

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

+ CS(OS) 636/2011 & IA No.4501/2014

Decided on : 26.02.2015

IN THE MATTER OF:

GOODLUCK CAPITAL (P) LTD. Plaintiff

Through : Mr. A.K. Thakur and
Mr.R.K.Mishra, Advocates

versus

JHARKHAND ISPAT PVT. LTD. Defendant

Through : Mr. N.Raja Singh, Advocate

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.(Oral)

IA No.15128/2011(by the defendant u/O VII R 11 CPC)

1. The present application has been filed by the defendant praying *inter alia* that the suit as filed by the plaintiff, is liable to be rejected on the ground that this court is not vested with the territorial jurisdiction to try and entertain the same. In support of the aforesaid submission, learned counsel for the defendant company refers to and relies upon the averments made by the plaintiff in paras 7 & 8 of the plaint.

2. Counsel for the defendant company states that on a plain reading of the averments made in the plaint and on perusing the documents filed by the plaintiff, it clearly emerges that the plaintiff has failed to show

even an iota of evidence to establish that any part of the cause of action had arisen within the territorial jurisdiction of this court. He points out that all the documents filed by the plaintiff along with the plaint, fortify his stand that the entire cause of action had arisen in Ghaziabad, Uttar Pradesh and not in Delhi. As for the address of the defendant company given in the memo of parties, he submits that it is to the knowledge of the plaintiff that the registered office of the defendant company is situated at Ghaziabad and its head office is situated at Jharkhand. To substantiate the said submission, he relies upon a copy of the Complaint Case No.4327/2009, filed by the plaintiff before the learned Additional Chief Judicial Magistrate at Ghaziabad, Uttar Pradesh, wherein the address of the defendant company has been furnished in the memo of parties as at District Ramgarh, Jharkhand.

3. Learned counsel for the defendant also refers to the legal notice dated 1.10.2009, issued on behalf of the plaintiff to the defendant company where again, the address of the defendant company has been mentioned as that of its registered office situated in Varanasi, Uttar Pradesh. The third document relied upon by the counsel is the complaint dated 1.4.2008, addressed by the Director of the plaintiff company to the SSP, Ghaziabad, specifically stating *inter alia* that the defendant

company is situated in the jurisdiction of PS Ramgarh, Hazaribagh, Jharkhand.

4. Learned counsel for the defendant company sums up his argument by stating that all the aforesaid documents conclusively prove that no part of the cause of action has arisen in Delhi for the plaintiff to have filed the suit in this Court and nor is the registered office/head office of the defendant company situated in Delhi, and therefore this Court is not vested with the territorial jurisdiction to try and entertain the present suit. To buttress the said argument, he relies on the decision of the Supreme Court in the case of Kusum Ingots and Alloys Ltd. vs. Union of India & Anr., reported as **AIR 2004 SC 2321**.

5. It is settled law that the Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause that empowers it to decide a dispute which has at least in part, arisen within its jurisdiction. The concept of 'forum conveniens' fundamentally means that it is obligatory for the court to see the convenience of all the parties before it. The word, "convenience" would take in its ambit and sweep, the existence of a more appropriate forum, the expenses involved, the law relating to the lis, verification of certain facts which are necessary for the just adjudication of the controversy and such other ancillary aspects.

6. In the case of Kusum Ingots (supra) referred to by learned counsel for the defendant, while reiterating the well established principle of 'forum conveniens', the Supreme Court had dismissed an appeal against an order of the Delhi High Court, refusing to exercise its discretion to entertain a petition on the ground of lack of territorial jurisdiction. It was held that simply because a small part of the cause of action arises within the territorial jurisdiction of the High Court, may itself not be considered as a determinative factor, compelling the said Court to exercise its jurisdiction.

7. In an earlier decision in the case of Union of India v. Adani Exports Ltd. reported as **AIR 2002 SC 126**, the Supreme Court had made the following pertinent observations:-

"10. ...Cause of action as understood in civil proceedings means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. It is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. Each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned." **(emphasis added)**

8. After analysing a catena of decisions of the Supreme Court on what constitutes "cause of action", this Court had held in the case of Bata India Limited v. Vitaflex Mauch GMBH reported as **(2008) ILR 2 Delhi 665**, that while examining the expression, "cause of action", the Court ought to look at the factual situation that gives rise to an enforceable claim and it must take into consideration the entire averments contained in the plaint and test whether, on being read collectively, they constitute a bundle of facts that form the basis of instituting of the suit.

9. In a recent decision, in the case of M/s Shristi Udaipur Hotels and Resrots (P) Ltd. vs. Housing and Urban Development Corporation Ltd. reported as **210 (2014) DLT 198**, while relying on the judgment of the Supreme Court in the case of National Textile Corporation Ltd & Ors v. Haribox Swalram & Ors. reported as **AIR 2004 SC 1998** and on a Full Bench decision of the Delhi High Court in the case of Sterling Agro Industries Ltd. v. Union of India reported as **AIR 2011 Delhi 174**, this Court had declined to exercise its jurisdiction on the ground that it would be inconvenient to entertain the petition and that the High Court of Rajasthan would be better equipped to deal with the issues raised by the petitioner therein and in the said context, had observed as below:-

"22. The position of law that clearly emerges from the above is that the expression "cause of action" means and includes the circumstance resulting in breach of right or immediate occasion for the party to react. The said expression shall take in its fold the whole bundle of material facts which a party must prove in order to succeed. It also includes the circumstances and situations that entitle a party to maintain an action in court. For determining as to whether a particular fact constitutes a cause of action, would depend on the facts and circumstances of each case and while considering the facts averred, the court has to consider the substance of the matter and not the form. Simply because a miniscule part of the cause of action arises within the territorial jurisdiction of a particular High Court may not be sufficient to compel the said court to decide the matter on merits. **In appropriate cases, discretion still rests with the court to decline to exercise the jurisdiction vested in it by invoking the doctrine of forum convenience or the doctrine of non-convenience. The said doctrine of forum non-convenience can be invoked when the court deciding to refrain from exercising its jurisdiction, is vested with the jurisdiction to decide the case."** (*emphasis supplied*)

10. As for the instant case, the records reveal that the plaintiff had instituted the present suit against the defendant company in March, 2011, for seeking recovery of a sum of ₹26,09,617/- along with interest. At the time of instituting the suit, the address of the defendant company was mentioned in the memo of parties as "S-35, Second Floor, Panchshila Park, New Delhi". Subsequently, on 25.5.2011, the plaintiff had filed an amended memo of parties, wherein the address of the

defendant company was mentioned as Ramgarh Cantt., Jharkhand, with a note that the defendant company is also available at the earlier address given in the memo of parties which happens to be the residential premises of Ms. Shalini Rungta, a Director of the defendant company.

11. As per the averments made by the plaintiff in para 7 of the plaint, this court has the territorial jurisdiction to try and entertain the suit for the reason that the plaintiff as also the defendant company have their offices in Delhi and their Directors are also based in Delhi. It has been averred in para 10 of the plaint that the cause of action for filing the present suit arose on 1.10.2009, when the defendant company was called upon to make the payment to the plaintiff, but it had failed to do so.

12. The documents filed by the plaintiff make it evident that neither the registered office nor the corporate office of the defendant is situated in Delhi. To overcome the objection of territorial jurisdiction, the address of the defendant was shown in the memo of parties as that of a person described as the Director of the defendant company. Section 20 of the Code of Civil Procedure, 1908 prescribes that if the defendant is a corporation, then it must be served at the registered office or at its subordinate office, in respect of any cause of action arising at such

place. Neither the memo of parties, nor the documents filed by the plaintiff substantiates the averments made in the jurisdiction para of the plaint that the defendant company has any office at Delhi. The residential address of a Director of the defendant company in Delhi would not be a relevant consideration for vesting territorial jurisdiction on this Court. The averments made in the cause of action para also do not demonstrate as to how would this court be vested with the territorial jurisdiction for entertaining the suit. In fact, the documents filed by the plaintiff reinforce the arguments advanced by learned counsel for the defendant company that the plaintiff cannot maintain an action in this Court.

13. A reply in opposition to the present application has not been filed by the plaintiff. However, in the course of making submissions, learned counsel for the plaintiff concedes the objection taken by the other side and states that the plaint may be returned to the plaintiff under Order VII Rule 10 CPC, so that it can be presented before the appropriate court, vested with the territorial jurisdiction to try and entertain the suit, i.e., the Civil Court, Ghaziabad, Uttar Pradesh. He further requests that the defendant be directed to appear before the said court, in terms of the provisions of Order VII Rule 10A CPC.

14. In view of the aforesaid submission, directions are issued to the Registry to return the plaint to the counsel for the plaintiff for it to be presented before the competent court vested with the territorial jurisdiction to try and entertain the same. As learned counsel for the plaintiff submits that he shall present the plaint before the court of the learned Civil Judge, Ghaziabad, the parties are directed to appear before the said court on 25.3.2015. On the said date, the plaintiff shall present the plaint and the defendant shall appear before the said court without waiting to be served afresh with the summons in the suit.

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In view of the order passed in IA No.15128/2011 above, the suit is disposed of, along with the pending application, while leaving the parties to bear their own costs.

FEBRUARY 26, 2015
mk/sk/rkb

(HIMA KOHLI)
JUDGE