

\$~50 to 66 (17 matters)

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

Date of decision: 30th November, 2016

- (1) + FAO 270/2015
- (2) + FAO 273/2015
- (3) + FAO 389/2015 & C.Ms.26339/2015 & 14072/2016
- (4) + FAO 1/2016 & C.M.105/2016
- (5) + FAO 5/2016 & C.M.120/2016
- (6) + FAO 6/2016 & C.M.123/2016
- (7) + FAO 8/2016 & C.M.162/2016
- (8) + FAO 9/2016 & C.M.165/2016
- (9) + FAO 72/2016 & C.M.5233/2016
- (10) + FAO 80/2016 & C.Ms.5729-31/2016
- (11) + FAO 168/2016 & C.Ms.14485/16, 14487/16
- (12) + FAO 169/2016 & C.Ms.14497/16, 14499/16
- (13) + FAO 174/2016 & C.Ms.15071/16, 15073/16
- (14) + FAO 179/2016 & C.Ms.15196/16, 15198/16
- (15) + FAO 194/2016 & C.Ms.16171, 16173-74/16
- (16) + FAO 195/2016 & C.Ms.16178-180/2016
- (17) + FAO 200/2016 & C.Ms.16843/16, 16845/16, 16875/16

ICICI BANK LTD

..... Appellant

Through: Mr. Punit Bhalla, Advocate

versus

- (1) RAJESH KUMAR
- (2) P K GOSWAMI
- (3) MOHINDER KUMAR GOYAL
- (4) SONU BHADHANA & ANR
- (5) RAJU ARORA
- (6) POONAM SHARMA
- (7) VIRENDER SINGH
- (8) PRABHU DAYAL
- (9) SANJOY SAHA

- (10) ANIL KUMAR
- (11) SONU KR SHARMA
- (12) VARINDER SINGH
- (13) VIJAY KUMAR RAI
- (14) AMFAH INFRASTRUCTURES PVT LTD & ORS
- (15) VIDYA BHUSAN
- (16) MANJEET KAUR
- (17) RAVI PRAKASH

.....Respondents

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In the above captioned 17 appeals, the challenge is to impugned order vide which appellant's suit for recovery has been disposed of while returning the plaint to appellant-plaintiff for presentation before the competent court having territorial jurisdiction.

Learned counsel for appellant-plaintiff had submitted that the reasoning in impugned order in the above-captioned appeals is identical and so, these appeals were heard together and are being decided by this common judgment.

As per order of 1st September, 2016, respondents were set *ex parte* as none had appeared on their behalf.

At the final hearing, learned counsel for appellant had submitted that the territorial jurisdiction would be of Delhi Courts and to submit so, reliance was placed upon two decisions of co-ordinate Bench of this Court in FAO 391/2015 titled *ICICI Bank Ltd. v. Rahul*, rendered on 6th

November, 2015 and in FAO 133/2015 titled *ICICI Bank Ltd. v. Saurabh Agarwal*, rendered on 25th May, 2016. Reliance was also placed upon a decision of a co-ordinate Bench of this Court in *ICICI Bank Ltd. v. Astha Kumar*, (2015) 224 DLT 651.

During the course of hearing, learned counsel for appellant had contended that the impugned order, directing return of the plaint under Order VII Rule 10 CPC, is premised on the decision of Apex Court in *Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 129. It was also contended by learned counsel for appellant that the said case involves a question of territorial jurisdiction of a case filed under Section 138 of *the Negotiable Instruments Act, 1881* with reference to Sections 177 to 179 of Cr.P.C, which is at variance with procedure under Section 20 of CPC conferring territorial jurisdiction on the civil court.

It was next contended that despite the fact that ratio of *Dashrath Rupsingh Rathod (supra)* has been neutralized by an Ordinance which has been recently passed by the President of India and trial court has ignored the decision of this Court in *Astha Kumar (supra)* and is still returning such plaints in a routine manner with reference to Order VII Rule 10 CPC. It was further submitted by learned counsel for appellant that the decisions in *Saurabh Aggarwal (supra)*, *Rahul (supra)* and *Astha Kumar (supra)* were cited before trial court, but they have not been noticed or considered in the impugned order, which discloses utter non-application of mind and so, impugned order ought to be set aside as it runs contrary to the legal position as declared in *Astha Kumar (supra)*. Lastly, it was submitted that impugned order holding to the contrary is liable to be set aside and trial court ought to be directed to try appellant's suit in

accordance with the law. Nothing else was urged on behalf of appellant.

After having heard learned counsel for appellant and on perusal of impugned order and the decisions cited, I find that trial court has erred in misconstruing Supreme Court's decision in *Dashrath Rupsingh Rathod (supra)* as that the subject matter of these appeals is squarely covered by a decision of this Court in *Astha Kumar (supra)*, which has been relied upon by a co-ordinate Bench of this Court in *Saurabh Agarwal (supra)* to reiterate as under: -

“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, Auto Vikas Sales Services 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, Auto Vikas Sales and Services 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: Fina Name: Auto Vikas Sales & Service Pvt. Ltd. 12-A, Shivaji Marg, New Delhi – 110015....”

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.”

The afore-noted observations squarely apply to the appeals in hand. I find no reason to take a different view than the one taken in *Saurabh Agarwal (supra)*.

In view of the aforesaid, impugned order in the above-captioned 17 appeals is set aside and trial court is directed to expeditiously proceed with the complaints of appellant. Appellant to appear before trial court on 17th December, 2016 for proceeding further in accordance with law.

**(SUNIL GAUR)
JUDGE**

NOVEMBER 30, 2016

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