



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 22ND DAY OF JANUARY, 2024
BEFORE
THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 100173 OF 2024 (GM-CPC)**

BETWEEN:

ACHARYA PATHASALA EDUCATIONAL TRUST,
NARASIMHARAJA COLONY,
BENGALURU-560019,
REPRESENTED BY ITS GENERAL SECRETARY,
SRI. A.R. ACHARYA
S/O. LATE SRI. N. ANANTHAR,
AGED ABOUT 77 YEARS.

...PETITIONER

(BY SRI. SHIVASAI M. PATIL, ADVOCATE)

AND:

...RESPONDENTS

(SERVICE OF NOTICE TO RESPONDENTS D/W (V/O/D
22.01.2024))





THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI AND QUASH ANNEXURE-A IMPUGNED ORDER DATED 03-10-2023 PASSED BY THE HON'BLE PRINCIPAL DISTRICT AND SESSIONS JUDGE, DHARWAD IN COM. O.S. 69/2022; ALLOW I.A. NO. 1 FILED BY THE PETITIONER UNDER ORDER VII RULE 10 READ WITH SECTION 151 CPC FOR RETURN OF THE PLAINT AT ANNEXURE-L.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Notice to respondents is dispensed with in view of the proposed order to be passed.
2. Petitioner is before this Court seeking for the following reliefs:
 - a. *Issue a writ of certiorari and quash Annexure A Impugned Order dated 03.10.2023 passed by the Hon'ble Principal District & Sessions Judge, Dharwad in Com. O.S.69/2022;*
 - b. *Allow I.A. No.1 filed by the Petitioner under Order VII Rule 10 read with Section 151 CPC for return of the plaint at Annexure L.*
 - c. *Pass such other order/orders and issue such other necessary direction/directions as this Hon'ble Court may deem fit to grant in the circumstances of the above case in the interest of justice.*



3. The respondents had filed a suit in Comm.O.S.No.69/2022, before the Principal District and Sessions Judge, Dharwad, for recovery of certain amounts of money. In the said suit, the petitioner, who is the defendant therein, had filed an application under Order VII Rule 10 of the Code of Civil Procedure, to return the plaint on the ground that the said Court does not have jurisdiction to try the matter; the transaction having occurred within the jurisdiction of the City of Bengaluru, it is only the Court at Bengaluru, which has the jurisdiction. The said application came to be rejected vide order dated 03.10.2023 and it is challenging the same, the petitioner is before this Court.

4. The contention of Sri. Shivasai M. Patil, learned counsel for the petitioner is that, the trial Court has not appreciated the fact that the entire transaction, work order, supply of software, etc., had occurred in Bengaluru. The petitioner's head office is located at



Bengaluru and the petitioner being the defendant, it was for the respondents, to have filed the suit in the place where the defendant is ordinarily residing and/or carrying on the business in terms of Section 20 of the Code of Civil Procedure, and as such, the plaint ought to have been returned to the plaintiffs under Order VII Rule 10 of the Code of Civil Procedure.

5. Order VII Rule 10 of the Code of Civil Procedure reads as under:

10. Return of plaint.—(1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

[Explanation.— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.]

(2) Procedure on returning plaint. —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.



6. A perusal of the said provision would only indicate that, in the event of suit being presented before the Court which does not have the pecuniary or territorial jurisdiction over the matter, an application could be made under the said provision for return of the plaint to be presented before the appropriate forum, or subject to the provision of Rule 10A of Order VII of the Code of Civil Procedure, when the Court comes to the conclusion on its own motion that it does not have jurisdiction to entertain a particular suit.

7. In the present case, the application is made by the defendant for return of the plaint, which, in the considered opinion, cannot be so done by the defendant. The defendant is entitled to take a defence as regards lack of jurisdiction, which would have to be considered by the Court on merits in terms of the applicable law including Section 20 of the Code of Civil Procedure, either after the trial or



as preliminary issue which can so permissible under Sub-Rule(2) of Order 14 of the Code of Civil Procedure.

8. In that view of the matter, though not for the reasons stated by the trial Court, for the reason that an application under Rule 10 of Order VII of the Code of Civil Procedure can be maintained only by the plaintiff and not by the defendant, the petition not making out any grounds is required to be and is so dismissed.
9. Liberty is however reserved to the petitioner to seek for treating the issue framed relating to territorial jurisdiction as a preliminary issue, if such an issue has been framed, if not, seek for such an issue to be so framed.

Sd/-
JUDGE