



Niti

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.237 OF 2025(F)**

M/S. VIVIENDA LUXURY HOMES
LLP

A Limited Liability Partnership,
Bearing LLP

Identification No: LLPIN:AAX-0237

Having its registered office at: 8-2-686/B/1

Road No. 12, Banjara Hills, Hyderabad,
Telangana - 500 034,

Represented herein through its
Designated Partner,

Mr. Nitin Bhatia,

S/o Major Bridhiv Bhatia,

Aged: 53 years, Business

R/o: Villa No. 48, Aditya Casa Grande,
Gandipet Road, Gandipet, K.V.

Rangareddy, Telangana - 500 075.

...Petitioner

Versus

1. M/S. GREGORY & NICHOLAS

A Partnership Firm,

Registered under the Indian Partnership
Act, 1932

Bearing PAN Card No: AADFG2702Q,

Having its registered office at: 99-C,

Tardeo, Mumbai-400 034;

And presently having office at: Boqueachi

Arrady, House No. 377/2, Parra, Bardez,

Goa-403 510,

Through its Partners,

(a) MR. RAHUL NICHOLAS SHAH,

(b) MR. GREGORY DANIEL

BHIKALAL SHAH.

2. MR. RAHUL NICHOLAS SHAH
S/o: Mr. Christopher Robin Shah,
Aged: 55 years, Business,
R/o: 82, Club Cabana, Arpora, Bardez,
North Goa, Goa - 403 516.
Mob No: +91 91582 57000

3. MR. GREGORY DANIEL
BHIKALAL SHAH,
S/o: Mr. Christopher Robin Shah,
Aged: 58 years, Business,
R/o: V.E. 5 Riviera Palms Arpora, Bardez,
North Goa, Goa - 403 516.
Mob No: +91 98235 39000

...Respondents

Mr Nigel Da Costa Frias with Ms S. Nishad, Advocate for the
Petitioner.

Mr Shivan Desai with Mr Jatin Ramaiya and Ms Riya Amonkar,
Advocates for the Respondents.

CORAM : **NIVEDITA P. MEHTA, J.**

Reserved on : **13th JUNE 2025**

Pronounced on: **27th JUNE 2025**

JUDGMENT : *(Per Nivedita P. Mehta, J.)*

1. Heard Mr Nigel Da Costa Frias with Ms S. Nishad for the
petitioner and Mr Shivan Desai with Mr Jatin Ramaiya and Ms Riya
Amonkar for the respondents.

2. Rule. The rule is made returnable forthwith with the consent of
and at the request of the learned counsel appearing for the parties.

3. The instant Writ Petition has been filed invoking the
jurisdiction of this Court under Article 226 as well as Article 227 of the

Constitution of India, 1950 praying for the issuance of a writ of *certiorari* to quash and set aside the impugned order dated 25.11.2024 passed by the *Ad-hoc* Civil Judge, Senior Division, Mapusa (hereinafter referred to as 'Trial Court') in Commercial Suit No.20/2024/B. The petitioner has also prayed for the issuance of a consequential direction to the Trial Court to decide the application for amendment of the petition filed by the plaintiff prior to any other applications filed in relation to the suit. Further, the petitioner has prayed for interim relief in the nature of stay of further proceedings in Commercial Suit No.20/2024/B.

4. The petitioner (original plaintiff) is a limited liability partnership engaged in the business of construction of homes for the purpose of sale as well as providing their professional services of carrying out construction of homes for clients. Respondent no.1 (original defendant no.1) is a partnership firm represented through its partners, respondent nos.2 and 3 (original defendant nos.2 and 3).

5. Briefly, it is the case of the petitioner that an oral agreement was entered into between the petitioner and respondent no.1 for the purchase of a property known as 'Aradi', situated at Village Parra, Taluka Bardez, District North Goa along with an Industrial Unit constructed thereon bearing house no. 377/2 admeasuring an area of 2,000 sq. mts of built-up area and a total area of approximately 10,300 sq. mts. surveyed in the Old Cadastral survey no. 2514 (part) and presently bearing survey no.211, sub-division no.1 (hereinafter referred to as 'Suit Property'). Respondent no.1 was the owner of the Suit

Property which the petitioner had sought to purchase for the purpose of developing the business of the petitioner. In furtherance of the petitioner's desire to purchase the Suit Property, negotiation was initiated in November, 2003, whereby the petitioner and the respondents resolved to execute the sale for a total consideration of Rs.8,05,00,000/- (Rupees Eight Crores Five Lakhs Only). The various facets and modalities necessary for the completion of the process of the sale were negotiated and mutually agreed upon by the petitioner and the respondents.

6. Pursuant to the oral agreement between the parties, the petitioner's lawyer, at the behest of the petitioner, started to investigate the title of the Suit Property. Upon being satisfied with the outcome of the diligence undertaken by the petitioner's lawyer, the petitioner mutually agreed to forgo the execution of a formal agreement between the petitioner and respondent no. 1, and move directly, to execute and register a Deed of Sale in respect of the Suit Property before the Sub-Registrar of Bardez. Upon confirmation by respondent no.2, the petitioner's lawyer proceeded to upload the confirmed draft of the Deed of Sale in respect of the Suit Property on the website of the Sub-Registrar of Bardez for obtaining the approval for the Sub-Registrar which was subsequently accorded in April, 2024.

7. In furtherance of the sale, the respondent nos. 2 and 3 agreed to travel to Goa for the registration of the Deed of Sale and communicated this to the petitioner via Whatsapp. Based on the confirmation of the intention of the respondents to travel to Goa as well

as the confirmation of the dates of travel, the petitioner paid the stamp duty, registration charges, mutation fees and *tatkal* charges amounting to Rs.73,16,080/- (Rupees Seventy Three Lakhs Sixteen Thousand and Eighty only). The petitioner's lawyer also made an appointment dated 14.05.2024 before the Sub-Registrar of Bardez.

8. The majority of the communication in relation to the sale took place between the petitioner and respondent no.2 who was purportedly the designated partner for the purposes of the sale of the Suit Property. On 11.05.2024, respondent no.2 informed the petitioner over a phone call that he was unable to contact respondent no.3 whose presence in Goa was necessary for the registration of the Deed of Sale. The petitioner was shocked to hear this as he had expended time, energy and resources in furtherance of the sale, presuming that both parties were acting in good faith. After failing to execute the registration of the Deed of Sale on the agreed upon date, the petitioner extended multiple offers to the respondents to agree upon a date for rescheduling the appointment before the Sub-Registrar which were ignored by the respondents. The petitioner, subsequently, made appointments with the Sub-Registrar for 04.06.2024 and 10.06.2024, but the respondents did not make themselves available on either date. It is the case of the petitioner that the wilful failure to come forth and conclude the Sale in terms, orally agreed upon constitutes breach of the oral agreement of sale.

9. Aggrieved by this, the petitioner was compelled to file Commercial Suit No.20/2024/B, praying, *inter alia*, that the Trial

Court declare that there this a valid and subsisting oral agreement between the petitioner and respondents, that respondent no.1 be ordered and decreed to specifically perform the oral agreement. In the alternative, the petitioner prayed for damages and/or compensation to the tune of Rs.8,00,00,000/- (Rupees Eight Crores Only) with 18% interest from the date of the filing of the suit in lieu of the specific performance.

10. The petitioner had also prayed for interim relief in the nature of maintenance of status quo as regards the creation of third party rights in the Suit Property, which was granted by the Trial Court *vide* order dated 13.06.2024. An application for the extension of the order granting status quo has been filed by the petitioner before the Trial Court, which is yet to be decided.

11. The respondents filed a written statement, wherein they categorically denied and refuted the claims and allegations brought to the fore by the petitioners by way of the plaint. The respondents had agitated before the Trial Court that the petitioner failed to demonstrate the Suit Property's exclusive use for trade or commerce which was necessary to establish jurisdiction as laid down in *Ambalal Sarabhai Enterprise Ltd. V/s. K.S. Infraspace LLP¹*.

12. In this context, the respondents had pleaded before the Trial Court that the plaint should be returned for filing in the court of competent jurisdiction. Subsequently, on 21.08.2024, the respondents

¹ (2020) 15 SCC 585

filed an application for return of plaint, submitting that the commercial suit that had been instituted before the Trial Court was filed for adjudication of a dispute that was not commercial in nature under the provisions of the Commercial Courts Act, 2015. The respondents invoked section 2(1)(c)(vii) of the Commercial Acts, 2015 to impress upon the Trial Court that only disputes arising out of agreements relating to immovable property used exclusively in trade and commerce ought to be considered as commercial disputes. It was further submitted that since the plaint does not disclose the requisite facts or averments to establish the dispute between the parties as being commercial in nature, it ought to be returned.

13. On 04.10.2024, the petitioner filed their reply to the application of return of plaint, by which the petitioner made specific submissions to demonstrate that the suit is a commercial dispute within the definition given under the Commercial Court Act, 2015. Subsequently on 05.10.2024, the petitioner moved an application seeking amendment of the plaint to incorporate additional averments and file additional documents. The contents of the proposed amendments which were sought to be added were clarificatory in nature and were, as per the petitioner, moved to remedy the defects if any and to establish that the dispute was commercial in nature and therefore, the Court had jurisdiction to adjudicate upon the suit.

14. *Per Contra*, the respondents contended before the Trial Court that their application for return of plaint ought to be decided before the Trial Court decided the application for amendment of plaint. The

respondents advanced the argument that since the Trial Court lacked jurisdiction to enter the suit, by extension, they also lacked jurisdiction to entertain an application for amendment. However, the petitioners stood firm on their stance that the application for amendment of the plaint should be allowed first, submitting that the Trial Court did not lack competent jurisdiction and that the amendments which were sought were merely clarificatory in nature.

15. After hearing the arguments advanced on behalf of either parties that have been discussed hereinabove, the Trial Court passed the impugned order. The Trial Court opined that the application for return of plaint had to be decided prior to the application for amendment and that by allowing the application for amendment, the application for return of plaint cannot be frustrated. The Trial Court has further observed that neither did the petitioner submit that the plaint suffered from defects which were sought to be rectified nor are there any pleadings pertaining to jurisdiction of the Trial Court that are sought to be incorporated by way of the amendment.

16. It is pertinent to note that the impugned order does not conclusively decide either the application for amendment or the application for return of plaint, but simply delineates the position of the Trial Court that the application for return of plaint has to be decided before the application for amendment of the plaint. The impugned order specifies that since the application for amendment of plaint has been filed only after the Trial Court has heard the arguments advanced

by the petitioner concerning the application for return of the plaint filed by the respondent.

17. In support of his contentions, Mr. Nigel Da Costa Frias, the learned counsel for the petitioner canvassed the following arguments to buttress his case:

17.1. The observation of the Trial Court that the application filed by the respondents for return of plaint on the ground of lack of inherent jurisdiction has to be decided prior to the application for amendment of the plaint and by allowing the application for amendment of the plaint, the application for return of plaint filed by the respondents cannot be frustrated. This observation clearly implies that the Trial Court drew an inference that it lacks the inherent jurisdiction to entertain the suit and hence the application for the return of the plaint has to be considered before any other application.

17.2. Specifically, the observation of the Trial Court that the application for return of the plaint filed by the respondent cannot be allowed to be frustrated by considering the application for amendment is perverse and arbitrary.

17.3. The stance of the defendant would not be prejudiced against if the application for amendment is heard first. There is no right that has accrued in favour of the respondents that would be defeated, whereas, to the contrary, the petitioner would be greatly prejudiced against if they are non-suited on a technicality which may be cured.

17.4. Rules of procedure serve as the handmaiden of justice and cannot be harnessed to defeat the cause of justice. The form in which a pleading is made as well as the lack of a plea are matters which pertain to procedure which may always be corrected, therefore an opportunity has to always be afforded to the party that seeks an amendment of plaint to cure any lacunae before drastic measures such as return or rejection of plaint are resorted to.

17.5. The petitioner seeks to introduce pleadings in the plaint by virtue of the proposed amendment which would illustrate that the Trial Court has jurisdiction to entertain the suit. It is reiterated that the dispute between the parties is a commercial dispute and is therefore rightly filed before the Commercial Court.

17.6. The Trial Court does not lack inherent jurisdiction to entertain the suit. Lack of inherent jurisdiction refers to a scenario when a court has no jurisdiction to entertain the case due to a lack of territorial, pecuniary or subject matter jurisdiction. For instance, the question of a lack of subject matter jurisdiction would arise in a scenario where a suit which is cognizable by a Revenue Court is brought before a Civil Court or where a rent case which lies solely before a rent tribunal is brought before a Civil Court. The question of subject matter jurisdiction would equally arise in cases where, by a statutory provision a special forum is created and conferred with jurisdiction to adjudicate upon disputes arising out of the implementation of the provisions of the statute, and the jurisdiction of the civil court is expressly barred.

17.7. The argument advanced on behalf of the respondents that the pleadings on the plaint do not indicate that the dispute is a commercial dispute as defined under section 2(1)(c)(vii) of the Commercial Courts Act, 2015, is a matter to be considered on merits, perhaps by framing a preliminary issue.

17.8. If the Trial Court opines that the pleadings in the plaint are defective, then an opportunity to rectify the defects has to be afforded to the petitioner, provided that no prejudice or injustice is caused to the respondents. In the present case, no such prejudice or injustice will be caused.

17.9. The suit is presently at the preliminary stages and issues are yet to be framed. If the Trial Court is pleased to return the plaint, upholding the objection of the respondent, the time that has already passed in the course of the proceedings will be wasted.

17.10. It appears that the Trial Court has proceeded based on the principles that emanate from the provisions of section 9A of the Code of Civil Procedure, 1908 which is not applicable in this case.

17.11. In support of his arguments, the learned counsel for the petitioner has placed reliance on the rulings in *Kamalakar Eknath Salunkhe V/s. Baburav Vishnu Javalkar and ors.*², *Goverdhan Bang and Jt. Family of Kaniram Laxminarayan V/s. Govt. of Union of India*³, *Archie Comic Publications Inc. V/s. Purple Creations Pvt.*

² (2015) 7 SCC 321

³ 1953 SCC OnLine Hyd 87

*Ltd. & ors.*⁴, *Nusli Neville Wadia V/s. Ivory Properties & Ors.*⁵, *Varun Pahwa V/s. Renu Chaudhary*⁶, *M/s. Ganesh Trading Co. V/s. Moji Ram*⁷, *Indofer Society & Ors. V/s. Director General of Foreign Trade & Ors.*⁸ and *Industrial Credit and Investment Corporation of India (I.C.I.C.I.) V/s. Sharad Khanna*⁹.

18. *Per Contra*, the learned counsel appearing behalf of the respondents has made the following submissions to substantiate his case:

18.1. The Trial Court has neither decided either the issue of its own jurisdiction nor has it determined the merits of the application for amendment. It has merely set a course of proceedings and deemed it fit to decide the issue pertaining to lack of inherent jurisdiction prior to granting any further relief in this matter.

18.2. Commercial Courts are empowered to take cognizance of commercial disputes only and no ordinary dispute can be adjudicated before Commercial Courts. Commercial Courts are special courts, i.e. a class of courts which is enabled to take cognizance of commercial disputes as defined under section 2(1)(c) of the Commercial Courts Act, 2015.

⁴ 2010 SCC OnLine Del 3101

⁵ (2020) 6 SCC 557

⁶ (2019) 15 SCC 628

⁷ (1978) 2 SCC 91

⁸ 2001 SCC OnLine Cal 26

⁹ 1993 (1) Mh.L.J. 448

18.3. The Hon'ble Supreme Court has opined in *Ambalala Sarabhai Enterprises Ltd.* (supra) that the words “used exclusively in trade or commerce” are not to be interpreted purposefully, the word “used” denotes “actually used” and it cannot be either “ready to use or likely to be used”, it should be actually “actually used”.

18.4. In the absence of specific pleadings/averments in the plaint disclosing the jurisdiction of the Court, such a Court cannot assume jurisdiction. In the absence of specific pleadings *qua* the nature of the user of immovable property or statement that the Suit Property is used for commercial purpose, Commercial Court cannot take cognizance of the dispute.

18.5. The power to allow or to disallow an amendment is a substantial power vested in the Court which has inherent jurisdiction. A Court which has no inherent power to decide the dispute, cannot allow or disallow an amendment. While the procedure regulating amendment of pleadings is given under Order VI Rule 17 of the Code of Civil Procedure, 1908, the substantial power to grant such amendment is given under section 153 of the Code of Civil Procedure, 1908.

18.6. In the context of an objection under Order VII Rule 10 of the Code of Civil Procedure, 1908, a Court which lacks jurisdiction cannot grant an amendment, by which the court confers jurisdiction upon itself.

18.7. The nature of objections as provided for under Order VII Rule 10 is mutually exclusive to the objections given under Order VII Rule

11 of the Code of Civil Procedure, 1908. If an objection under Order VII Rule 10, and there is no factual foundation or a foundation in the plaint in respect of a jurisdictional fact, the court lacks jurisdiction to entertain an application for amendment under Order VI Rule 17.

18.8. The plaint proceeds entirely on the premise that there is an oral contract for sale of immovable property. The only statement to the effect that the transaction is commercial in nature in terms of section 2 of the Commercial Courts Act, 2015 is found in paragraph 26 of the plaint. The foundational factual ingredients have to be in relation to the use of property exclusively for trade and commerce under section 2 of the Commercial Courts Act, 2015. Paragraph 26 does not disclose any foundation of a commercial dispute and, the petitioner, cannot seek an amendment under the garb that is clarificatory in nature.

18.9. The pleadings contained in the plaint do not disclose juridical facts. The plaint is bereft of any material averments that would bring the dispute under the ambit of Section 2(i) of the Commercial Courts Act, 2015. The plaint only discloses that the suit has been filed for specific performance. It does contain any material pleading to state that the Suit Property is actively used for commercial purposes.

18.10. An exercise by which the petitioner seeks to bring the suit, which, admittedly, does not disclose the ingredients of a Commercial Suit, is not permissible in law.

18.11. The contentions raised by the petitioner that since the suit is filed before a Commercial Court and since the pleadings are complete

therein, prejudice shall be caused to the petitioner if the plaint is returned or that the Trial Court has made up its mind on the issue of jurisdiction are completely unfounded.

18.12. In support of the aforestated arguments, reliance has been placed on the rulings in *Asma Lateef V/s. Shabbir Ahmad*¹⁰, *Abdul Azis Bhat and Ors. V/s. Hilal Ahmad Bhat*¹¹, *INC. V/s. Purple Creation Pvt. Ltd.*¹², *HSIL Ltd. V/s. Imperial Ceramics and anr.*¹³

19. Having heard the learned counsel on behalf of the respective parties, the rival contentions now fall for my determination.

20. At the outset, it is essential to note that in light of the relief sought by the petitioner in the instant Writ Petition, this court shall deliberately refrain from settling the issue of whether the plaint discloses the essential ingredients of a commercial dispute and consequently whether the Commercial Court is the Court of competent jurisdiction, as the same are not in question before this court within the frame of this Writ Petition. What arises for determination by this court, is whether the decision of the Trial Court that the application for return of plaint filed by the respondents should be decided prior to deciding the application for amendment of plaint filed by the petitioners, suffers from an infirmity that warrants interference from this court in exercise of its writ jurisdiction.

¹⁰ 2024 SCC OnLine SC 42

¹¹ CM (M) No. 27 of 2023, Decided on 12.05.2023

¹² 2010 SCC OnLine DEL 3101

¹³ 2018 SCC OnLine DEL 7185

21. An argument that the learned counsel for the respondents has sought to impress upon this court is that in view of the settled position of law, when a court lacks inherent jurisdiction to hear the suit, the court cannot even entertain an application for amendment of the plaint. This argument is based on the premise that a plaint is foundation of a civil suit, which brings out the necessary facts that form the basis upon which the Court adjudicates upon the issue and if the plaint does not disclose the essential elements that are necessary for the suit to invite the cognizance of the court before which it is instituted, then adjudication would not be permissible in the eyes of the law.

22. While this court shall refrain from delving into the specific argument of whether the suit invites the subject matter jurisdiction of the Commercial Court, it would be necessary for this court to travel upon the impact of a question pertaining to the subject-matter jurisdiction of the court before which the suit has been instituted. In this light, we may take a look at the ruling of the High Court of Delhi in *HSIL Ltd.* (supra) , which aptly propounds the area of the law and observes thus:

“15. The Division Bench of this Court in Archie Comic Publications Inc. supra held that if a plaint is completely bereft of any pleading which are the jurisdictional facts, the Court will not have jurisdiction to proceed in that suit or even to allow an application seeking amendment; thus, a completely unconscionable plaint which does not reveal any fact which confers a jurisdiction on a Court may not vest the jurisdiction with the Court to even allow an amendment of the same. It was however further held that if it is a case of unclear or

ambiguous pleading, the same may be allowed to be amended to clarify the earlier pleaded facts till the same does not give rise to addition of a new cause of action or pleading new facts. In *Just Lifestyle Pvt. Ltd.* *supra* also, amendment of the plaint *inter alia* to vest the Courts at Delhi with territorial jurisdiction was refused *inter alia* holding that the issue of jurisdiction of the Court, as per *Mohannakumaran Nair v. Vijayakumaran Nair* (2007) 14 SCC 426, is required to be determined with reference to the date on which the suit is filed and entertained and not with reference to a future date and that the amendment sought would not clothe the Court with territorial jurisdiction to try the suit; the counsel for the plaintiff is however right in his contention that other reasons for denying the amendment were also stated.”

The ruling further observes thus:

“20. I have however wondered whether an application under Order VII Rule 11 of the CPC on the ground of the plaint not disclosing a cause of action or suffering from some other technical defect viz. of valuation, court fee paid or the claim therein being barred by any law, can be equated with an application under Order VII Rule 10 of the CPC on the ground of the Court not having territorial jurisdiction. This becomes important because of the consistent view of the High Courts mentioned above including of this Court that when the Court lacks territorial jurisdiction, it cannot even entertain an application for amendment of the plaint and which amendment would vest territorial jurisdiction in the Court. Reference may also be made to *Hans Raj Kalra v. Kishan Lal Kalra* ILR (1976) || Delhi 745 and *Anil Goe/ v.*

Sardari Lal (1998) 75 DLT 641 though in the context of pecuniary jurisdiction.

21. Having considered the matter, I am of the opinion that the judgments holding that application for amendment of

plaint, even if filed to defeat the pending application under Order VII Rule 11 of the CPC, has to be heard first, will not extend to a case where averments contained in the plaint as existing does not disclose the Court to be having territorial jurisdiction and amendment is sought to incorporate the pleas to disclose the Court to be having territorial jurisdiction. I have reached the said conclusion relying on the dicta of the Supreme Court in Harshad Chiman Lal Modi v. DLF Universal Ltd. (2005) 7 SCC 791 holding that a Court has no jurisdiction over a dispute in which it cannot give an effective judgment and even an agreement between the parties vesting jurisdiction in the Court which it otherwise does not have, is void as being against public policy. It was further held that where a Court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, it cannot take up the cause or the matter and an order passed by a Court having no jurisdiction is a nullity. It was yet further held that neither waiver nor acquiescence can confer jurisdiction upon a Court, otherwise incompetent to try the suit. It was yet further held that where a Court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing and a decree passed by a Court having no jurisdiction, is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings; a decree passed by a Court, without jurisdiction is a coram non judice.

22. Thus, if the plaint in these suits as it exists, does not disclose this Court to be having territorial jurisdiction, then the only option for this Court is to return/reject the plaint and this Court would not have jurisdiction to even consider the application of the plaintiff for amendment of the plaint and which amendment, if allowed, would disclose the plaint as having the necessary averments for this Court to have jurisdiction to entertain the suit.

23. The counsel for the plaintiff has contended that the plaintiff, even after return/rejection of the plaint, would be entitled to sue the defendants afresh in this Court only by making the averments in the fresh plaint to be filed, averments which are sought to be made by way of amendment in these pending suits. It is argued that once it is so, this Court should not, on account of technicality, compel the plaintiff to follow the said procedure. It is yet further argued that compelling the plaintiff to follow the said procedure would also result in undue advantage to the defendants and prejudice to the plaintiff. It is stated that the Commissioners appointed in the suits have seized the infringing goods and if the plaint is returned/rejected, the defendant/s would be entitled to remove the seals from the seized goods and appropriate the same and by the time the plaintiff files fresh suits, the defendant/s may arrange their affairs in a manner so as to not be caught.

24. Though undoubtedly so but once the law is found to be as aforesaid, I cannot, in the name of "technicalities being not allowed to come in the way of justice" violate the law or decide contrary to law. Moreover, the plaintiff itself is to blame for the position in which it is today. The plaintiff cannot have any premium on its own fault and negligence if any in pleading the requisite facts. It cannot also be lost sight that the plaintiff having its principal/registered office in West Bengal has invoked the jurisdiction of this Court instead of suing the defendants at the place where the defendants are carrying on their business, obviously with an intent to have an unfair advantage over the defendants. Judicial notice can be taken of the fact that it is always inconvenient to persons/entities as the defendant/s to fight a litigation at a far off place, where they have no base and the cost and inconvenience in defending the litigation itself becomes a reason for such defendant/s to concede to the claim of the plaintiff, even if they have an arguable defence thereto."

23. This Court is in agreement with the position extracted hereinabove. It is trite that the ruling of a court that is not a court of competent jurisdiction is *quorum non judice* and therefore a nullity. However, there is a distinction between territorial jurisdiction of a court as opposed to the subject matter jurisdiction of the court. As regards, territorial jurisdiction, it is a settled principle of the law that when a case has been tried by a Court on merits and a judgment is rendered, it should not be reversed purely on technical grounds unless it occasions a failure of justice. This position is congruent with section 21 of the Code of Civil Procedure, 1908 and is underscored by the same principle of procedural law being the handmaiden of justice, which is not to be harnessed to defeat substantive law, that the learned counsel seeks to impress upon us. From a cumulative reading of what has been laid down as concerns subject-matter jurisdiction as well as the aforementioned ruling, it would reveal that a question subject-matter attacks the very foundation of a suit, hence it must be a primary consideration to be borne in the mind of the Court.

24. This brings to fore two important considerations, firstly, that the respondents have sought a return of plaint, and not a rejection of plaint. The remedy that is sought by the respondents would not stand extinguished if the Trial Court opines that the petitioner applicant has successfully discharged its burden to establish the plaint as being ripe for return, but rather would just be directed towards, and subsequently decided upon by a Court of competent jurisdiction. Whereas to the contrary, if a court lacking in incompetent jurisdiction is allowed to try

the matter on merits, any subsequent ruling would be *nonest*. An order under Order VII Rule 10 of the Code of Civil Procedure, 1908 to return the plaint is not an adjudication on the merits of the case.

25. Secondly, there exists a distinction between the subject-matter jurisdiction and the territorial jurisdiction of a Court of law that this court must bear in mind. Territorial jurisdiction refers to the geographical area wherein a Court is conferred with the power to take cognizance of and adjudicate upon disputes. While territorial jurisdiction is tied into the geographical area where a Court is competent to exercise its function, subject-matter jurisdiction has to do with the nature of the dispute. Subject-matter jurisdiction courts travel to the very epicentre of the dispute and is, in this aspect distinct from pecuniary or territorial jurisdiction as it accounts for the innate character and identity of a dispute. Such character or identity of a dispute is what dictates the area of the law that is attracted and consequently determines the court of law that is conferred with the authority to decide the dispute. In other words, while territorial jurisdiction may be treated as a technicality that may not after the court of first instance has ruled over a dispute, outweigh the cause of justice, a ruling by a court lacking subject matter jurisdiction is a nullity.

26. Further, the Court seized with the suit has to examine whether the essential ingredients that would invite the jurisdiction of the court are disclosed, and if it is found that such ingredients are missing, it would render the court lacking in jurisdiction. A court that does not

have jurisdiction, cannot be allowed to confer itself with jurisdiction by way of an amendment of pleadings.

27. The argument of the learned counsel for the petitioner that an opportunity to rectify the defects has to be afforded to the petitioner, does not hold weight in light of the fact that, an amendment that seeks to rectify the absence of essential juridical facts conferring jurisdiction upon the court cannot be stated to be merely curing of defects. Such an amendment would lead to a change in the very nature of the dispute and isolate the character of the plaint that is filed from the character of the amended plaint. Further, to state that since the proceedings are underway, it would cause prejudice to the petitioners if the plaint is now returned, does not find favour with this court. No saving of judicial time can counteract the lack of jurisdiction. If for want of convenience of the petitioners, the suit is allowed to be heard and decided and subsequently, it is found that the suit was not instituted before a Court of competent jurisdiction based on subject matter, the entirety of the judicial exercise will be futile and a nullity.

28. The ruling in *Indofer Society & Ors.* (supra), relied upon by the learned counsel for the petitioner is not of much practical help to the case of the petitioner as the amendment that was sought therein is in respect of a Writ Petition where the standard of applicability of the Code of Civil Procedure, 1908 differs from that of civil suit. The rulings in *Varun Pahwa* (supra) and *Ganesh Trading Co.* (supra) do not hold factual nexus with the facts at hand. The rulings in *I.C.I.C.I* (supra), *Nusli Neville Wadia* (supra), *Kamalakar Eknath Salunke* (supra),

Goverdhan Bang (supra) and *M/s Cross Country Hotels* attract a different area of law than the one applicable herein. While *Archie Comic Publication* (supra) does contemplate the area attracted herein, it does not help buttress the proposition that is sought to be advanced by the learned counsel for the petitioner.

29. A perusal of the impugned order will make it clear that the same is a well reasoned order and not a non-speaking one. The Trial Court has made an observation that since, the application for amendment has been filed only after hearing the arguments advanced by the respondents in relation to the application for return of plaint, the application for return of the plaint has to be decided first. It is not a matter purely of the Trial Court's discretion over the course of proceedings in terms of what the Trial Court prefers to hear and adjudicate when. Rather, it is the chronological order in which issues are brought to the fore that seem to partly dictate the opinion of the Trial Court. It stands to reason that the issue that surfaces first in the course of proceedings and is then reasoned before the Court shall be what is settled first before moving on to the next issue, especially when such an issue travels to the foundation of the suit.

30. To summarise the discussion hereinabove, an issue of subject-matter jurisdiction travels to the very root of the dispute.

31. Therefore, this court finds that there is no infirmity in the impugned order. It is clarified that all contentions of the parties

concerning the subject matter jurisdiction of the Trial Court are left open.

32. Accordingly, the Writ Petition is dismissed. The rule is discharged.

NIVEDITA P. MEHTA, J.