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

+ **CS(OS) 1480/2010**

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Judgment dated 12.03.2014

M/S SWASTIK POLYTEX PVT LTD Plaintiff
Through : Mr. Mukesh Sharma, Adv.

versus

ORIENTAL INSURANCE COMPANY Defendant
Through : Mr. Bhaskar Tiwari, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The plaintiff has filed the present suit for recovery of Rs.1,24,11,770/-. Issues were framed in this case on 09.10.2013. Issue No.2, which is to be treated as a preliminary issue, reads as under:-

“(ii) Whether this Court has territorial jurisdiction to entertain the present suit? **OPP**”

2. The necessary facts to be noticed for disposal of issue No.2 are that the plaintiff is a Company carrying on its business at Udaipur. The plaintiff Company had obtained a loan from State Bank of Bikaner and Jaipur from Udaipur and the Bank had financed running the business of the plaintiff. The plaintiff got insured the factory building, plant machineries, electronic and other installations from the defendant for a sum of Rs.60 lakhs vide fire policy bearing No.827/1999 for the period 08.11.1998 to 07.11.1999 and for raw material, finished goods, stock in process and packing material for a sum of Rs.15 lakhs for the period 30.01.1999 to

29.01.2000 vide policy No.938/1999. A devastating fire took place in the factory of the plaintiff on 24.10.1999 in which almost the entire factory building, plant machineries, installations, raw material and finished goods were reduced to ashes resulting into heavy losses to the plaintiff. The matter was reported to the local Police on 20.10.1999. The extent of losses was informed by the plaintiff to the defendant on 26.10.1999. The insurance claim was lodged in the Branch Office of the defendant at Udaipur, which was eventually rejected by the defendant. Consequent thereto the present suit has been filed.

3. According to the defendant, no part of cause of action has arisen within the territorial jurisdiction of this Court. It is contended that the factory of the plaintiff is situated at Udaipur. Loan was granted from Udaipur at the behest of the Bank. The insurance policy was obtained from the Udaipur office of the defendant. The premium was paid by the Bank from Udaipur to the branch office of defendant at Udaipur. The accident took place at Udaipur and the claim of the plaintiff was rejected by the Udaipur office of the defendant.
4. Per contra, learned counsel for the plaintiff has laboured hard to agitate that the letter of rejection is based on the opinion of the Surveyor who was appointed at New Delhi and the cancellation and the rejection of the claim is based on the opinion of the Head Office and also issued by the Head Office. Reliance is also placed on a letter dated 03.10.2000 addressed to the plaintiff which refers to the claim being put up to the Head Office. Reliance is also placed on a letter of 13.02.2000 to show that a Surveyor had been appointed in the matter from Delhi. Reliance is also placed on a communication of 18.09.2001 which refers to the fact that the competent authority has repudiated the claim, to show that the competent authority is situated at New Delhi. Reliance is also placed on the explanation to

Section 20 of the Code of Civil Procedure to show that a Corporation shall be deemed to carry on business at its sole or principal office and the Head Office of the defendant being at Delhi, it is contended that this Court would have territorial jurisdiction in the matter.

5. I have heard counsel for the parties and considered their rival submissions. Counsel for the plaintiff has placed reliance on Section 20 of the Code of Civil Procedure, which 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 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.

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 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.”

6. The explanation to Section 20 CPC on which counsel for plaintiff has sought to place reliance, takes into account two situations. First part of the explanation deals with the situation where a corporation merely has a sole or a principal office. In such a situation, obviously the place where the sole or the principal office of the corporation is situated, will have the jurisdiction. As opposed to this, the second part of the explanation, deals with a situation wherein the cause of action arises at a place where the corporation has its branch / subordinate office, and as per the explanation to section 20, the Courts at such place where the subordinate office is situated, alone will have the territorial jurisdiction to entertain the suit.
7. Although counsel for plaintiff has laboured hard to persuade the court that the case of the plaintiff would be covered under the first part of the explanation on the ground that since the principal office of the defendant is situated at Delhi, the courts in Delhi would have territorial jurisdiction, in my view, this argument of the plaintiff is erroneous and misplaced. In my considered opinion, the latter part of the explanation to section 20 is squarely applicable to the present case at hand, as the cause of action has arisen at Udaipur, where the branch / subordinate office of the defendant is situated and hence, it is the courts at Udaipur that will have the jurisdiction.

8. In the case of Patel Roadways Limited Bombay Vs. Prasad Trading company, (1991) 3 SCR 91 the Supreme Court of India had considered similar argument. It was held as under:

“The explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event, the courts within whose jurisdiction, the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually 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 words “at such place” occurring at the end of the 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.”

9. Similar view has been expressed in the case of New Moga Transport Co. Vs. United India Insurance Co. Ltd. & Ors., 2004 4 SCC 677. The relevant portion of the judgment reads as under:-

“10. On a plain reading of the Explanation to Section 20 CPC it is clear that the Explanation consists of two parts : (i) before the word “or” appearing between the words “office in India” and the words “in respect of”, and (ii) 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 has the jurisdiction in respect of any cause of action arising at any place where it has also a subordinate office.”

10. A Single Judge of this Court in the case NTPC [General Manager] & Anr. Vs. Lt. Col. A.P.Singh (Retd.) & Anr., 156 (2009) DLT PAGE 572, has also held as under:-

“9. Thus it is clear that where the cause of action takes place within the jurisdiction of the subordinate office, it is only the Court situated at that place where the suit can be brought. I, therefore, consider that the trial Court wrongly came to conclusion that the Court at Delhi had jurisdiction. In the instant case, it was specifically provided in the Contract that the Court at Bhagalpur would have the jurisdiction. The entire cause of action had taken place within Bhagalpur.”

11. Counsel for the plaintiff has relied on Sunil Goel vs. Oriental Insurance Co. Ltd., 154(2008) DLT 1, in support of his argument that a Corporation shall be deemed to carry on business at its principal office and hence, the Courts within the territorial jurisdiction of which the principal office is situated, will have jurisdiction to entertain the case.
12. In the light of the settled law by the Apex Court, the judgment of the Single Judge of this Court relied upon by counsel for the plaintiff, can be of no benefit to the plaintiff.

13. Admittedly, as detailed above, the plaintiff is carrying on its business at Udaipur. The insurance policy was obtained by the plaintiff at Udaipur. The statement of claim was filed by the plaintiff at Udaipur office of the defendant. It may also be noticed that even as per the understanding of the plaintiff, the Court at Udaipur was the Court of competent jurisdiction which is evident from the fact that after a petition filed before the National Consumer Disputes Redressal Commission (NCDRC) was rejected on the ground that it raises complicated questions, the plaintiff approached the State Commission at Udaipur.
14. In addition thereto, the plaintiff also filed a petition under Section 11 of the Arbitration & Conciliation Act, 1996 at the Courts in Jodhpur. The argument of learned counsel for the plaintiff that the claim was rejected by the Head Office and the communication sought to be relied upon by the learned counsel can be of no benefit to the plaintiff as the letter dated 18.09.2001 has been issued by the Branch Office at Udaipur although the letter head shows that the Head Office of the Company is situated at New Delhi. Merely because the Head Office processed the claim of the plaintiff or that a Surveyor was appointed from New Delhi, by itself would not confer jurisdiction on the Courts in New Delhi.
15. Since no part of cause of action has arisen within the territorial jurisdiction of this Court and having regard to the settled law as laid down by the Supreme Court, the issue No.2 which is the preliminary issue is decided against the plaintiff. Resultantly, the plaint is liable to be returned to the plaintiff to be filed in the competent Court of jurisdiction within four weeks of its being returned to the plaintiff.

G.S.SISTANI, J

MARCH 12, 2014 'sn/ssn'