

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

Judgment delivered on 06.11.2015

+ FAO No. 381/2015

ICICI BANK LTD.

.....Appellant

Vs

AMARAPALI TIWARI

.....Respondent

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

FAO 381/2015 & CM Nos. 26320-26321/2015

1. This is an appeal against the judgement and decree passed by the learned ADJ-II Central/ Delhi, dated 10.08.**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 loan to the respondents herein (i.e. the defendants), for purchase of a vehicle. The agreement arrived at in this regard was translated into a loan agreement/ a credit facility application form dated 29.11.2013 (hereafter referred to as the loan agreement). Along with the loan agreement, two sets of documents

were also executed, firstly, an unattested deed of hypothecation; and secondly, an irrevocable power of attorney (collectively referred to as documents). The said documents were also executed on the same date i.e. 29.11.2013.

2.2 With the execution of the loan agreement, and aforementioned documents, a sum of Rs.9.26 lacs is said to have been disbursed in favour of the respondents for purchase of vehicle described as: TATA SAFARI STORME/LX, bearing Engine No. 2.2LDICOR09KWYJ12770 and Chassis No. MAT617033DNK09229. The said sum, according to the appellant, was disbursed on 05.12.2013, 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. 23,710/- each.

2.3 The appellant, claims, that the respondents 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 22.12.2014. 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 respondents, failed to make payment of the amounts referred to in the said notice.

2.5 According to the appellant, as on 30.01.2015, a sum of Rs. 88,817 /- is due and payable by the respondents.

3. It is in these circumstances, that the appellant had moved the trial court with an action for recovery of the aforementioned amount along with interest at the rate of 24% per annum, commencing from 30.01.2015 till its realization. Relief, in the form of cost, was also sought.

4. On 11.09.2015, the matter came up before the trial court for hearing arguments on the aspect of territorial jurisdiction. Notably the matter was taken up for hearing without issuing summons in the suit.

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

5. Being aggrieved by the aforesaid order, the present appeal was preferred.

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, to which, my attention was drawn by Mr Bhalla, were: the date and place of execution of the loan agreement along with the security documents. The statement of account of the concerned branch of the bank (i.e. the Videocon Tower branch, located at Jhandenwalan Extension, New Delhi), which was, according to him, demonstrative of the fact that the EMIs which were paid, and those, in respect of which there were defaults – were payable at the said branch.

6.2 Furthermore, Mr Bhalla, drew my attention to paragraph **18** of the, plaint where an assertion has been made to the effect that the agreement, [which in this case would include the loan agreement, and the attendant documents (i.e. the security documents)] was arrived at the appellant's office located at 2nd Floor, Videocon Tower, Block – E1, Jhandewalan Extn., New Delhi. Learned counsel also laid stress on the assertion made in the

very same paragraph that the payments were made within the territorial jurisdiction of the concerned court.

6.3 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 answer 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 defendant(s) 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 respondents/ defendants 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 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 18 the plaint, there is a specific averment that the agreement, (which comprises of the loan agreement and the attendant documents such as the unattested hypothecation deed and the irrevocable power of attorney), were 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 17 of the plaint, that a cause of action arose against the respondents i.e. the defendants, each time they defaulted in the payment of EMI and furthermore, when, despite the demand notice dated 22.12.2014, no payments were made.

10.1 While the loan agreement does not set out the place of its execution, the unattested deed of hypothecation under clause 1(a) reads as follows:

“..1A DETAILS OF PLACE AND DATE OF EXECUTION
OF THIS DEED

At: Delhi in the State of Delhi

Date: The 29 day of 11, Two Thousand and 13 ...”

10.2 The statement of account, appended to the plaint, is facially suggestive of the fact that it was generated by the Videocon Tower, Jhandewalan Extn., New Delhi Branch. 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 and the attendant documents do not appear to have been executed at the Videocon Tower, Jhandewalan Extn., New Delhi branch. 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 respondents, 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, form 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 directly to the dealer, namely, Oberoi Cars Pvt. Ltd., and since, the disbursement to the dealer was not within the territorial jurisdiction of the court, the plaint could not be entertained. In this context, it was also noticed that the dealer was not made party to the suit. Second, a substantial part of the cause of action arose where the respondents bank was situate and those details were not provided. Lastly, the statement of account appended to the plaint, while advertng to the fact that the appellant's/ plaintiff's branch was located in Delhi, did not disclose its details.

12.1 According to me, the learned ADJ has erred in appreciating the nature of the transaction pleaded by the appellant. It is the appellant's case that the loan agreement was executed between itself and the respondents. It is not the case of the appellant that the dealer is a party to the agreement. The reference to the dealer, Oberoi Cars Pvt. Ltd., is made in clause (2) to the Annexure to Credit Facility Application Form (which is the loan agreement). Clause (2) of the said annexure gives a choice to the borrower, in this case the respondents, as to the manner in which the loan amount is to be disbursed. There are various options provided including the option for disbursement of the loan amount via the dealer. For a better appreciation of this fact, the relevant clause, is extracted hereinbelow:

“..2. Facility is to be disbursed to the person mentioned below:

Dealer	☒	Manufacturer	☐	Seller	☐	Existing Financier	☐	Applicant	☐
Co-applicant	☐	DMA	☐	DSA	☐	Other person	☐	(tick whichever is applicable)	

Name: Oberoi Cars Pvt. Ltd., C-12, Sector-1, NOIDA-201301”

12.2 This aspect by itself could not have led the trial court to come to the conclusion that no part of the cause of action arose within its territorial jurisdiction.

12.3 As regards the point about territorial location of respondents’ bank is concerned, without doubt, it form a part of the cause of action, as dishonor of cheque(s) would have occurred at that place. Having said so, the payee would receive intimation of dishonour only upon being informed by his bank, which could be located, in given circumstances at a different place. Besides, a 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 proceed to refrain from exercising jurisdiction; is to my mind, a failure to appreciate the true scope and import of the expression cause of action.

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)

12.7 In so far as the observations vis-à-vis the statement of account is concerned, in my view, it had to be read with assertions made by the appellant in paragraph 18 of the plaint that the disbursement / payment was made within the territorial jurisdiction of the concerned court. As indicated

above, the trial court at this stage was required to accept the veracity of the assertions made in the plaint by the appellant.

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

14. Furthermore, having regard to the fact that the appellant had moved an application before the trial court with regard to the appointment of a receiver, which quite obviously with the return of plaint, could not see the light of the day, I am inclined to appoint a receiver pending the disposal of the interlocutory application moved in that behalf having regard to the assertions made in the plaint, in consonance with a similar prayer being made in the appeal.

14.1 Accordingly, Sh. **Venkat Rao**, a representative of the appellant is appointed as a receiver. The receiver will take possession of the vehicle described in paragraph 2.2 of my judgement above. In the event the respondents were to pay the amounts due and payable, the subject vehicle will be released to the respondents on superdari. The receiver will issue a receipt in that behalf. If necessary, the receiver will be entitled to take assistance of the concerned police station. The receiver will, however, bear in mind the time and place at which possession of the subject vehicle is sought to be taken, bearing in mind that no inconvenience is caused to the respondents. The receiver will extend due courtesy to the respondents while seeking to take possession of the subject vehicle. The receiver is directed to file a report with the trial court, within one week of taking possession of the subject vehicle. The trial court will, thereafter, be at liberty to pass any

order that it may deem fit in respect of the application pending before it in that behalf.

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

RAJIV SHAKDHER, J

NOVEMBER 06, 2015

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