

accrued to the Plaintiff, on a certain sum retained by the Defendant bank by freezing the Plaintiff's account on instructions of the customs department of Government of India. The Plaintiff claims to have issued a mandate to the Defendant bank to keep the said sum in fixed deposit whilst the account was frozen. The Plaintiff's case is that despite such mandate, the amount was kept in a suspense account which did not earn any interest. The Plaintiff sues for the unearned interest, alleging breach of contract on the part of the Defendant bank.

2 The Plaintiff is a Government recognized export house carrying on the business of exports under licence granted by the Government of India. The Plaintiff held a current account with the Defendant bank in connection with its exports business. The Commissioner of Customs (Preventive), R. & I. Division, by his letter dated 4 November 1996, informed the Defendant that the Plaintiff's exports in connection with a particular L/C were under investigation and that preliminary investigations had revealed that as against purported exports of Rs.8 Crores, no physical exports had been made, but only paper transactions had been carried out. The Commissioner of Customs, in the premises, called upon the Defendant bank to withhold any operations of the subject L/C and not to release any payment to any party thereunder without prior clearance of the Customs. Simultaneously, a summons was issued under Section 108 of the Customs Act, 1962, requiring the Defendant to supply information and documents. The Defendant, accordingly, proceeded to freeze the Plaintiff's current account with the bank. During the period the account was frozen, export remittance in the sum of Rs.65,66,200/- on account of export of goods to Russia under the subject letter of credit was received and credited to the

said account. The amount of the subject remittance was remitted by State Bank of India to the Defendant bank under specific instructions not to disburse the amount to the beneficiary till clearance was received from the Commissioner of Customs (Prevention). The Defendant, accordingly, kept the amount of the remittance in the sundry creditors account. In the meantime, by its letter dated 7 July 1998, the Plaintiff claims to have issued instructions to the Defendant to keep the remittance amount in a fixed deposit so as to enable the Plaintiff to earn maximum interest. (There is a controversy between the parties as to whether or not this letter was actually received by the Defendant.) The Plaintiff, thereafter, proceeded to challenge the purported inquiry of the Customs Department including freezing instructions issued by the latter before this Court in a writ petition. The Defendant was a party to this petition along with the Customs Department. By its order dated 9 June 2004, a Division Bench of this Court allowed the writ petition *inter alia* by ordering defreezing of the Plaintiff's current account and release of the remittance withheld by the Defendant in the account. On 2 November 2004, the Defendant released the amount without any interest and after deducting charges of Rs.15,997/-. The Plaintiff claims interest during the period 7 July 1998 to 2 November 2004 at the rate of 18% p.a.

3 The Defendant contests the suit. In its written statement, the Defendant submits that based on the directions of the Commissioner of Customs, the Defendant did not release the amount received into the Plaintiff's current account, but retained the same in the Sundry Creditors Account so as to avoid any irregularities in the said current account; that no interest is payable on any amount lying in the current account or the

Sundry Creditors Account; that the amount withheld by the Defendant could not be termed or treated as a deposit and the same was not utilized by the bank for its business; that no mandate was actually received from the Plaintiff for placing the said amount in Fixed Deposit; that in any event, the Defendant was not liable to place, and could not have placed, the amount in Fixed Deposit in the facts of the case; that even the order of this Court does not direct the Defendant to pay any interest; and that no interest is payable by the Defendant to the Plaintiff on the amount. Apart from a contest on merits, the Defendant pleads the bar of limitation, and also contests the jurisdiction of this Court to entertain the suit.

4 Based on the pleadings, the following issues were framed by this Court :

: I S S U E S :

1. Whether this Court has jurisdiction to receive, try and dispose of this suit ?
2. Whether the suit is filed within limitation ?
3. Whether the suit is bad for non-joinder of necessary parties ?
4. Whether the Defendant proves that the amount in question could not have been placed in fixed deposits as requested by the Plaintiff ?
5. Whether the Plaintiff proves that they are entitled to a decree in the sum of Rs.1,21,91,105/- along with further interest at 18% p.a. from the date of filing of the suit until payment/realization ?
6. What decree ? What order ?

5 Both parties produced documentary and oral evidence, and made submissions through Counsel.

6 The ground of want of jurisdiction is urged by the Defendant on the basis that the cause of action arises at the branch in which the Plaintiff held its current account, and not at the Corporate office of the Defendant referred to in the cause title. Learned Counsel for the Defendant relies on the judgment of the Supreme Court in case of **Agencia Commercial International Ltd Vs. Custodian of the Branches of Banco Nacional Ultramarino**¹ and **Indian Performing Rights Society Vs. Sanjay Dalia**², in support of his submission. In the case of **Agencia** (Supra), the Supreme Court held that in the case of a bank which operates through its branches, the branches are regarded for many purposes as separate and distinct entities from the Head Office and from each other. The obligation of a bank to pay the cheque of a customer or honour his mandate rests primarily on the branch at which he keeps his account and the bank can rightly refuse to cash a cheque or honour his mandate at any other branch. Based on these propositions and the judgment of the Supreme Court in the case of **Indian Performing Rights Society** (supra), it is submitted by learned Counsel for the Defendant that the suit must be filed at a place where the defendant has branch office and where the cause of action arises. It is, however, important to mention that the Supreme Court was considering Section 20 of CPC in **Indian Performing Rights Society's** case. On a consideration of Section 20, the Court came to a conclusion that when the defendant corporation has a subordinate office at a place where

1 AIR 1982 Supreme Court (1268)

2 (2015) 10 Supreme Court Cases 161

the cause of action has arisen, it is the Court of that place alone which has jurisdiction to entertain a suit and not of the place where the defendant has the principal office. Altogether different considerations apply when a plaintiff invokes the jurisdiction of this Court under Clause 12 of Letters Patent. As held by the Supreme Court in the case of **Jindal Vijayanagar Steel Vs. Jindal Praxair Oxygen Company Ltd.**³, the principle of Section 20 cannot be made applicable to Clause 12 of the Letters Patent, since the CPC itself, by Section 120, specifically excludes the applicability of Section 20 of the CPC to Chartered High Courts. The Letters Patent is a special charter conferring jurisdiction on a Chartered High Court. When there is a special enactment such as the Letters Patent, which expressly lays down the criteria on the jurisdiction of the Chartered High Court, it is totally unnecessary and, in fact, futile to refer to another legislation such as the CPC (which is not applicable) to determine the jurisdiction of the Chartered High Court. Under Clause 12 of the Letters Patent, if and to the extent the defendant carries on business within the local limits of the jurisdiction of this Court, this Court has jurisdiction to entertain a suit against the defendant. Issue No.1 is, accordingly, answered in favour of the Plaintiff and against the Defendant.

7 As for the ground of limitation, it is important to note that the amount lying in deposit with the Defendant Bank became payable to the Plaintiff only after this Court passed an order directing the Defendant to defreeze the account and pay the amount lying to the credit of the account of the Plaintiff. The liability to pay the interest, accordingly, arises only upon the passing of that order. If that date is reckoned as the starting point

³ [2006] Insc 547 (29 August 2006)

of limitation, the suit filed for interest on the amount due to the Plaintiff is within time. Issue No.2 is also, accordingly, answered in favour of the Plaintiff and against the Defendant.

8 Neither State Bank of India nor Customs Department can be said to be a necessary party to the present suit. Neither is their presence necessary for determining the controversy in the present suit nor can it be said that in their absence no effective decree can be passed. Issue No.3 is also, accordingly, answered in favour of the Plaintiff and against the Defendant.

9 The main arguments in the present suit were advanced on Issue Nos.4 and 5, which are considered together. There are two main questions which arise in connection with these issues. Firstly, it is necessary to consider whether or not the instructions or mandate to hold the amount lying in the frozen current account in a fixed deposit (namely, letter dated 7 July 1998) was actually issued by the Defendant to the Plaintiff. Secondly, on the footing that such instructions or mandate was issued by the Plaintiff to the Defendant, was the Plaintiff bound to accept such mandate and transfer the amount lying in the current account or held in the sundry creditors account to a fixed deposit. Learned Counsel for the Plaintiff relies on the Code of Bank's Commitment issued by the Reserve Bank of India, which sets standards of banking practices for banks to follow when they deal with individual customers. According to this Code, the Bank is bound to honor direct debit or standing instructions, if the same was issued at the time of opening of the account. The Bank is also liable to act upon the mandates given by a customer for direct debits (say Electronic

Clearing Service (ECS) and other standing instructions. The Plaintiff also relies upon the Code of Bank's Commitment to Customers, issued by Banking Codes And Standards Board of India in this behalf.

10 The receipt of the letter dated 7 July 1998 was contested by the Defendant in its written statement. It is submitted that the onus was on the Plaintiff to prove its receipt by the Defendant; that though this document was admitted in evidence and marked, its receipt by the Defendant was a matter at large, to be tried at the hearing of the suit. A document is usually marked in evidence after a formal proof of the same is tendered by the party producing it or its production and exhibiting is not opposed to by the opponent, though, as held by the Supreme Court in the case of **Sait Tarajee Khimchand Vs. Yelamarti Satyam**⁴, mere marking of a document as an exhibit does not dispense with the proof of genuineness, when such genuineness is contested by the opponent. The genuineness of a document, its receipt by the addressee when it is addressed to someone and the truth of its contents are all matters of trial. In the present case, the document is produced by the Plaintiff through PW-1. PW-1 has deposed both to its contents and also its receipt by the Defendant. There are two important things to be noticed here. Firstly, after such formal proof was tendered, the Defendant did not appear to have objected to the marking of the document. Secondly, there is absolutely no cross-examination of PW1 on this point. In the premises, the only inescapable conclusion to be drawn is that the existence, receipt and contents of the document are duly proved by the Plaintiff. I hold accordingly.

⁴ AIR 1971 Supreme Court 1865

11 The more important point, however, is, whether the Defendant was bound to act on the letter of 7 July 1998 and keep the amount lying to the credit of the current account of the Plaintiff in a Fixed Deposit. In the first place, there is admittedly (i) no cheque issued by the Plaintiff drawn on the current account to pay any monies to the Defendant bank towards a fixed deposit, (ii) no standing instruction from the Plaintiff to the Defendant bank to transfer any amount in the current account to any fixed deposit account, or (iii) any Electronic Clearing instructions or mandate to do so. These are the only ways in which a bank transacts monies lying to the credit of a constituent's account (here, the Defendant's current account). There is no form filled in by the Plaintiff for keeping any fixed deposit with the Defendant Bank. There is no indication of any particular duration of the purported deposit or its kind, whether cumulative or requiring periodical interest payments, or otherwise. There no mandate for further renewals. Besides, the bank was obliged not to honour any payment instructions from the Plaintiff due to the requisition of the Collector of Customs and also instructions received by it from the remitting bank. In the premises, the Defendant was not liable to act on the letter of 7 July 1998, unilaterally issued by the Plaintiff, and hold the amount in a fixed deposit. Any contract of Fixed Deposit with a bank is a bilateral matter involving both the bank and the constituent.

12 There is no dispute between the parties that amounts lying in the current account or sundry creditors account do not bear any interest. No interest is payable on a current account or an account in the nature of a current account. (See **Raneegunj Coal Association Ltd Vs. Union of**

India.⁵⁾

13 Issue Nos.4 and 5 are, accordingly, answered against the Plaintiff and in favour of the Defendant. The Defendant was not legally bound to place the amount in question in fixed deposits as requested by the Plaintiff. The Plaintiff is not entitled to the decree as prayed for.

14 The suit is, accordingly, dismissed. There shall, however, be no order as to costs.

(S.C.GUPTE, J.)

⁵ AIR 1990 S.C. 1879.