

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

+ **CS(OS) 2448/2008 & IA No.12874/2009**

Date of Decision: October 06, 2010

M/S CARMEL OVERSEAS LTD Plaintiff
Through: Mr.Tarkeshwar Nath and
Mr.Saurabh Tuteja, Advocates.

versus

STURDY INDUSTRIES LTD Defendant
Through: Mr.Puneet Khurana, Advocate.

% **CORAM:**
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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?

J U D G M E N T

ARUNA SURESH, J.

1. Plaintiff company has filed the present suit under summary provisions of Order 37 of the Code of Civil Procedure (hereinafter referred to as 'CPC') for recovery of Rs.38,40,000/- against the defendant company based on a contract, in accordance of which it had paid US\$ 80,000 vie T/T (telegraphic transfer) against the order of aluminum composite panels with due intimation vide letter dated 8th November, 2005. Since defendant did

not deliver the goods, hence this suit for recovery of the advance paid.

2. Defendant put in appearance, on receipt of summons for appearance, on 19th April, 2009. Thereafter summons for judgment were served upon the defendant and it filed leave to defend application being IA No.12874/2009. This application was dismissed on 7th October, 2009, for non-appearance on behalf of the defendant. Thereafter on an application of the defendant for restoration of the said IA, the application was restored vide detailed order dated 2nd July, 2010.

3. The said application has been duly contested by the plaintiff. Foremost objection of the defendant is that this Court has no territorial jurisdiction to entertain the present suit.

4. Mr.Tarkeshwar Nath, counsel appearing on behalf of the plaintiff has submitted that defendant has not challenged the jurisdiction of the Court in its application for leave to defend the suit. It is settled principle of law that jurisdiction of a court, being question of law, can be considered at any stage even if not specifically pleaded in the application or in the written statement. Therefore, defendant is within its right to challenge the territorial jurisdiction of this Court, though not specifically pleaded in the application for leave to defend. The Court is also within its right to determine if it has the territorial jurisdiction to entertain the suit especially, when it has been questioned by the defendant.

5. Mr. Puneet Khurana, counsel appearing on behalf of the

defendant has submitted that defendant is a company having its corporate office at 55 Industrial Area, Sector 1, Parwanoo, District Solan, Himachal Pradesh. Transaction in question was entered into between the parties through correspondence at the corporate office of the defendant and therefore, this Court at Delhi has no territorial jurisdiction to entertain the present suit.

6. Counsel for the plaintiff has submitted that defendant has its office at 28, Ashoka Chambers, B-5, Rajendra Park, Pusa Road, New Delhi and therefore, Delhi Courts have the territorial jurisdiction to entertain the suit.

7. Territorial jurisdiction of this Court to try the present suit is governed by the principles laid down in Section 20 CPC.

8. Section 20 CPC reads:-

“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.

1[* * *]

2[Explanation].-A corporation shall be deemed to carry on business at its sole or principal office in 3[India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

9. On plain reading of Section 20 CPC, it is clear that clauses (a) and (b) *inter alia* refer to a Court within the local limits of whose jurisdiction, defendant carries on business, whereas clause (c) refers to a Court within the local limits of whose jurisdiction cause of action wholly or in part arises. It is urged by counsel for the plaintiff that defendant has its subordinate office at Delhi and is carrying on its business at Delhi, therefore, this Court has the territorial jurisdiction to entertain the present suit in view of clauses (a) and (b) read with explanation to Section 20 CPC.

10. The Explanation to Section 20 CPC is in two parts, one before the word ‘or’ occurring between the words ‘office in India’ and the words ‘in respect of’ and the other thereafter. The Explanation applies to a defendant which is a corporation, which term includes even a company such as the plaintiff in the instant case. The first part of the Explanation applies only to such corporation which has its sole or principal office at a particular place. In that case, the court within whose jurisdiction the sole or principal

office of the corporation is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on its business at that place, it will be deemed to carry on its business at that place because of the fiction created by the Explanation. The second part of the Explanation becomes applicable to 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 words 'at such place', occurring in the end of Explanation and the word 'or' referred to above 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 shall have jurisdiction 'in respect of any cause of action arising at any place where it has also a subordinate office'.

11. In *New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. & Ors.*' AIR 2004 SC 2154, Section 20 CPC was interpreted in the following manner:-

"9. Normally, under clauses (a) to (c) plaintiff had a choice of forum and cannot be compelled to go to the place of residence or business of the defendant and can file a suit at a place where the cause of action arises. If the defendant desires to be protected from being dragged into a litigation at some place merely because the cause of action arises there it can save itself from such a situation by an exclusion clause. The clear intendment of the Explanation, however, is that where the Corporation has a subordinate office in the place

where the cause of action arises it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. Clauses (a) and (b) of Section 20 inter alia refer to a Court within local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a Court within local limits of whose jurisdiction the cause of action wholly or in part arises.

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".

12. Reference is also made to *M/s. Patel Roadways Ltd., Bombay Vs. M/s. Prasad Trading Company [1991] 3 SCR 391.*

13. In the present case, it is not in dispute that defendant company has its corporate office, in other terms, principal office at Parwanoo, District Solan, Himachal Pradesh. It has an office in Delhi. Under the circumstances, it is to be seen if any cause of action wholly or in part thereof arose in favour of the plaintiff at Delhi, to confer jurisdiction on this Court.

14. A part of cause of action accrues at a place where contract is executed. Each and every fact pleaded in the plaint does not *ipso facto* lead to the conclusion that those facts constitute cause of action vesting territorial jurisdiction with a Court to adjudicate upon a case. The expression 'cause of action' consist of bundle of facts which the plaintiff must prove in order to entitle him to a judgment in his favour by the court. Whether any part of cause of action has accrued within the jurisdiction of a court would depend upon the facts and circumstances of the given case.

15. It is urged on behalf of the plaintiff that transaction with the defendant had taken place and completed at the defendant's office at 28, Ashoka Chambers, B-5, Rajendra Park, Pusa Road, New Delhi, to which a specific averment has been made in para 19 of the plaint. The impugned contract is dated 20th October, 2005, which in fact is an offer made by the defendant company to the plaintiff. It is pertinent that this letter is written

on the letter head of the defendant company having its corporate office address of Parwanoo. It is on the right side at the bottom that address of Delhi office has also been mentioned. Therefore, from this document, in no manner, it can be inferred that the contract was executed *inter se* the parties at Delhi. Counsel for the plaintiff has highlighted terms and conditions contained in this letter to emphasize that part of cause of action arose in Delhi. The first line of terms and conditions reads:-

“The above prices are at ICD Tughlakabad, New Delhi, India”.

16. ICD means Inland Container Depots. It is not in dispute that ICD Tughlakabad is only a transit depot and is not the place where the goods were to be supplied to the plaintiff. This is only a term and condition of the contract regarding the price of the goods. As regards jurisdiction, this document finds mention that ‘all disputes are subject to Courts in India only.’ Therefore, it cannot be said that even by way of contract the parties had agreed to confer jurisdiction at Delhi where the defendant has got its subordinate office. It is settled principle of law that by a contract or an agreement parties cannot confer jurisdiction on a Court if it otherwise does not have, or where no part of cause of action has accrued in favour of the party claiming enforcement of its claims.

17. Letter dated 8th November, 2005, is written by the plaintiff to the Managing Director of the defendant company at Parwanoo, Solan, H.P. Letter dated 15th November, 2005, is addressed to the plaintiff from

corporate office at Parwanoo of the defendant confirming receipt of telegraphic transfer of US\$ 80,000 as advance payment. Simply because at the bottom of the letter head, Delhi office address of the defendant is mentioned, it does not mean that this letter was addressed to Delhi office. Had it been so, this address would have found its place on the top of the letter head. Besides, this letter does not suggest that it was written from Delhi office of the defendant company. Similarly letter dated 10th December, 2005, has been written by the defendant from its corporate office at Parwanoo addressed to the plaintiff requesting it to depute its Authorized Representative to carry out the inspection of their works and make the balance payment to enable them to make shipments. This also contains Delhi office address of the defendant company. It is pertinent that all the correspondence made by the defendant addressed to the plaintiff are on the letter head of the company carrying its address of corporate office at Parwanoo and the Delhi office address finds mention as a reference only.

18. Counsel for the plaintiff has submitted that the legal notice was also served upon the defendant at Delhi. This is belied from plaintiff's own document dated 19th December, 2006. This notice is addressed by the Advocates and Solicitors of the plaintiff company from Delhi to the defendant company at Parwanoo. This does not, in any manner, mean that part of cause of action arises in favour of the plaintiff at Delhi. The place where the plaintiff is carrying on its business or from where he is sending

his legal notice is not relevant and is of no consequence as it does not constitute any cause of action within the meaning of Section 20 (c) CPC. This notice was duly replied by the defendant on 16th January, 2007 through its Advocate, O.C.Sharma, District Court Solan.

19. Counsel for the plaintiff has referred to '*Laxman Prasad Vs. Prodigy Electronics Ltd. & Anr., (2008) 1 SCC 618* to support his submissions that averment made in the plaint in regard to the jurisdiction of the court has to be looked into. In the said case, plaintiff company had alleged that defendant had committed breach of terms and conditions of the agreement during the Trade Fair in February, 2005 held in Pragati Maidan, Delhi. It was under those circumstances that the Court held that it was open to the plaintiff company to institute a suit in a competent court within the jurisdiction of Delhi and disagreed with the contentions of the defendant that the agreement was executed in a foreign country or that the defendant was a resident of Ghaziabad.

20. In the present case, none of the pleadings indicate that any part of cause of action accrued in favour of the plaintiff at Delhi. Each and every fact pleaded in the plaint does not constitute a cause of action. It is only in para 19 the plaintiff has averred that this Court has the jurisdiction.

21. Para 19 reads:-

“19. That this Hon’ble Court has territorial jurisdiction to entertain the present suit as the defendant has its registered office at Delhi. Each and every meeting with the defendant took place in Delhi

office of the defendant. Decisions were taken in Delhi. The plaintiff sent the legal notice to the defendant asking for the money payable from Delhi. The defendant refused to make the payment vide its reply-dated 16.1.2007, which was received by the plaintiff in Delhi. The cause of action has arisen in Delhi and therefore, this Hon'ble Court has territorial jurisdiction to entertain and decide the present suit.”

22. These are the facts which have not been specifically pleaded in the plaint and even in this para, it is not specifically disclosed as to how many meetings and when were they held in Delhi, which decisions took place in Delhi and where the contract was finalized or executed?

23. From perusal of the legal notice dated 19th December, 2006, it cannot be said that payment was to be made at Delhi. Receipt of reply to the notice by the plaintiff at Delhi, as disclosed above, does not confer any territorial jurisdiction on this Court. It seems that para 19 has been drafted in such a manner so as to confer territorial jurisdiction on this Court, which otherwise it does not have.

24. Under the circumstances, *Liverpool & London S.P. & I. Assn. Ltd. vs. M.V. Sea Success, 2004 (9) SCC 512* is of no help to the plaintiff as it has no application to the facts and circumstances of this case. Plaintiff has not been able to provide any document to show *prima facie* that any part of cause of action accrued at Delhi. Every correspondence does not set out a cause of action.

25. As discussed above, from bare reading of the plaint and documents annexed with it, evidently no cause of action wholly or in part

arose in favour of the plaintiff to invoke territorial jurisdiction of this Court. Pleadings are required to specifically contain all necessary details which are to be substantiated by way of evidence during trial. If the pleadings are silent on particular material facts, a party cannot be allowed to prove the same later on by adducing evidence. Plaintiff has not pleaded material facts of cause of action or a part thereof having accrued in its favour at Delhi.

26. In *Golden Peacock Overseas Limited (M/s) Vs. M/s. Ranjit Industries, 2006 II AD (DELHI) 130*, this Court has observed that some correspondence *inter se* the parties would be of no help to the plaintiff to vest jurisdiction in a Court if the Court otherwise has no jurisdiction to entertain a lis. As discussed above, none of the letters, in any manner, constitute a cause of action having accrued within the territorial jurisdiction of this Court so as to confer jurisdiction on this Court. The plaintiff, therefore, cannot vest jurisdiction in this Court on the basis of the correspondence as placed on record.

27. As conversed above, registered and principal office of the defendant is at Parwanoo, District Solan, Himachal Pradesh, where entire transactions and correspondence *inter se* the parties took place. True that, it has an office at Delhi. However, as per the averments contained in the plaint, no cause of action or part thereof accrued in favour of the plaintiff against the defendant at Delhi. Therefore, this Court has no territorial

jurisdiction to entertain the present suit.

28. Under the circumstances, I need not go into the other objections raised by the defendant.

29. In view of my aforesaid discussion, plaint along with original documents is ordered to be returned to the plaintiff under Order 7 Rule 10 CPC within two weeks for presentation before the competent court of jurisdiction at Parwanoo within two weeks thereafter. It is clarified that time spent in prosecution of this case by the plaintiff *bona fidely* shall not be counted while computing the period of limitation for filing the present suit.

**ARUNA SURESH
(JUDGE)**

**OCTOBER 06, 2010
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