

Vilas Ramchandra Shinde and another Vs. Sashi V. Sachdev	...	Applicants Respondent
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Mr. K. K. Malpathak for Applicants.
Mr. R. D. Suryawanshi for Respondent.

CORAM : R. G. KETKAR, J.
DATE : MARCH 07, 2016

P.C. :

Heard Mr. Malpathak, learned Counsel for applicants and Mr. Suryawanshi, learned Counsel for respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as defendants, have challenged the judgment and order dated 26.02.2013 passed by the learned Civil Judge, Senior Division, Vasai below exhibit-1 in Summary Suit No.4 of 2010. By that order, the learned trial Judge held that the Court of Civil Judge, Senior Division, Vasai has territorial jurisdiction to entertain and try the Suit.

3. Respondent, hereinafter referred to as plaintiff, has instituted Summary Suit No.4 of 2010 under Order XXXVII, Rule 2 of C.P.C. against the defendants. It is the case of the plaintiff that by writing dated 18.08.2008, defendants had agreed to return the friendly loan of Rs.5,00,000/- to the plaintiff. However, defendants failed to return the said amount. Defendants also failed to make payment of amount due to the plaintiff under five Demand Promissory Notes dated 24.12.2009, 30.12.2009, 04.01.2010, 08.01.2010 and 14.01.2010, amounting to

Rs.1,00,000/- each. Defendants also failed to comply with the requisition made by the plaintiff in her Advocate's notice dated 06.04.2010. In paragraph 5 of the plaint, it is asserted that the cause of action for filing the Suit arose on 06.04.2010 when the defendants refused to comply with the requisition made by the plaintiff in her Advocate's Notice dated 06.04.2010. In paragraph 7, plaintiff asserted that the defendants are residing at Ambadi Road, Vasai (West). The writing dated 18.08.2008 and Demand Promissory Notes were signed by the defendants at the residence of the plaintiff i.e. B/205, Ganesh Deep Co-operative Housing Society Limited, Maitree Park, Ambadi Road, Vasai (W). In prayer clause (a), plaintiff has prayed for order and decree against the defendants for paying a sum of Rs.5,00,000/- under the writing dated 18.08.2008 as well as 5 Promissory Notes.

4. Defendants filed application exhibit-22 for framing preliminary issue on the ground of territorial jurisdiction of the Court of Civil Judge, Senior Division, Vasai. The learned trial Judge rejected the application on 18.10.2011 on the ground that the application is premature and that Section 9-A of C.P.C. is not applicable. The learned trial Judge thereafter framed issues at exhibit-27 on 27.02.2012. Issue No.4 was "Does this Court has jurisdiction to try the Suit?". Plaintiff filed her affidavit of examination-in-chief under Order XVIII, Rule 4 of C.P.C. on 04.10.2012 at exhibit-37. Defendants cross-examined her. By the impugned order, the learned trial Judge held that the Court of Civil Judge, Senior Division, Vasai has jurisdiction to entertain and try the Suit.

5. Mr. Malpathak submitted that in paragraph 5 of the plaint, plaintiff asserted that the cause of action for filing the Suit arose on 06.04.2010 when the defendants refused to comply with the requisition

made by the plaintiff in her Advocate's notice dated 06.04.2010. In paragraph 7 of the cross-examination, plaintiff admitted that Promissory Notes at exhibits-39 to 43 do not show her address of Vasai. In exhibits 39 to 43, it is not written that it was executed at Vasai. It is also not written in the Promissory Notes that on demand, the amount is to be paid at Vasai. He invited my attention to the Promissory Notes and submitted that the Promissory Notes are silent as to whether they are executed either at Kalyan or Vasai. The notice dated 06.04.2010 was received at Kalyan. Thus, the moneys were payable at Kalyan. Having regard to the fact that in the Promissory Notes, the address of defendant No.1 of Kalyan is mentioned, inference has to be necessary drawn that the Promissory Notes were executed at Kalyan. He relied upon the decision of this Court in the case of *Jivatlal Vs. Lalbhai*, AIR 1942 **Bombay 251** to contend that the moneys due under the Promissory Note being payable on demand, the natural inference was that the moneys were payable at the place where the demand was communicated to and received by the debtor. In the present case, demand notice was received at Kalyan and therefore, the Court of Civil Judge, Senior Division, Vasai has no jurisdiction to entertain and try the Suit.

6. On the other hand, Mr. Suryawanshi supported the impugned order. He submitted that perusal of the plaint and in particular paragraph 7 shows that both, plaintiff and defendants, at the relevant time, were residing at Vasai (W). Writing dated 18.08.2008 and the demand Promissory Notes were signed by the defendants at Vasai (W). He further submitted that perusal of prayer clause (a) shows that the Suit is based on both writing dated 18.08.2008 as well as 5 Promissory Notes. He further submitted that defendants did not lead any evidence to establish that cause of action entirely accrued outside the limits of Civil Judge, Senior Division, Vasai. He, therefore, submitted that no case is

made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 7 of the plaint, plaintiff has asserted thus,

“7. The plaintiff states that the Defendant is residing at Ambadi Road, Vasai (West). Moreover, the said Writing, dated 18th August, 2008 and the said Demand Promissory Notes were signed by the Defendants at the residence of the Plaintiff i.e. at B/205, Ganesh Deep Co-operative Housing Society Ltd., Maitree Park, Ambadi Road, Vasai (West). The Plaintiff therefore, states that the entire cause of action for filing the present suit arose within the territorial jurisdiction of this Hon'ble Court and therefore, this Hon'ble Court has jurisdiction to try and entertain the present suit.”

8. Perusal of paragraph 7 shows that at the relevant time, both, plaintiff and defendants were residing at Vasai (W). Perusal of prayer clause (a) also shows that the Suit is based on writing dated 18.08.2008 as well as 5 Promissory Notes. Perusal of Promissory Notes, prima facies, does not indicate that it was executed either at Kalyan or Vasai. Merely because address of defendant No.1 of Kalyan is mentioned, that does not lead to inference that the Promissory Notes were executed at Kalyan and not at Vasai. Perusal of the evidence of the plaintiff as also her cross-examination shows that she specifically denied execution of the Promissory Notes at Kalyan. As against this, defendants did not lead any evidence.

9. Mr. Malpathak relied upon the decision of this Court in **Jivatlal** (*supra*). In that case, the Promissory Notes were executed at Ahmedabad and the question was whether the Court at Bombay has jurisdiction to entertain and try the Suit, which was based entirely on the Promissory Note. In that context, the Division Bench of this Court held that the Bombay Court will have no territorial jurisdiction.

10. In the present case, as noted earlier, the place of execution of Promissory Notes either at Kalyan or Vasai is silent. As against this, after considering the evidence on record and probability of the case as also after taking judicial note, the learned trial Judge came to the conclusion that the Promissory Notes were executed at Vasai. After considering the material on record as also having regard to the fact that the defendants did not substantiate their plea that cause of action entirely accrued outside the territorial jurisdiction of the Court of Civil Judge Senior Division, Vasai, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)

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