

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

Judgement reserved on: 30.09.2015
% Judgement delivered on: 06.11.2015

+ **FAO No. 216/2015**

ICICI BANK LTD.Appellant

Vs

K.P. MURGESANRespondent

ADVOCATES WHO APPEARED IN THIS CASE:

For the Appellant: Mr Punit K. Bhalla & Ms Chetna Bhalla, Advocates
For the Respondent: None.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is an appeal against the judgement and decree passed by the learned ADJ-II Central/ Delhi, dated 15.04.2015. The learned ADJ by virtue of the impugned judgement and decree has returned the plaint.

1.1 The appellant (i.e. the plaintiff in the suit), being aggrieved, has moved this court by way of the instant appeal.

2. The brief facts, which one is required to note, in order to adjudicate upon this appeal are as follows:

2.1 It is the case of the appellant that it had extended a personal loan to the respondent herein (i.e. the defendant). The agreement arrived at in this regard was translated into a loan agreement/ a credit facility application form (hereafter referred to as the loan agreement). Along with the loan

agreement, an acknowledgement form was executed by the respondent, which is dated 03.02.2014.

2.2 With the execution of the loan agreement, and aforementioned documents, a sum of Rs. 3 lacs is said to have been disbursed in favour of the respondent. The said sum, according to the appellant, was disbursed on 03.02.2014, and in terms of the loan agreement, it was required to be paid in 48 Equated Monthly Instalments (EMIs), equivalent to an amount of Rs. 8579/- each.

2.3 The appellant, claims, that the respondent breached their obligations under the loan agreement, in as much as, they defaulted in regular payments of EMIs. The attempts of the appellant to retrieve the situation, apparently, failed, which prompted issuance of a notice of demand dated 21.01.2015. By this demand notice the appellant recalled the loan and, consequently, foreclosed the loan agreement.

2.4 It is the stand of the appellant that, despite, issuance of the aforementioned notice, the respondent, failed to make payment of the amounts referred to in the said notice.

2.5 According to the appellant, as on 19.02.2015, a sum of Rs. 98,644/- is due and payable by the respondent; besides a sum of Rs. 3,08,583.50 towards future installments.

3. It is in these circumstances, that the appellant had moved the trial court with an action for recovery of the amount of Rs. 3,57,143/- along with interest at the rate of 24% per annum, commencing from 19.02.2015 till its realization. Relief, in the form of cost, was also sought.

4. The suit came to be filed and assigned on 09.04.2015. On 15.04.2015, though the respondent/ defendant was not served, the learned ADJ heard arguments on the aspect of territorial jurisdiction.

4.1 It is in this background that the impugned judgement and decree came to be passed.

5. Being aggrieved, as indicated above, an appeal was preferred, in which a notice was issued on 14.07.2015. Despite, service of notice, there has been no appearance on behalf of the respondent. Consequently, arguments were heard and judgement was reserved, in the matter, on 30.09.2015.

6. Mr Bhalla, who appeared on behalf of the appellant, submitted that the learned ADJ had failed to take into account the provisions of Section 20(c) of the Code of Civil Procedure, 1908 (in short the CPC), which were, clearly applicable in the facts of the present case.

6.1 It was the learned counsel's submission that having regard to the facts obtaining and pleaded in the plaint, it could not have been held that no cause of action arose within the territorial jurisdiction of the trial court. The facts, and/or averments to which, my attention was drawn by Mr Bhalla, were: first, date and place of execution of the loan agreement; clause I(1) of the loan agreement and the foot of the acknowledgement form, adverts to V.T. Jhandewalan Branch. Second, the assertion in paragraph 11 of the plaint that, not only the loan agreement executed between the parties, but also, the payments (i.e. the EMIs) had their locus at the Videocon Tower branch, situate at Jhandenwalan Extension, New Delhi.

6.2 Based on these assertions, Mr Bhalla contended that the learned ADJ ought to have accepted the veracity of the averments made in the plaint which was backed by an affidavit, and not, gone on to reject the plaint, at the very threshold.

6.4 In substance, it was Mr Bhalla's submission that the conclusion reached by the learned ADJ was not in consonance with the provisions of the law and hence it ought to be reversed.

7. I have perused the plaint filed before the trial court and the documents placed on record by the appellant. In so far as the case set up by the appellant before the trial court is concerned, the broad parameters, have already been etched out by me, in the narration made hereinabove. The core issue is: whether the concerned trial court had jurisdiction in the matter?

7.1 Undoubtedly, in so far as the appellant, like any other plaintiff, was concerned, it had the choice to file a suit in any of the forums which answers the requirements of clause (a), (b) and (c) of Section 20 of the CPC. In so far as clause (a) of Section 20 is concerned, the plaintiff may file a suit against a defendant where the defendant actually and voluntarily resides, or carries on business or personally works for gain. Clause (b) of Section 20, while following the same measure, provides that where there are more than one defendant to a suit, and one or more of them do not reside or carry on business or personally work for gain, within the territorial jurisdiction of the court within which the suit is instituted, then the plaintiff, is required to take leave of the court, or such defendants' acquiesce in the institution of the suit against them.

7.2 As against this, clause (c) of Section 20 of CPC gives liberty to a plaintiff to file a suit in a court within whose jurisdiction the cause of action wholly or in part arises.

7.3 The explanation to the section provides, in so far as a corporation is concerned, it 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.

7.4 It is no longer *res integra* that corporation includes a company. [See ***Hakam Singh vs Gammon (India) Pvt. Ltd. (1971) 1 SCC 286***]. Furthermore, the explanation only expounds on the concept of “business” carried on by a corporation. Therefore, if a corporation is sued in a place where its sole or principal office is located, it cannot be heard to say that the suit will not lie in that court because it does not carry on business at its sole or principal office, in view of the deeming fiction created by the explanation. Similarly, the second part of the explanation attracts itself to a set of circumstances where the cause of action arises and the subordinate office of the defendant-corporation is located. Therefore, if in a given case, a principal office of the defendant was located, say at place ‘A’, and the cause of action arose in place ‘B’, where the defendant also had its subordinate office located, the jurisdiction for filing the suit would lie in place ‘B’ and not in place ‘A’. [See ***Patel Roadways Ltd., Bombay vs Prasad Trading Company (1991) 4 SCC 270*** at page 277, 278 paragraph 12]

“....12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of clauses (a), (b) and (c) together with the first part of the Explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under clause (c) (irrespective of whether the corporation had a subordinate office in such

place or not). This was, therefore, not the purpose of the explanation. The Explanation is really an explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the Explanation would have read "and in respect of any cause of action arising at any place where it has a subordinate office, also at such place...."

(emphasis is mine)

8. In this case though, since respondent/ defendant are individuals this problem does not arise. Therefore, all that the learned ADJ was required to see was, whether clause (c) of Section 20 of the CPC was triggered in the facts of the case.

8.1 In order to appreciate this aspect of the matter, one needs to understand what would constitute a cause of action. Cause of action, as commonly understood, is a bundle of facts which the plaintiff must prove, if traversed, to entitle him to a judgement, in his favour, by the concerned court. Cause of action has no relation whatsoever with the defence set up by

the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. In ascertaining as to whether or not the concerned court has territorial jurisdiction, the court should take the facts pleaded in support of the cause of action into consideration without embarking upon an enquiry, at that stage, as to the correctness or otherwise of the facts so stated. In this context, the following observations of the Supreme Court made in *Oil and Natural Gas Commission vs Utpal Kumar Basu & Ors. (1994) 4 SCC 711* at page 717, in paragraph 6 being apposite, are extracted hereinafter:

“...6. It is well settled that the expression “cause of action” means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kour v. Partab Singh* Lord Watson said:

“... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.”

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court....”

(Emphasis is mine)

8.2 A more elaborate exposition of the expression cause of action is given in ***Rajasthan High Court Advocates' Association vs Union of India & Ors. (2001) 2 SCC 294***. The relevant observations made in paragraph 17 at page 304, is extracted hereafter:

“.....17. The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in “cause of action”. It has to be left to be determined in each individual case as to where the cause of action arises. The Chief Justice of the High court has not been conferred with the legislative competence to define cause of action or to declare where it would be deemed to have arisen so as to lay down artificial or deeming test for determining territorial jurisdiction over an individual case or class of cases....”

(emphasis is mine)

8.3 Reference in this behalf may also be made to the observation of the Supreme Court in the case of ***The State of Madras vs C.P. Agencies & Anr. AIR 1960 SC 1309***:

“.....3. We have been referred to the well-known observations of Brett J. in *Cooke v. Gill*, (1873) 8 CP 107 and to the definition of "cause of action" given in *Read v. Brown*, (1888) 22 QBD 128 which are all referred to in 75 Ind App 121 : Lord Esher M. R., defined "cause of action" to mean

"Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

Fry L. J. agreed and said:

"Everything which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause of action."

9. In the context of what constitutes a cause of action, in respect of a suit arising out of a contract, one may advert to Explanation III, which was part of Section 7 of Act of 7 of 1888. This Explanation was, however, omitted. A reference to this explanation is found in paragraph 13 at page 171 in the judgement of the Supreme Court in the case *A.B.C. Laminart Pvt. Ltd. vs A.P. Agencies, Salem (1989) 2 SCC 163*. The relevant part of the Explanation III is extracted hereinbelow:

"....13. Under section 20(c) of the Code of Civil Procedure subject to the limitation stated theretofore, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. It may be remembered that earlier section 7 of Act of 1888 added Explanation III as under: "Explanation III--In suits arising out of contract the cause of action arises within the meaning of this section at any of the following places, namely:

- (1) the place where the contract was made;
- (2) the place where the contract was to be performed or performance thereof completed;
- (3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable...."

9.1 A perusal of the explanation would show that in a matter concerning a contract, there may arise various kinds of causes of action. Amongst others,

the place where the contract is made, or where in the performance of the contract any money was expressly or impliedly payable, would form, a part of the cause of action.

10. In the instant case, in paragraph 11 of the plaint, there is a specific averment that the loan agreement, was executed at the appellant's branch office located in Videocon Tower, Jhandewalan Extn., New Delhi. It is further averred that payments were made within the territorial jurisdiction of the court. In the body of the plaint, as indicated in my narration above, there is assertion in paragraph 10 of the plaint, that a cause of action arose against the respondent i.e. the defendants, each time they defaulted in the payment of EMI and furthermore, when, despite the demand notice dated 21.01.2015, no payments were made.

10.1 To my mind, the aforesaid assertions, made in the plaint, when read along with the contents of the documents appended therewith, do establish at this stage, that cause of action does arise within the territorial jurisdiction of the court. The learned ADJ should have accepted, at this stage, the veracity of the assertions made in the plaint, which in any event are supported by an affidavit. In my view, the learned judge has erred in observing that the loan agreement does not appear to have been executed at the Videocon Tower, Jhandewalan Extn., New Delhi branch, especially when regard is had to the acknowledgement form. This aspect, in my view, was a matter for trial and the learned Judge, could not have, at the threshold returned the plaint on a mere impression.

11. The other reason given in the impugned judgement, which I understand to mean that the dishonour of post-dated cheques issued by the respondent, did not occur within the territorial jurisdiction of the concerned court, and hence, the plaint could not be entertained, is to my mind,

untenable in law. The learned ADJ has observed in the impugned judgement that such dishonour forms a “substantial cause of action” as against the factum of execution of documents and/or disbursement of the loan amount. As indicated above, cause of action is a bundle of facts. The place where the contract is executed and payments are made, forms a part of the cause of action. Therefore, of necessity, the trial court was bound to entertain the suit. For the learned ADJ to convey that these two facets of the action did not form a substantial part of cause of action, is erroneous.

12. Apart from the above, there are three reasons given for rejection of the plaint, which can be broadly paraphrased as follows: First, that the loan amount was disbursed to the respondent’s bank, which was not located within the territorial jurisdiction of the court. This objection was elaborated by the learned ADJ by observing that disbursement of loan forms a substantial part of the cause of action and hence the plaint could not be entertained. Second, a substantial part of the cause of action arose where the respondent’s bank was situate, the details with respect to which were not provided in the plaint. Lastly, the statement of account appended to the plaint, while adverting to the fact that the appellant’s/ plaintiff’s branch was located in Delhi, did not disclose its details.

12.1 To my mind, the territorial location of the respondent’s bank would undoubtedly form part of the cause of action, as both, the disbursement and dishonour of cheques would have occurred at that place. Having said so, in so far as dishonour of cheques is concerned, the drawer would receive intimation of dishonour only upon being informed by its bank, which could be located, in given circumstances, at a different place.

12.2 Besides, the loan transaction has two components, disbursement and repayment. Both form a vital part of the cause of action. To say one part is

substantial, while the other is not, and hence for a court to refrain from exercising jurisdiction, is in my opinion, a failure on its part to appreciate the true scope and import of expression cause of action. Therefore, to return the plaint on the ground that a substantial part of cause of action arose where the respondent's bank was situated, as the disbursement of loan took place via that bank, is clearly erroneous. The mere absence of details of the respondent's bank, which in any case the learned ADJ seems to have discovered by visiting the website (and is referred to in the impugned judgement), could not have formed the basis for returning the plaint, as a part of cause of action, apparently, did arise within the territorial jurisdiction of the court.

12.3 Similarly, the other reason given for rejection by the learned ADJ that the statement of account appended to the plaint did not give the exact location of the appellant's branch, to my mind, is also erroneous for the reason that the learned ADJ ought to have, at this stage, accepted the assertions of the appellant that the payments were made within the territorial jurisdiction of the court. The trial court, at this juncture, was required to accept the veracity of assertions made in the plaint.

12.4 In any event, in an action, such as a suit, a court cannot refuse to exercise jurisdiction on the ground that a substantial part of the cause of action does not arise within its jurisdiction. That is the preserve of the court exercising writ jurisdiction. The writ court invokes this principle, which is often referred to as doctrine of forum conveniens, not for the reason that it does not have jurisdiction but for the reason that it takes upon itself not to exercise jurisdiction, in a given fact situation; writ being an extra ordinary remedy the grant of relief by the court being in the realm of its discretionary jurisdiction. In this regard, observations of the Supreme Court in *Kusum*

Ingots and Alloys Ltd. Vs Union of India & Anr. (2004) 6 SCC 254 in paragraph 30 at page 265, are extracted below:

“.... Forum Conveniens:

We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See Bhagar Singh Bagga v. Dewan Jagbir Sawhany, AIR 1941 Cal; Mandal Jalan v. Madanlal, (1945) 49 CWN 357; Bharat Coking Coal Limited v. M/s Jharia Talkies & Cold Storage Pvt. Ltd. (1997) CWN 122; S.S.Jain & Co. & Anr. v. Union of India & Ors. (1994) CHN 445; M/s. New Horizon Ltd. v. Union of India, AIR 1994 Delhi 126)...”

(emphasis is mine)

12.5 As to how a court exercising civil jurisdiction is to proceed in the matter, the observations of Karnataka High Court in ***D. Munirangappa vs Amidayala Venkatappa & Anr. AIR 1965 Kant 316***, being relevant are extracted hereinafter:

“..... (4) Under Section 9 of the Code of Civil Procedure, the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Therefore, every Civil Court will have jurisdiction subject to the provisions mentioned in the Code to try the suit within its cognizance. This jurisdiction exists unless it has been specifically taken away by a statute, either expressly or impliedly. Section 20, clause (c), C.P.C. which is material for the purpose states that--

"Subject to the limitation aforesaid every suit shall be instituted in a Court within the local limits of whose jurisdiction--

(a) X X X

(b) X X X

(c) the cause of action, wholly or in part, arises."

Thus, it is clear that every suit has to be instituted in a Court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It would not be right as has been done by the Court below to proceed to examine the extent of the cause of action or to try to find out the percentage of the cause of action. If a part of the cause of action arises within the local limits of the jurisdiction of a Court, then such a Court would have jurisdiction to entertain and try such a suit, irrespective of the extent of the cause of action. It is in my opinion wholly wrong to state that a very small fraction of the cause of action accrued within the jurisdiction of the Tumkur Court, which would not entitle the plaintiff to institute a suit in that Court. This process of examining the cause of action would be wholly wrong in view of Section 20, Clause (c), which provides that every suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. The words 'in part' have not been defined. Even a fraction of a cause of action is a part of the cause of action and therefore, if a part of the cause of action accrues within the local limits of the jurisdiction of Tumkur Court then it must be held that that Court has the jurisdiction to entertain the suit. The provisions of clause (c) of Section 20 of the Code of Civil Procedure are based on broad principle to avoid the multiplicity of the proceedings and inconvenience to the parties. If the reasoning adopted by the Courts below is accepted as correct, it would lead to many inconvenient results which the legislature sought to avoid by enacting the provisions of clause (c) of Section 20 of the Code of Civil Procedure. For these reasons I hold that the Courts below were wrong in taking the view they took and thus declining to exercise the jurisdiction vested in them by law...."

(emphasis is mine)

12.6 In this context, also see the following observations of the Madras High Court in *Karur Vysia Bank Ltd. vs Ramachandra C. Oza & Ors.* AIR 1974 Mad 209:

“.....15. In this connection, I may refer to a ruling of the Mysore High Court in *Munirangappa vs Venkatappa*, AIR 1965 Mys 316, in which it has been held that even an infinitesimal fraction of a cause of action will be part of the cause of action and confer jurisdiction on the court within the territorial limits of which that little occurs.....”

(emphasis is mine)

13. Therefore, for the foregoing reasons, I am persuaded to set aside the impugned judgement and decree. The trial court would recommence the proceedings from the stage they are presently positioned.

15. The appeal is, accordingly, disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

NOVEMBER 06, 2015

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