

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE R.MAHADEVAN

O.S.A.Nos.141 and 142 of 2016

T.Palaniappan .. Appellant in both the
appeals/Applicant

-vs-

- 1.City Union Bank Ltd.,
rep.by its Managing Director,
Administrative Office,
No.24-B, Gandhi Nagar,
Kumbakonam-612 001.
- 2.City Union Bank Ltd.,
T.Nagar Branch,
rep.by its Chief Manager,
Ground Floor,
No.48, Mahalakshmi Street,
T.Nagar, Chennai-600 017.
- 3.The Assistant General Manager,
Business Development Centre,
City Union Bank Ltd.,
1st Floor, No.48, Mahalakshmi Street,
T.Nagar, Chennai-600 017...Respondents in both the /Respondents
appeals

Appeals filed under Order 36 Rule 1 of O.S.Rules r/w Clause 15 of the Letters Patent, against the judgment and decree passed by this Court on 28.03.2016 in Appln.Nos.7450 and 7451 of 2015.

For Appellant :: Mr.PL.Narayanan

COMMON JUDGMENT

These appeals are filed against the judgment and decree passed by this Court on 28.03.2016 in Appln.Nos.7450 and 7451 of 2015.

2.The appellant herein is the applicant in A.Nos.7450 and 7451 of 2015 filed before this Court. A.No.7450 of 2015 was filed to grant leave to the appellant to institute the suit against the first

respondent/first defendant and A.No.7451 of 2015 was filed to grant leave to institute the suit against all the respondents / defendants. In the plaint, it has been averred that the same has been filed for recovery of money due to him from the defendants in respect of his service with the first defendant-Bank and in respect of unauthorised withdrawal from his Savings Bank Account by the first defendant-Bank. The appellant has stated that he was last working as a Manager in the officer cadre in the CDPC Department, in the defendants-Bank, and that as a Branch Head, he had a duty to canvass for new accounts; that he was specifically posted in his native place by the respondent Bank in order to take advantage of his communal contacts to develop the business of the Bank; that many of the account holders who were introduced by him are either distant or close relatives of the plaintiff. It is further stated that one such Account Holder by name T.Arunachalam, approached the Bank for opening an account informing that he was settled in USA and was looking forward to RTGS funds transfer operations through e-mail instructions. The appellant states that his junior colleagues who were working in the Bank proceeded to act on the e-mail instructions given by the said T.Arunachalam, now and then. While so, a Circular was issued by the bank in 2014 stating that fund transfer should not take place on e-mail instructions. There has been deviation on many occasions on several issues by various branches of the defendant Bank when they chose to by-pass the internal circulars with a view to retain the account holders while making sure that they do not migrate to another bank. While so, between the period 10.10.2013 and 24.10.2013, since there were e-mail requests from the constituent's e-mail id for fund transfer, the same were effected by the juniors of the plaintiff without any hesitation, as similar such requests were made in the past, and such transfers amounted to Rs.33,81,300/-. After completion of a transaction for transfer of funds pursuant to an e-mail request in the account of the said T.Arunachalam involving a sum of Rs.25,30,000/-, the same got re-credited back to the account. Hence, the appellant suspected foulplay and thereafter instructed his juniors not to act further on any e-mail request in this particular account. He also asked the said person to contact him forthwith. Subsequently, it came to the knowledge of the appellant through the said T.Arunachalam, that a sum of Rs.10 lakhs have been withdrawn from his account through net banking unauthorisedly. For these unauthorised transactions, the appellant was held responsible. The appellant states that till date, the defendant bank has not issued any memo or charge nor did they question about the non-compliance of the internal circular which requires the officials of the bank not to act on e-mail instructions of the constituent of the bank to transfer funds from their account. But, the bank appropriated a sum of Rs.31,52,000/- from the appellant's account in view of the fraudulent transaction involving him to the tune of Rs.31,52,000/- as stated above. In spite of calling upon the bank to release the retirement benefits, there was no follow up action. Hence, the plaintiff filed the suit.

3. When these applications came up before this Court for hearing, it was argued on behalf of the appellant / applicant, that part of the cause of action has arisen within the jurisdiction of this Court and as such, the suit is maintainable before this Court. It was further contended that the Human Resources Department of the Bank which authorised to release his retirement benefits, is situated within the jurisdiction of this Court and hence he is entitled to lay the suit before this Court.

4. The above contention was opposed by the Bank by filing a counter affidavit, in which, the Assistant General Manager, City Union Bank Ltd., Kumbakonam, contended that the entire cause of action has arisen at Karaikudi and Kumbakonam. According to the bank, in spite of the circular issued by the Head Office that no officer shall act upon transfer instructions received from customers by electronic mail, the appellant/ applicant entertained a request and transferred a sum of Rs.33,81,300/- by way of three RTGS transfers to different persons holding accounts with ICICI Bank Ltd. It was further contended that the transactions were initiated from the computer terminals of the bank at Karaikudi, and when it was pointed out, the appellant / applicant agreed to make good the loss. Though he deposited the amount with the bank, cheque was not issued for appropriation. The bank calculated the gratuity and provident fund payable to the appellant / applicant and instructions were given to the third respondent to release the funds only after collecting a cheque amounting to Rs.31,52,000/-. It was further contended that the witnesses to prove the illegal acts committed by the applicant are all residing at Karaikudi and Kumbakonam, and that since the entire cause of action has arisen at Karaikudi and Kumbakonam, this Court has no jurisdiction to entertain the suit.

5. On hearing both sides, this Court dismissed the applications, holding that the respondents are perfectly justified in their contention that data entry and vouchers regarding the transaction in question had taken place at Karaikudi and Kumbakonam and that the witnesses in respect of the said transaction are also living in and around those two places. It was further held that though the applicant is presently residing at Chennai and similarly, the office of the third respondent is also at Chennai, those factors would not give jurisdiction to this Court. The cause of action has arisen only at Kumbakonam and Karaikudi and hence, the learned single Judge held that the applicant has not made out a case for grant of leave to institute the suits. Challenging the same, the present appeals have been filed.

6. Among the grounds raised in the appeals, the learned counsel for the appellant has mainly contended that the learned single Judge failed to appreciate the fact that the chunk of the money claimed in the suit has been taken out of the account which the appellant held in the T.Nagar Branch at Chennai and therefore the principal cause of action for the suit has arisen at Chennai; that the learned single

Judge failed to appreciate that admittedly all actual credits and debits happened at Chennai in the central server at Velachery and therefore, any customer having an account with the bank is only the customer of the bank and not of an individual branch, and in those circumstances, even as per the admission of the respondents in their counter, the cause of action has arisen at Chennai. He further contended that the respondent bank has suppressed the terms and conditions governing the internet banking service of City Union Bank Ltd., that whenever disputes or matters arise under the terms and conditions governing internet banking service, the bank has to submit itself to the exclusive jurisdiction of the Courts of competent jurisdiction at Chennai. Stating so, the learned counsel for the appellant has submitted that these appeals have to be allowed. In support of his contention, the learned counsel for the appellant has relied upon the following decisions of the Hon'ble Supreme Court:

- (1) Jindal Vijayanagar Steel (JSW Steel Ltd.) v. Jindal Praxair Oxygen Co. Ltd., reported in (2006) 11 SCC 521 and
- (2) Union of India v. Ladulal Jain, reported in AIR 1963 SC 1681.

7. We have heard the submissions made by the learned counsel for the appellant and perused the judgments relied on by him, as well.

8. In Union of India v. Ladulal Jain, reported in AIR 1963 SC 1681, Section 20 of the Code of Civil Procedure, which relates to the territorial jurisdiction of a Court has been extracted. Referring to Explanation-II that "a Corporation 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", and also referring to Explanation-I that "where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence", it was held that the principle behind the provisions of Section 20 is that the suit be instituted at a place where the defendant be able to defend the suit without undue trouble. Referring to this, the learned counsel for the appellant submitted that the cause of action in the present case, arises at Chennai and hence these appeals have to be allowed. On a perusal of this judgment, we find that the same has been rendered on a conjoint reading of Explanation-I and Explanation-II of Section 20 of CPC. The said judgment was rendered in the year 1963. Subsequently, Explanation-I has been omitted by passing Act 104 of 1976. Therefore, this judgment is not applicable to the facts of the present case.

9. The next case relied on by the learned counsel for the appellant is Jindal Vijayanagar Steel (JSW Steel Ltd.) v. Jindal Praxair Oxygen Co. Ltd., reported in (2006) 11 SCC 521. It was an appeal filed by the appellant therein seeking special leave to appeal against the order passed by the High Court of Bombay in an

Arbitration Petition, stating that the High Court has wrongly assumed jurisdiction to entertain petitions under Section 9 of the Arbitration and Conciliation Act, 1996, despite holding that the entire cause of action has arisen outside its territorial jurisdiction. After considering various judgments, the Hon'ble Supreme Court dismissed the appeal stating that the Bombay High Court has jurisdiction to entertain Section 9 application of the respondents therein. This judgment has been rendered on an entirely different subject matter which is not the issue in the present case. Hence, the said judgment is also not applicable to the facts of the present case.

10. With regard to the issue before this Court in the present case, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in *Alchemist Limited and Another v. State Bank of Sikkim and Others*, reported in (2007) 11 SCC 335. The said judgment deals with territorial jurisdiction of the High Court, and it was filed against a bank. After considering various judgments of the Hon'ble Supreme Court, the said judgment has been rendered, wherein it has been stated that for the purpose of deciding whether the facts averred by the appellant would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action, and that it must be a "part of cause of action". The relevant paragraph of the said judgment reads as under:

"From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit / petition. Nevertheless it must be a "part of cause of action", nothing less than that."

11. In AIR 1992 (SC) 1514, in *Patel Roadways Limited, Bombay v. Prasad Trading Company*, the Hon'ble Supreme Court of India, under similar circumstances, while dealing with jurisdiction and Section 20 of CPC, held that the place where cause of action arises is to be the place for filing a suit and the same is to be dealt with by the Courts having local jurisdiction. The relevant portion of the said judgment reads as under:

"11. This Explanation dealt with the case of place of residence of the defendant and provided with regard to a person having a permanent dwelling at one place and also

temporary at another place that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. The language used in Explanation II on the other hand which is the present Explanation was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places the language used in Explanation II would have been identical to that of Explanation I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place. The marked difference in the language of the two Explanations clearly supports the view which we have taken with regard to the interpretation of the present Explanation to Section 20 of the Code which was Explanation II earlier as indicated above.

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 officer (within the limits of which a cause of action arises) are to be deemed to be placed 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."

13. As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus standi for the corporation's place of business, not an additional one.

14. There may be only an extraordinary situation in which this interpretation may cause an apparent anomaly. This is where the plaintiff has also his/its place of business at the same place as the corporation but the cause of action has arisen at some other place. The above interpretation would preclude him from filing a suit in

that place of business common to both parties and compel him to go to a court having jurisdiction over the place where the cause of action has arisen. But this is not really a hardship because such plaintiff must have some nexus or connection with the place since some part of the cause of action had arisen there; if he can have dealings with the corporation at such a place giving rise to the cause of action, there is no reason why he should find it disadvantageous or difficult to file a suit at such place. Equally, the corporation, having a subordinate office at the place, will suffer no disadvantage.

15. In this view of the matter since in the instant two cases clause (c) is not attracted to confer jurisdiction on courts at Bombay and the appellant has admittedly its subordinate offices at the respective places where the goods in these two cases were delivered to it for purposes of transport the courts at Bombay had no jurisdiction at all to entertain the suits filed by the respondents and the parties could not confer jurisdiction on the courts at Bombay by an agreement. Accordingly no exception can be taken to the findings in this behalf recorded by the trial Court and the High Court in these two cases.

16. In the result, we find no merit in any of these two appeals and they are accordingly dismissed but in the circumstances of the case the parties shall bear their own costs."

12. Relying on the principles enunciated by the Hon'ble Supreme Court in Alchemist Limited's case and Patel Roadways Limited's case (cited supra), and the foregoing discussions, this Court is of the considered opinion that no leave could be granted to the appellant to institute the suit against the respondents / defendants within the jurisdiction of this Court, as the cause of action has arisen only at Kumbakonam and Karaikudi. Hence, these appeals are dismissed and the judgment and decree passed by this Court on 28.03.2016 in Appln.Nos.7450 and 7451 of 2015 are confirmed. No costs.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

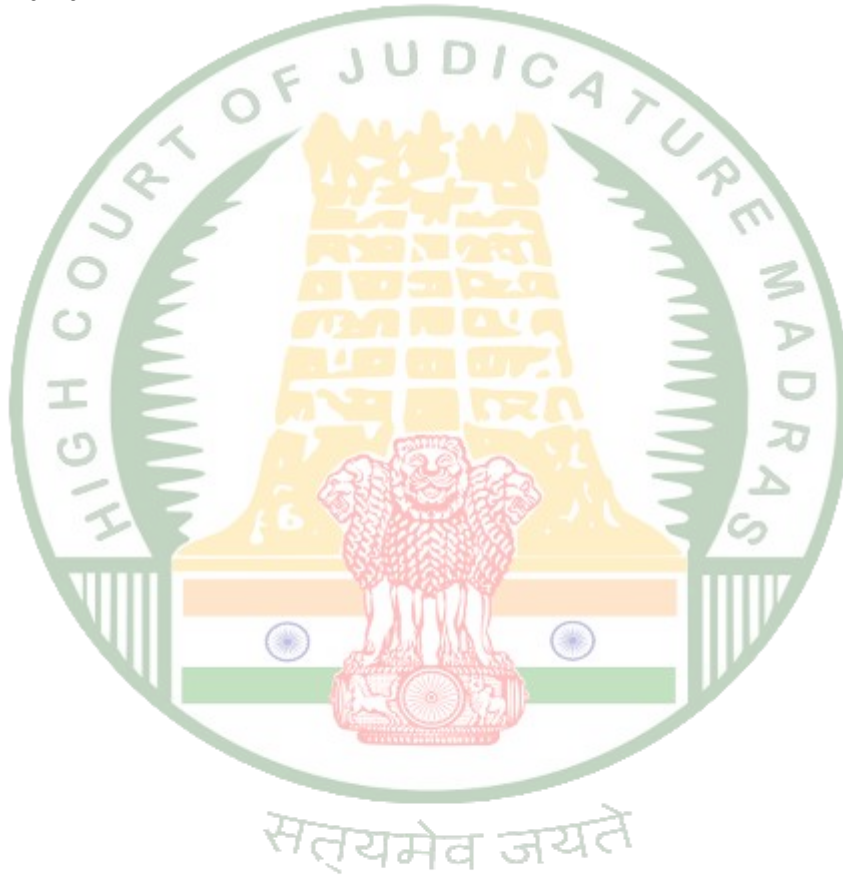
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To
The Sub Assistant Registrar
Original side, High Court, Madras

1 cc to M/s.P.L.Narayanan, Advocate Sr.36284

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