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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 2284/2001

Date of decision: 12th September, 2008

STERLITE OPTICAL TECHNOLOGIES LIMITED Plaintiff
Through Mr. T.K. Ganju, Sr. Advocate with Mr.
A.K. Thakur, Mr. R.K. Mishra & Mr. Bharat
Gupta, Advocates.

versus

BHARAT SANCHAR NIGAM LIMITED Defendant
Through Mr. Dinesh Agnani & Ms. Leena
Tuteja, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

IN OPEN COURT

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1. The plaintiff, Sterlite Optical Technologies Limited, having it's office at Aurangabad in Maharashtra has filed the present suit for recovery of Rs.1,76,59,761/- with interest against the defendant, Bharat Sanchar Nigam Limited.

2. I am not inclined to go into the merits of the claim of the plaintiff as I am of the opinion that this Court does not have territorial jurisdiction to adjudicate and decide the present suit and the plaint has to be returned as per provisions of Order VII, Rule 10 of the Code of Civil Procedure, 1908. In these circumstances, I am not required to examine and decide all other issues framed by this Court vide order dated 27th April, 2004. The view I have taken is fortified by the decision of a learned Single Judge of this Court in ***Janta Travels Pvt. Ltd versus Punjab Chemiplasts Ltd*** reported in 54 (1994) DLT 273.

3. By this order I will be disposing of issue No. 2 as framed vide Order dated 27th April, 2004, which reads as under:-

“2) Whether this Court has no territorial jurisdiction to entertain and try the present suit. OPD”

4. As is apparent from the above issue, the onus of this issue was placed on the defendant. Parties have not lead any oral evidence on this issue. In this connection, learned counsel for the defendant has rightly drawn my attention to paragraph 27 of the plaint, which reads as under:-

“27. The plaintiff states that this Hon’ble Court has the territorial jurisdiction to entertain the

present suit between the parties. Defendant is a company having its registered office situated at New Delhi, well within the jurisdiction of this Hon'ble Court. All the circle offices of Defendant are fully controlled managed & supervised by the Defendant, who having their office at New Delhi well within the jurisdiction of this Hon'ble Court."

5. The question which arises for consideration is even if the averments made in paragraph 27 of the plaint are admitted as correct, whether this Court has territorial jurisdiction to adjudicate and decide the present suit in view of Section 20(a) of the Code of Civil Procedure, 1908 read with explanation to the said Section. Section 20 of the Code of Civil Procedure, 1908 reads as under:-

20. Other suits to be instituted where defendants reside or cause of action arises.- Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or

carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

[*Explanation*]. A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.”

6. The aforesaid provision has been examined by the Supreme Court in the case of ***New Moga Transport Company versus United India Insurance Company Limited***, reported in AIR 2004 SC 2154.

After examining Clauses (a) to (c) and the Explanation to Section 20 of the Code of Civil Procedure, it was observed as under:-

“**10.** On a plain reading of the Explanation to

Section 20, CPC it is clear that Explanation consists of two parts, (i) before the word “or” appearing between the words “office in India” and the word “in respect of” and the other thereafter. The Explanation applies to a defendant which is a Corporation which term would include even a company. The first part of the Explanation applies only to such Corporation which has its sole or principal office at a particular place. In that event, the Court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression “at such place” appearing in the Explanation and the word “or” which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation. It is not the Court within whose jurisdiction the principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate office which alone have the jurisdiction “in respect of any cause of action arising at any place where it has also a subordinate office”.

7. The Supreme Court in the case of ***New Moga Transport Company*** (supra) has observed that where a defendant has principal office as well as subordinate office at two different places, the place where the cause of action has arisen will determine and decide

territorial jurisdiction. A suit cannot be filed at a place where the principal office of the defendant is located, if cause of action has arisen at a different place/location where a subordinate office of the defendant exists. In this case, the Supreme Court referred to its earlier decision in the case of ***Patel Roadways Limited, Bombay versus Prasad Trading Company***, reported in AIR 1992 SC 1514.

8. The above decision of the Supreme Court in ***Patel Roadways*** (supra) has been followed by this Court in the case of ***M/s B.S. Virdi Electric Works versus Union of India and Another***, reported in AIR 2002 Delhi 318, wherein it was held that location of the principal office alone will not clothe a Court with territorial jurisdiction and the Court must examine the question whether cause of action has arisen at any other place where the subordinate office of the defendant company is located. In case cause of action has arisen at a place where a subordinate office of the defendant company is located, then courts having jurisdiction over the subordinate office will have jurisdiction. Similar view has been taken in ***Famous Construction versus National Projects Construction Corporation*** reported in AIR 2000 Delhi 402. It has been held that if cause of action has arisen where a subordinate office is located, then courts located there will have jurisdiction and courts where registered office or principal

office is located will not have jurisdiction.

9. As far as place or location where the cause of action for filing of the suit has arisen, I may refer to paragraph 26 of the plaint, which reads as under:-

“26. The cause of action for filing the present suit arose some time in May 1999 when Defendant made recovery and/or deducted a sum of Rs.1,56,97,566.70 from the current bills of the plaintiff. Cause of action further arose on 11.10.99 when the legal notice for refund of Rs.1,56,97,566.70 was sent to the Defendant. Cause of action further arose on 27.11.99 when the another reminder for refund was issued to the defendant. The cause of action is still subsisting. Hence the suit is within time.”

10. The letters referred to in paragraph 26 were written by the plaintiff from Mumbai to the DOT's subordinate office at Bhopal or from Bhopal to Mumbai. No letter originated or was written by or to the DOT at Delhi.

11. I have also read the plaint in detail. Nowhere in the plaint it is stated that cause of action or any part thereof has arisen at Delhi. The plaint refers to letter dated 3rd December, 1991 marked as Ex. PW1/3, which was written by the plaintiff from Mumbai to the General Manager of Department of Telecommunication, Bhopal expressing their willingness to supply PIJF cables in the said circle. The said

letter stipulated that the price of the goods shall be at the old rate of CGMTS purchase order placed in June, 1991 and subsequently the plaintiff would submit revised invoices once rates are approved by Department of Telecommunication in the tender dated 22nd March, 1991. The second letter referred to in the plaint is the letter dated 20th December, 1991, Ex. D-2 by which Department of Telecommunication, Bhopal had issued the purchase order subject to terms and conditions mentioned in the said letter. In this connection, learned counsel for the plaintiff had drawn my attention to item No. 4/clause 4 of the said letter relating to price of the goods, as it refers to tender dated 22nd March, 1991. My attention was drawn to the said clause as the dispute pertains to the price payable for the goods that were supplied by the plaintiff to the Department of Telecommunication at Bhopal.

12. Learned counsel for the plaintiff had also relied upon Ex. D-4, which is letter dated 14th February, 1992 issued by Assistant General Manager, Department of Telecommunication, MP circle, Bhopal to the plaintiff at Mumbai stating that rates as approved by Department of Telecommunication in the contract dated 22nd March, 1991 would be applicable.

13. Lastly, learned counsel for the plaintiff had drawn my attention

to letters dated 19th January, 1998 and 11th March, 1998 marked Exs. PW1/X-1 and PW1/X-2. By these letters, the Assistant General Manager, MP circle, Bhopal had informed the plaintiff that excess payment of Rs.1,56,97,566.70 had been made under the purchase order Ex. D-2 on the basis of price stipulated in the tender dated 22nd March, 1991.

14. It is the case of the plaintiff that he is entitled the price approved by the DOT in tender dated 22nd March, 1991 as per the offer made by him by letter Ex. PW1/3 and purchase order Ex. D-2. and other letters. It was the case of the defendant that the said rates could not have been paid on the basis of the said tender and thereafter recoveries were made against the plaintiff for the excess amount paid by the defendant. Suit for recovery is based upon the aforesaid letter of offer, purchase order and the letters written by Department of Telecommunication, Bhopal to the plaintiff at Mumbai and from Mumbai to Bhopal. No recoveries are alleged to have been made at Delhi and no letter has been written or originated from Delhi. It is clear that no part of cause of action has arisen in Delhi.

15. Learned counsel for the plaintiff submitted that onus of issue No. 2 was on the defendant and the said onus has not been discharged. He has stated as onus was put on the defendant, the

plaintiff did not lead any evidence. It is not possible to accept the said contention. Onus had been put on the defendant in view of averments made in paragraph 27 of the plaint and on the basis of explanation to Section 20 of the Code of Civil Procedure, 1908. It is apparent that the plaintiff was of the opinion that as the defendant's principal office or registered office is located in Delhi, this Court would have territorial jurisdiction, even if no cause of action or part thereof had arisen at Delhi. On this basis, issue No. 2 was framed and onus was put on the defendant, treating issue No. 2 as a legal issue in view of the admitted position that the registered and the principal office of the defendant company is in Delhi. The facts as stated in the plaint, are not disputed. The legal position and Section 20 of the Code of Civil Procedure, 1908 has been examined and interpreted above and issue No. 2 decided against the plaintiff. The defendant has not disputed the facts stated in para 27 of the plaint with regard to the principal office. Facts are not in dispute. Onus is relevant to prove facts. As the defendant has not lead evidence, it has been established that the defendant's registered/principal office is located in Delhi. However, on application of the legal principles to the admitted facts, the issue has been decided against the plaintiff.

16. On the question whether the plaintiff should be permitted and

allowed to lead further evidence, after evidence has been recorded and closed, I have examined the averments made in the plaint and the entire cause of action as disclosed in the plaint itself with reference to each and every document relied upon by the counsel for the plaintiff in support of the cause of action. The averments made in the plaint and the documents disclose that the entire transaction and the bundle of facts on which the plaint is based is in no way connected or associated with the principal/registered office of the defendant at Delhi. The entire cause of action has arisen outside Delhi. In these circumstances, I am not inclined to accept request of the plaintiff to set the matter for fresh trial or for recording of further evidence.

17. It is accordingly held that no cause of action or part thereof has arisen within the territorial jurisdiction of this Court. This Court, therefore, does not have territorial jurisdiction to adjudicate and decide the present suit. Issue No. 2 is accordingly decided. Plaint is directed to be returned in terms of Order VII, Rule 10 of the Code of Civil Procedure, 1908 to be filed in an appropriate court having territorial jurisdiction. It is also clarified that the plaintiff while filing the plaint in an appropriate court may file an application under Section 14 of the Limitation Act, 1963. Application, if filed, will be decided on

merits. In the facts and circumstances of the case, there will be no order as to costs.

SANJIV KHANNA, J.

SEPTEMBER 12, 2008
VKR/P