

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL SIDE JURISDICTION

LEAVE PETITION NO.109 OF 2015
IN
SUMMARY SUIT (L.) NO.313 OF 2015

KPL International Ltd.	...	Plaintiff
Vs.		
API Industries Ltd.	...	Defendant

Simil Purohit, Adv. a/w. Peshwan Jehangir, Adv. a/w. Himanshu Vidhani, Adv. i/b. Khaitan & Co. for plaintiff.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 18th June, 2015.

P.C. :

1. The plaintiff has applied for leave of the Court on the ground that a regional office of the defendant is in Mumbai, though the registered office of the company is in Bhavnagar, Gujarat. The suit is filed upon commercial invoices and debit notes stated to have been issued by the defendant from time to time.

2. It is argued on behalf of the plaintiff that a registered office of a company would give territorial jurisdiction to the Court where that registered office is situate. The clause XII of the Letters Patent under which leave is applied requires the plaintiff to sue where the defendants reside or carry on business or personally work for gain at the time of the commencement of the suit.

3. The defendant is a limited company. The defendant must, therefore, "carry on business" within the territorial limits of this Court's jurisdiction. It must be seen where a limited company "carried

on” its business. Clause XII of the Letters Patent does not show this fact. A similar provision for grant of territorial jurisdiction to Courts is contained in Sections 15 to 20 of the CPC. The explanation to Section 20 shows this aspect. It runs thus :

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.

The registered office of the defendant, which is its principal place of business, being in Bhavnagar, Gujarat, the defendant cannot be taken to be carrying on business in Mumbai even if one of its regional office is situate in Mumbai. Of course, its subordinate office, which could be its regional office, may give the Court territorial jurisdiction, but only in respect of any cause of action arising at that place.

4. Further under clause XII of the Letters Patent if the defendant is not carrying on business in India the other requirement is that a part of cause of action must arise within the Court's territorial jurisdiction.

5. The plaintiff has not shown any part of the cause of action arising within the territorial limits of this Court's jurisdiction.

6. It is argued on behalf of the plaintiff that only upon the regional office of the defendant which is in Mumbai the territorial jurisdiction of this Court is claimed.

7. The plaintiff relies upon the judgment in the case of

Pratap Singh Vs. The Bank of America, 1976, The Bombay Law Reporters, Vol. LXXVIII, 549. In that case the defendant was a foreign corporation incorporated abroad but carrying on business within the limits of the jurisdiction of this Court. How the defendant carried on that business has been shown in the judgment. The defendant was a foreign corporation registered under Section 592 (1) (e) of part XI of the Companies Act, 1956 dealing with companies incorporated outside India. The provision is made for companies incorporated outside India where they have established a place of business within India before or after the commencement of Act of 1956. Such company is required to comply with the provisions of companies Act with regard to the business carried on by it in India as if it were a company incorporated in India. The company would then inter alia have to show the place where the documents could be delivered to the registrar by the foreign company, where it would maintain its accounts etc. failing which the prescribed penalties under the chapter would be levied.

8. It is for such a company that the judgment relied upon by the plaintiff has been passed. In that case the Bank of America which was incorporated in America was carrying on business in Mumbai. It is stated to have had “a full-fledged branch at Mumbai” where it carried on business. That branch was disclosed as its “principal place of business” under Section 592 (1) (e) of the Companies Act. The company had authorised one person to accept service of process on its behalf.

The Court considered the case of a foreign corporation where the cause of action had arisen wholly outside India.

The Court held that the jurisdiction of the Court for taking

cognizance of the civil case is found in clause XII of the Letters Patent of the High Court of Bombay or Sections 15 to 20 of the CPC (as applicable) “and nowhere else”.

9. Consequently it would have to be seen whether the defendant carried on business in Mumbai. The defendant is an Indian limited company. Its registered office is at Bhavnagar, Gujarat. That is its principal place of business. It has regional office in Mumbai. It may have regional offices at many places. Merely having regional office cannot confer territorial jurisdiction upon any Court unless part of cause of action has accrued there. If this was not so, the result would be absurd. For a company registered in another state, where a part of cause of action or the entire cause of action may have arisen also in another state this Court would not be able to exercise its jurisdiction and grant relief which would be executable within its territorial jurisdiction.

10. The case of foreign company which has registered its address in Mumbai being held as its principal place of business in India is wholly different from the case of an Indian company registered in an another state which only has a regional office in Mumbai. Such company cannot be taken to be “carrying on business” in Mumbai simplicitor by its regional office to confer territorial jurisdiction on the Court. Of course, if a part of the cause of action has also arisen within the limits of such regional office then, with leave, the company may sue and the Court may exercise its territorial jurisdiction upon grant of such leave.

11. Consequently it is seen that the regional office at Mumbai

itself cannot imply that the defendant “carries on business in Mumbai”. Since the defendant is not carrying on business in Mumbai, a part of the cause of action must be shown to have arisen in Mumbai. No part of the cause of action is shown to have arisen in Mumbai.

12. It has been needlessly argued that payments were made from Mumbai. A place from which the payments are made is not a place where any part of the cause of action can arise. It is only where the payment is made is material to see since a debtor has to seek his creditor. The debtor would, therefore, have to come to the place of creditor to make payment. The place of payment is, therefore, held to be the material part of the cause of action. Payments in this case were made from Mumbai. They were not made in Mumbai. The plaintiff itself is in Delhi. The payments could not have been made in Mumbai. Mumbai is, therefore, not the place where any part of cause of action is seen to have arisen relating to payment.

13. No other aspect is produced to show that any part of cause of action has arisen in Mumbai. The cause of action may arise in Delhi where the payment had to be made or Bhavnagar, Gujarat where the defendant carries on business, it having its registered office, which is its principal place of business there. Nothing else has been shown.

14. Leave under the clause XII of the Letters Patent Act cannot be granted. Hence the leave is refused.

(ROSHAN DALVI, J.)