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

% *Judgment Reserved on : February 08, 2013*
Judgment Pronounced on :February 21, 2013

\+ **FAO(OS) 364/2012**

TATA MOTORS LIMITED ..... Appellant
Represented by: Mr.Arvind Nigam, Sr.Advocate instructed by Mr.Darpan Wadhwa, Mr.Arush Khanna, Ms.Jaishree Shukla, Advocates.

versus

JSC VTB BANK . ...Respondent
Represented by: Mr.Rakesh Tiku, Sr.Advocate instructed by Mr.Rajiv Nanda, Advocate.

AND

FAO(OS) 393/2012

TATA MOTORS LIMITED ..... Appellant
Represented by: Mr.Arvind Nigam, Sr.Advocate instructed by Mr.Darpan Wadhwa, Mr.Arush Khanna, Ms.Jaishree Shukla, Advocates.

versus

JSC VTB BANK ....Respondent
Represented by: Mr.Rakesh Tiku, Sr.Advocate instructed by Mr.Rajiv Nanda, Advocate.

AND

FAO(OS) 394/2012

TATA MOTORS LIMITED ..... Appellant
Represented by: Mr.Arvind Nigam, Sr.Advocate instructed by Mr.Darpan Wadhwa, Mr.Arush Khanna, Ms.Jaishree Shukla, Advocates.

versus

JSC VTB BANK ....Respondent

Represented by: Mr.Rakesh Tiku, Sr.Advocate instructed by Mr.Rajiv Nanda, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

FAO(OS) 364/2012 & CM No.21076/2012; FAO(OS) 393/2012 & CM No.21078/2012; and FAO(OS) 394/2012 & CM No.21071/2012

1. Not a misdescription but an inapt description of the defendant in the three suits filed by the appellant has necessitated CM No.21076/2012, CM No.21078/2012 and CM No.21071/2012 to be filed, one each in the three captioned appeals, invoking the amendment jurisdiction of Civil Courts to amend the plaint; not by way of additional pleadings of fact or of law, but clarificatory in nature : to blow away the clouds casting a shadow on the very maintainability of the suit.

2. Tata Motors Ltd. filed three suits against the same defendant, described in the memo of parties as under:-

> *"JSC VTB Bank*
> *A Corporation with a place of business/*
> *banking office in India*
> *registered under the Reserve*
> *Bank of India Act 1934*
> *as a foreign Bank*
> *at the Taj Mahal Hotel,*
> *Mezzanine Floor 1,*
> *Mansingh Road, Delhi-110011."*

3. And suffice would it be for us to highlight that the description of the defendant discloses that it is a foreign bank, having a place of business at Taj Mahal Hotel, Mansingh Road, New Delhi which is a banking office in India, registered under the Reserve Bank of India Act 1934 as a foreign bank.

4. Para 3 of the plaint in each suit reads as under:-

> *"That the Defendant is a banking corporation registered under the Reserve Bank of India Act 1934 having a branch office in New Delhi where it operates/carries on business within the territorial jurisdiction of this Hon'ble Court."*

5. The foundation of the action in the three suits are three Letters of Credit (one in each suit) issued by JSC VTB Bank from its branch located at Ekaterinburg, Russia at the instance of Closed Joint Stock Companies incorporated under the laws of Russia. The Letters of Credit were subject to Uniform Customs Practice for Documentary Credit (2007 Revision); UCP 600. The grievance raised in the plaint is that the defendant has refused to discharge its liability under the letters of credit raising flimsy objections which are not sustainable as per law. As per the plaint, the Letters of Credit were issued by the Ekaterinburg Branch of the bank at Russia and the bill of exchange was drawn by the plaintiff and sent through its collecting bank to the said branch at Russia for payment. The objections were raised by said branch. Money decree has been claimed pertaining to the letters of credit.

6. Not being relevant for the purpose of the present appeals we are not noting the dispute raised by the issuing bank when the letter of credit were required to be honoured when the plaintiff raised the bill of exchange.

7. The three suits, invoking the summary jurisdiction of this Court, resulted in notices being served upon the defendant in the form prescribed

as per the Civil Procedure Code, inviting applications under Order 7 Rule 10 read with Rule 11 and Section 151 of the Code of Civil Procedure being filed by the respondent, inter-alia, questioning the territorial jurisdiction of this Court by highlighting that as per the pleadings in the three plaints, Tata Motors Ltd. had itself pleaded that the three Letters of Credit were issued by JSC VTB Bank, Ekaterinburg branch, Russia and when the Bill of Exchange was drawn invoking the credit, the same was refused by said branch. It was highlighted that the plaint admitted the fact that the branch at New Delhi was registered with the Reserve Bank of India under the Reserve Bank of India Act 1934 and was thus a separate juristic entity.

8. Tata Motors Ltd. relied upon sub-Clause (a) of Section 20 read with the explanation thereto of the Code of Civil Procedure 1908 by highlighting that the Russian Bank had sole office in India at Delhi which was exclusively carrying on banking business of the defendant at New Delhi i.e. the bank could be sued at the place of its sole office in India i.e. at New Delhi.

9. Vide impugned order dated February 17, 2012, the three interim applications filed by the defendant have been allowed. The view taken by the learned Single Judge is that the explanation to Clause (a) of Section 20 is in two parts. The learned Single Judge has recognized that the first part applies only to such corporations which have its sole office at a particular place and that the second part takes care of a situation where a defendant has a principal office at one place and one or more subordinate offices at different places. It has been held that if the second part is attracted then the first part would not be applicable. Recognizing that the intention of the legislature was that in case of a corporation, for the purposes of Clause (a), location of the subordinate office is a relevant place for filing of the suit and that Section 20 makes no distinction between a company incorporated

as per laws in India and a foreign company, the learned Single Judge has taken a view that since UCP 600 requires it to be treated that each branch of a bank is an independent bank, the existence of a branch at Delhi which had no concern with the Letter of Credit would not confer territorial jurisdiction in the Courts at Delhi.

10. It needs to be highlighted that whereas the learned Single Judge has correctly acknowledged that the explanation which is referable only to Clause (a) of Section 20 of the Code of Civil Procedure, is in two parts, but we find no reasoning why the learned Single Judge has held that the concept of *'sole office'* in the explanation is not applicable in the present case. But one thing is clear. A meaningful reading of the impugned decision implies that even if a foreign company's *'sole office'* is in India it cannot be sued in India, probably for the reason it is not the foreign company's '*sole office'* in the entire world.

11. The learned Single Judge has referred to Article 3 of UCP 600 which states that *'branches of a bank in different countries are considered separate banks';* and this has been read to mean that the defendant, which was sole office in India, *is an independent and separate bank and is not a branch of the Russian Bank.*

12. During arguments in the appeal, since learned counsel for the respondent had heavily relied upon the description of the defendant, as per the memo of parties, and had referred to the pleadings in paragraph 3 of the plaint to highlight that it was the case of the plaintiff itself and as described, the branch of the bank at New Delhi had to be treated as a separate juristic entity; distinct from the main office at Russia and/or other branches all over the world, Tata Motors Ltd. was better advised by their counsel to seek to amend the description of the defendant, as in the memo

of parties, with simultaneous corresponding amendment in paragraph 3 of the plaint.

13. Vide above noted three Civil Miscellaneous Applications it is prayed that Tata Motors Ltd. be permitted to make two amendments. The first to amend the memo of parties and the second to amend paragraph 3 of the plaint.

14. As regards amendment to the memo of parties, the prayer made is to substitute the description of the defendant as under:-

> *"JSC VTB Bank*
> *A Corporation Incorporated in Russia*
> *having its headquarters at*
> *Federation Tower, 12 Presenskaya Emb.,*
> *Moscow, Russia*
> *(Also registered under the Reserve Bank of India Act 1934 as a foreign bank under the Companies Act 1956)*
> *Through its sole office in India located at the*
> *Taj Mahal Hotel, Mezzanine Floor*
> *1, Mansingh Road, New Delhi-110011."*

15. As regards paragraph 3 of the existing plaint, the amendment sought for is to substitute the said para No.3 as under:-

> *"3. That the defendant is a corporation incorporated in Russia having its head office at Federation Towers, 12 Presenskaya Emb., Moscow, Russia ("JSC VTB Bank"). The said JSC VTB Bank has several branch offices in Russia and elsewhere in the world. The concerned Letter of Credit was issued by the said JSC VTB Bank from its branch office located at Ekaterinburg Branch, 5 Zhukova Street, Ekaterinburg – 620 219, Russia. The said JSC VTB Bank also has its sole office in India at Taj Mahal Hotel, Mezzanine Floor, Mansing Road, New Delhi-110 011. The said JSC VTB Bank is carrying on business in India through this sole office, within the territorial jurisdiction of this Hon'ble Court. The said JSC VTB Bank is also a Banking Corporation registered under the Reserve Bank of India*

Act, 1935 and under Section 591 of the Companies Act, 1956."

16. With consent of parties we had heard arguments in the applications seeking amendment and the main appeal for the reason the issues raised pertaining to the amendment and the merits in the appeals were hyperlinked. It is the mis-description of the defendant which was being used by the respondents i.e. the defendant before us in appeal, to urge that irrespective of Article 3 of UCP 600, Courts at Delhi would have no jurisdiction to entertain the plaints, for the reason the plaintiff was suing an entity which did not exist in the eyes of law; and in fact Shri Rakesh Tiku, learned senior counsel urged that the suit itself had to be dismissed disclosing no cause of action against the defendant as described for the reason the Delhi Branch of the bank had not issued the letters of credit.

17. A corporation or a company is treated as a juristic entity and must be sued in its own name. If the said juristic entity carries on business at its sole office in India, the address of the sole office has to be distinctly disclosed and an averment made that the Corporation is carrying on business at its sole office in India at the place concerned and this would be for the purpose of attracting territorial jurisdiction keeping in view the explanation to Section 20 of the Code of Civil Procedure, which explanation admittedly relates to Clause (a) of Section 20. Such a simple proposition, had it been kept in mind when the plaint was drafted would have resulted in the defendant being correctly described in the original plaint itself; obviating the need to move an application seeking amendment to clarify the description of the defendant.

18. We have reproduced herein above in paragraph 2 the description of the defendant, as in the memo of parties, and the one proposed to be amended as per paragraph 14 above. It is not a case of mis-description but

it is a case of an inapt description. We have noted herein above in paragraph 4 the existing paragraph 3 in the three identically worded plaints and have noted herein above in paragraph 15 the substituted pleadings and would simply highlight that the inapt description of the defendant disclosed in the memo of parties which found its reflection in paragraph 3 of the plaint is being clarified in conformity with the correction made to describe the defendant in the proposed memo of parties, intended to be substituted in paragraph 3 of the proposed amendment by replacing paragraph 3 of the existing plaint. On the subject of amendment, a Division Bench of this Court, in the opinion reported as 172 (2010) DLT 234 *Archie Comic Publications Inc v. Purple Creations Pvt. Ltd. & Ors*. drew a distinction in pleadings requiring permission to amend and clarify already pleaded facts, as long as the same did not give birth to an additional or new cause of action or introduction of new facts. In relation to territorial jurisdiction, recognizing that the same does not strike at the root of proceedings it was nonetheless opined that if a plaint discloses some facts which are inchoate in their statement and an issue arises as to territorial jurisdiction, amendment to bring clarity would be permissible.

19. Even otherwise compartmentalization, dissection, segregation and inversion of pleadings runs counter to the cardinal canon of interpretation, that pleadings have to be read as a whole and a pedantic approach which defeats justice must give way to a liberal construction. In the opinion reported as (1987) 2 SCC 555 *Ram Swarup Gupta (deceased) through LRs v. Bishun Narain Inter College & Ors*. the Supreme Court observed that where pleadings are expressed in words which do not clearly make out a case in accordance with strict interpretation of law, but read substantively make out a case in accordance with law, it is the substance of the pleadings and not the form which should guide the Courts, a view which was

affirmed by the Supreme Court in the decision reported as (2005) 7 SCC 510 *Popat & Kotecha Property v. State Bank of India Staff Association*.

20. Thus, pleadings have to be read meaningfully and with an intention to find whether the opposite party has meaningfully understood the case pleaded. Even as originally drafted, the plaint would mean as is being clarified by the amendment.

21. The two proposed amendments are clarificatory and remove the shadow cast due to the inapt description of the defendant in the original plaint and thus we allow CM No.21076/2012, CM No.21078/2012 and CM No.21071/2012 noting further that it is settled law that an appeal is a continuation of a suit and that clarificatory amendments which remove inapt pleadings can be allowed at the appellate stage.

22. With the amendment allowed we have before us a clear description of the defendant which would be : *'JSC VTB Bank. A Corporation Incorporated in Russia'* having its headquarters at Federation Tower, 12 Presenskaya Emb., Moscow, Russia. As regards the Delhi Branch, we have in the memo of parties that the Russian Bank is carrying on its business at its sole office in India located at Taj Mahal Hotel, Mansingh Road, New Delhi.

23. We also would have before us the pleadings in the substituted paragraph 3 of the plaint which brings out as aforesaid.

24. Pertaining to Section 20 of the Code of Civil Procedure, the position is clear : that sub-Clauses (a), (b) and (c) are independent of each other and pertaining to Clause (a) the reference to defendant would include a living and a juristic person. The said clause has no concern with the place where the cause of action accrues. It only has a reference and concern to the place of residence or carrying on of business. The explanation to the Section : *'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' is ex-facie a deeming provision and as has been correctly opined by the learned Single Judge, is in two parts:-

Part-1 : A Corporation shall be deemed to carry on business at its sole or principal office in India.

Part-2 : In respect of any cause of action arising at any place where it has also a subordinate office.

25. The decision of the Supreme Court reported as AIR 2004 SC 2154 *New Moga Transport Company v. United India Insurance Co. & Ors*. brings out as aforesaid.

26. In the decision reported as AIR 1992 SC 1514 *M/s.Patel Roadways Ltd. Bombay v. M/s.Prasad Trading Company* the Supreme Court opined that pertaining to a cause of action, a corporation has to be sued at its subordinate office and not at its principal office if the cause of action arose where the subordinate office was situated.

27. Thus, the view taken by the learned Single Judge that a Corporation can be sued at its subordinate office only when the cause of action accrues in the territory where the subordinate office is situated is incorrect notwithstanding that the learned Single Judge has correctly acknowledged that the explanation is in two parts. The error committed is, in not appreciating the two distinct limbs of the explanation which have no concern with each other; and as explained by the Supreme Court in *New Moga Transport*'s case (supra).

28. Pertaining to the application of Article 3 of UCP 600, the discussion is to be found in paragraphs 10 to 12 of the decision.

29. The view taken by the learned Single Judge is pedantic. Article 3 of UCP 600 requires it to be treated that each branch of a bank in a different

country is a separate branch. But the same has to be limited for the purpose of *'documentary credits'* and not to make branches of a bank separate entities in all respect. It is settled law that the juristic entity is the Corporation and not its branch. Issues pertaining to jurisdictions, vesting Courts with the authority to entertain suits, and the law pertaining to territorial jurisdiction has not to be confused with the concept of juristic entities and likewise, provisions dealing with documentary credits and the deeming effect thereof, which is limited to documentary credits, cannot be expanded to other areas. Article 3 of UCP 600 is a mere enabling provision which allows the same bank's branch offices in different countries to perform additional roles in a documentary credit. For example, branch at place 'X' of bank 'A' can act as an advising bank and the branch at place 'Y' of the same bank 'A' can act as a confirming bank for the same documentary credit. Without this interpretative provision in Article 3 of UCP 600, which we find was in fact introduced in UCP 500, this could not be done. It was meant to facilitate the same juristic bank to perform two roles at its two different branches because this is the necessity in international transactions.

30. We simply highlight that the official ICC Commentary clarifies the aforesaid in the following words:-

> *"It is often the case that the branches of the same bank in different countries are involved in the same documentary credit transaction. Through the use of the term 'separate banks', this interpretation makes it clear that for purposes of these rules these branches of banks should be treated as separate banks."*

31. Overruling the view taken by the learned Single Judge we reach our destination, and on the way we have clarified the inapt pleadings by taking on record the amended pleadings, with a direction which we issue now that

the plaint(s) be amended by filing the amended plaint(s) in the three suits. We simultaneously set aside the impugned decision dated May 08, 2012 and we dismiss IA No.16809/2010, IA No.16755/2010 and IA No.16756/2010.

32. The suits are restored with all other pending applications.

33. The amended plaint be filed in the three suits within two weeks. The three suits would be listed before the Roster Bench on March 04, 2013.

34. Application seeking leave to defend and under Order 38 Rule 1 and Rule 5 read with Order 39 Rule 1 and 2 CPC are revived in all the three suits, as also the interim orders which were in existence.

35. Since the suits are revived, the appellant would be entitled to a refund of the Court Fees paid in the appeals and for which we direct the Registry to issue a certificate to the appellant in the three appeals authorizing the appellant to receive back from the Collector the full amount of the Court Fee paid on the memorandum of appeals.

36. Parties shall bear their own costs all throughout.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

FEBRUARY 21, 2013
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