdiction to entertain the suit and its decree was a nullity. The court executing the decree and the Court of Small Causes rejected the contention. The High Court reversed the order of the Court of Small Causes and dismissed the petition for execution. On appeal to this Court, a three judge Bench of this Court, reversed the*



judgment of the High Court and held thus:

"6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

8. If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding."

18. In recent judgment in case of **Punjab National Bank Vs. Atin Arora** and others arising out of SLP (C) Nos.15347 – 15348 of 2020, the Hon'ble Apex Court in para 4 held as under:-

"4. The High Court, while exercising its discretion, overlooked the provisions of [Section 21](#) of the Code of Civil Procedure, 1908, whose principles and rule should be applied in the present case. The principle enjoins that objections regarding the place of suing shall not be allowed unless such objection is taken in the Court/tribunal of first instance at the earliest possible opportunity. This Court, in [Harshad Chiman Lal Modi v. DLF Universal Ltd. and Anr.](#),³ has held that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. These principles were reiterated by this Court in [Subhash Mahadevasa Habib v. Nemasa Ambasa Dharmadas \(Dead\) by LRS.](#) and Ors."



19. Applying the aforesaid authorities to the facts of the case, what appears that the defendant had failed to prove that the decree passed by the learned Principal Senior Civil Judge, Porbandar had occasioned a failure of justice.

20. Nonetheless, let me consider Clause 18 of the agreement between the parties, which reads as under:-

“That dispute, if any, arising out of the interpretation or implementation of the provisions hereof shall be subject to the jurisdiction of the courts of MUMBAI CITY only.”

21. Clause 18 provides that disputes, if any, arising out of the interpretation or implementation of the provisions of the contract shall be subject to the jurisdiction of the Court of Mumbai City only. The present suit, being one for recovery of money advanced by the plaintiff to the defendant, is not a dispute of the kind covered by Clause 18. Therefore, taking reference to a provision of Section 20(c) of the Code, a suit may be filed in a court within the local limits of whose jurisdiction the cause of action wholly or in part arises, and that, since the amount was paid by the plaintiff to the defendant at Porbandar, the Civil Court at Porbandar also had jurisdiction to try and decide the suit.

22. It is interesting that the defendant did not meaningfully participate in the suit proceedings, except at two occasions; firstly by filing the written statement and secondly, cross-examining the plaintiff, and that in that cross-examination no



question was put suggesting that the Civil Court at Porbandar lacked territorial jurisdiction. On facts, it is important to visualize that learned counsel for the defendant had not been able to raise any doubt regarding the four receipts placed on record by the plaintiff, evidencing payment of Rs. 10,00,000/-, in installments of Rs. 2,50,000/- each, nor had the defendant placed anything on record to show that the said amount had been repaid to the plaintiff.

23. On the contention that the agreement had not been signed by the plaintiff, it can be observed that the agreement [Exh. 23] was executed between the defendant firm - Shivani Filams and plaintiff firm - Maruti Enterprise, and that, at the time the agreement executed on 25th March, 2003, the proprietor of Maruti Enterprise was the plaintiff's father. The plaintiff had admitted in cross-examination that his father had died in 2004, and that, by the time the suit was filed in 2006, the plaintiff had become the proprietor of Maruti Enterprise. Thus, the plaintiff had accordingly rightly filed the suit on the strength of the agreement executed in favour of Maruti Enterprise, and that it was not the defendant's case that Maruti Enterprise had at any point been appointed as a sub-distributor or provided with a print of the film.

24. Thus, it is proved the defendant, having breached the terms and conditions of the contract, was liable to return the benefit received under the agreement, and that the learned trial court had rightly decided the suit in favour of the plaintiff. The Court found no reason to interfere with the



judgment of the learned trial court.

25. As regards the judgment relied upon by learned counsel for the defendant, let me observe that in that case the issue of territorial jurisdiction had been raised at the first instance itself, and that the Hon'ble Apex Court, dealing with a jurisdiction clause in a contract with reference to Section 28 of the Indian Contract Act, had held that where parties agree that their dispute shall be governed by a specific court, such agreement excludes other courts from entertaining the suit. Thus, the facts of the case relied upon by the defendant did not assist the defendant in the present matter.

ORDER

26. For the foregoing reasons, the appeal fails and is accordingly, dismissed. Interim relief, if any, granted earlier stands vacated forthwith.

27. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

SHEKHAR P. BARVE

(J. C. DOSHI,J)