

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

% *Judgment reserved on:07.03.2013*  
*Judgment delivered on 13.03.2013*

+ **FAO(OS) 293/2011**

**CAPTAIN KERSY RATONSHA DRIVER** ..... Appellant  
Through: **Mr.Janendra Lal and Ms .**  
**Yashmin Tarapore, Advocates.**

versus

**NEPC INDIA LTD.** ..... Respondent  
Through: **Mr.Ajay Kumar Agarwal,**  
**Advocate.**

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**INDERMEET KAUR, J.**

1 This appeal encompasses a short point. Question raised is on the territorial jurisdiction of the Delhi Courts. Impugned order had returned a finding that under Section 19 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'said Code') Delhi Courts would have the territorial jurisdiction to entertain the suit.

2 The plaintiff (M/s NEPC India Ltd.) has filed a suit for damages claiming a sum of Rs. 50 lacs alleged to have been suffered by the plaintiff on account of the illegal grounding of its aircraft pursuant to an order passed by the Bombay High Court on 25.08.2008 which was at the  
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behest of the defendant. The averments in the plaint disclose that this order was obtained by the defendant by concealing material facts and furnishing false information on oath that the aircraft belongs to M/s Skyline NEPC Limited. Submission being that this aircraft is in no manner connected with M/s Skyline NEPC Ltd and it in fact belongs to M/s NEPC Airlines. This order of attachment was obtained by the defendant under a fraud. As a result of this attachment order the aircraft was grounded which has caused undue hardship and a resultant loss to the plaintiff company. Accordingly, the aforementioned suit was filed.

3 In the written statement, a preliminary objection was taken about the jurisdiction of the Delhi courts; submission was that the Bombay Courts would alone have the jurisdiction as the entire cause of action has arisen within the jurisdiction of the Bombay Courts; the defendant being a resident of Bombay and merely because the aircraft stood grounded in Delhi (Indira Gandhi International Airport) would not by itself confer jurisdiction upon the Delhi courts.

4 Learned counsel for the appellant (original defendant) points out that the provisions of Section 19 of the Code of Civil Procedure, 1980 (hereinafter referred to as the 'Code') have been mis-applied; the Delhi

Courts were not vested with the jurisdiction to try the suit. No wrong was done to any moveable property within the jurisdiction of Delhi. The averments contained in the plaint also show that the loss, if any, accrued to the plaintiff in Bombay pursuant to the attachment order passed by the High Court at Bombay; the defendant was also residing in Bombay, the present plaint was wrongly entertained by the Delhi Courts. The impugned order is liable to be set aside.

5        In the counter arguments, the position has been refuted. Learned counsel for the respondent submits that in no manner does the impugned order suffer from any infirmity.

6        Sections 16 to 20 of the Code deal with the aspect of territorial jurisdiction.

7        Section 16 of the Code deals with the territorial jurisdiction in regard to suits mentioned in clauses (a) to (f) of the said Section. Clauses (a) to (e) deal with immovable properties and clause (f) alone deals with an aspect of movable properties. For an application of this last clause, the suit must be one for recovery for property under attachment or distraint. This Section is inapplicable.

8        Section 17 deals with the immoveable properties situated within

the jurisdiction of different courts. In case of conflict of jurisdiction, the choice lies with the plaintiff to choose the forum best suitable to him unless there be a rule of law excluding access to that forum. The object of this Section is to prevent multiplicity of suits in those cases where properties in suit lie within the local jurisdictions of different courts.

9 Section 18 describes the place where the suit is to be instituted where the local limits of the jurisdiction of the Court are uncertain. The uncertainty mentioned in this Section must be a reasonable uncertainty; the object of this Section being that the litigant who has come to seek justice may not be denied the same by both the Courts under whose local limits the immovable properties overlap or an uncertainty prevails. This Section also relates to immovable properties.

10 Sections 19 & 20 are relevant to answer this controversy. They read herein as under:-

*19. Suits for compensation for wrongs to person or movables.*

*Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the*

*jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.*

*Illustrations*

*(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.*

*(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.*

*Sec. 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 a 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.*

*(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 Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares 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.*

11 Section 19 applies to suits for wrong done to the person or the movable property of the claimant. Under Section 19 a suit can be instituted at the place where the wrong was done or at the place where the defendant resides or carries on its business. To some extent, Section 19 overlaps the provisions of Section 20. However, it is not in the nature of an exception to Section 20; it is only an extension of Section 20. Section 19 elucidates that where the wrong is done to the person or movable property is the place where the cause of action arises an option is available to the plaintiff, in a suit for compensation, to file it at the place where the defendant resides or where the cause of action accrues.

Section 19 is in fact a specific Section. It is clear in its operation. It offers and furnishes an option or choice if the conditions indicated by the qualifying clauses are satisfied in that the wrong complained of was done within the local limit of one Court while the defendant in fact resides or carries on business within the local limits of the jurisdiction of another Court. Unless both these conditions together are available no question of option or choice for forum can conceivably arise. The conjunction “and” in the qualifying clause is very much indicative of this result and leaving aside the cases where these conditions together are not available the matters of such suits are still governed by other provisions of the Code. It is noticeable that in the body of Section 19, the phrase “the cause of action, wholly or in part” has not been used and it only finds place in Section 20 of the Code. In a suit for compensation for “wrong done” or “complained of” is the cause of action by which the Code understands and contemplates all the bundle of necessary facts capable on proof of sustaining the relief claimed. Compensation clearly posits an injury resulting in loss and damage. Mere injury or wrong without anything more would not suffice to sustain the claim for compensation. Where a wrongful act had been done in one place but the

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resultant damage is caused at another place, the Court at the latter place would also have jurisdiction. The expression ‘wrong done’ has been elaborated by judicial pronouncements to mean not only the act which has caused the wrong but would also include and cover the effect of the act namely the damage noticed at the destination.

12 Section 20 is a general Section covering all personal actions i.e. in relation to a person or movable property and as the opening words of the Section indicate it is subject to the provisions of Sections 19. Such personal actions shall be instituted in a Court within whose local jurisdiction

- (i) the defendant actually resides or carries on business,
- (ii) any of the defendants (where there are more than one) actually resides or
- (iii) the cause of action or a part of it arises.

The whole object of Section 20 (a) and (b) being that the defendant should be able to defend himself without any undue trouble. The expression “cause of action” has acquired a judicially settled meaning; compendiously the expression means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support

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his right to the judgment of the Court. It is to be given a liberal construction.

13 The burden of proof is always on the plaintiff to prove that the court has the jurisdiction where the suit has been filed. Normally under Clause (a) to (c) of Section 20, the plaintiff has a choice of the forum and he may not 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 only by an exclusion of the clause.

14 In the light of the aforementioned legal proposition the test has to be applied to the averments made in the present plaint as to whether the impugned order while applying the provisions of Section 19 of the Code had correctly returned a finding that the Delhi Courts would have the jurisdiction to entertain the suit.

15 The averments made in the plaint and the perusal of the record, evidence that the Bombay High Court had passed an order for attachment of the disputed aircraft on 25.08.2008. There is no dispute that the air-craft at that point of time was parked/stationed at Indira

Gandhi International Airport at Delhi. The allegations in the plaint are to the effect that the defendant by playing a fraud had obtained the restraint order from the Bombay High Court illegally. From these averments, it is borne out that the alleged wrong appears to have been done to the plaintiff at the time when the Bombay High Court passed the attachment order on 25.08.2008 on the basis of a mis-representation by the defendant. This order was no doubt passed within the jurisdiction of the Bombay High Court. The effect of this order was however felt within the jurisdiction of Delhi Courts as the aircraft which was stationed at Indira Gandhi Airport stood grounded in terms of the effect of the attachment order. The Civil Aviation Department was therefore bound to comply with the directions contained in the order of the Bombay High Court pursuant to which the attachment of the aircraft was effected in Delhi.

16 In a judgment of a Bench of the Bombay High Court reported as The State of Maharashtra Vs. Sarvodaya Industries AIR 1975 Bom 197, the words 'wrong done' as appearing in Section 19 of the Code had been expounded and the relevant extract of the aforementioned order reads herein as under:-

*“It is clear that the phrase “wrong done” is not used in any narrow sense but has to be understood in all its amplitude so as to afford forum and necessary relief. That clearly taken in both cause and effect. Injury or actual wrong may occur at place A but its effect may be felt at places other than „A” and may effect places „B” or „C” Act or actions taking place at a given place may still give rise at places quite different and at all these places and for all those effects, cause would arise seeking compensation. Without resultant loss or its proof restitution justice may not afford any relief nor there could be any remedy in vacuum. Thus the phraseology used by Section 19 about “the wrong done” would clearly take in not only the initial action complained on but its result an effect... ..Mere allegation of wrong is not the whole cause of action. It is the resultant effect that furnishes cause of action. Therefore, the damages that was suffered by the plaintiff, was the part of the cause of action i.e., “the wrong done” and that arose within the jurisdiction of Akola Court. Though therefore, the complaint of the plaintiff was against the action by defendant No.2 being without the limits of Akola Court, it follows that as he was affected by that action for all purposes in his business within the jurisdictions of that Court all the requirements of Section 19 of the Code have been fully answered and the suit was properly laid in Akola Court.”*

17 “Wrong done” includes the effect of the act and the resultant damage. If the act did not result in any damage, such an act may not become an actionable claim; the words ‘wrong done’ have thus been construed to include within it the effect of the act. Learned counsel for

the appellant has not been able to distinguish this legal position. The legal position as it stands; it is clear that despite the order of attachment having passed by the Bombay High Court, the effect of it was felt in Delhi as the aircraft was parked in Delhi; part of the cause of action had arisen within the jurisdiction of Delhi Courts.

18 Under Section 19 there are two twin conditions which have to be fulfilled; first is that the wrong has been done within the jurisdiction of one Court and the defendant resides outside the jurisdiction of the Court where the wrong has been done. Both these conditions have been satisfied. The wrong was done in Delhi; this is evident from the definition of the words ‘wrong done’; the effect of the attachment order of the Bombay High Court led to its attachment in Delhi; the resultant damage and the effect was felt within the jurisdiction of Delhi courts. It is clear that the phrase “wrong done” is not used in any narrow sense but has to be understood in all its amplitude so as to afford forum and necessary relief. Thus, the phraseology used in Section about “the wrong done” would clearly take in not only the initial action complained of but its result and effect. The wrong thus having been committed in Delhi, part of the cause of action has arisen in Delhi courts. The second  
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concurrent condition that the defendant must be living outside the jurisdiction where the wrong has been done has also been satisfied. The defendant is a resident of Bombay. The plaintiff has the choice to choose the forum where he has to file the suit. He being the principal dominus litis in the case.

19 In this view of the matter, the impugned judgment has correctly returned a finding that it would be the Delhi courts which would have the jurisdiction in the matter. There is no fault in the impugned order.

20 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J.

SANJAY KISHAN KAUL, J.

MARCH 13, 2013

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