

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

% **Date of Decision: 25th May, 2016**

+ **FAO 133/2015**

ICICI BANK LTD Appellant
Through: Mr. Punit K. Bhalla, Adv.
versus

SAURABH AGARWAL Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 27th February, 2015 whereby the learned Trial Court has returned the plaint on the ground that the Trial Court has no territorial jurisdiction to entertain and try this suit.

2. Learned counsel for the appellant refers to and relies upon ***ICICI Bank Ltd. v. Astha Kumar, (2015) 224 DLT 651.***

3. This case is squarely covered by ***ICICI Bank Ltd. v. Astha Kumar (supra)*** in which this Court set aside a similar order passed by the learned Trial Court. Relevant portion of the said judgment is reproduced hereunder:

“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 adverting 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
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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:

Dealer ☒ Manufacturer ☐ Seller ☐ Existing ☐ Applicant ☐
Financier ☐

Co-applicant ☐ DMA ☐ DSA ☐ Other ☐ (tick
person ☐ whichever is
applicable)

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.

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, there is a factual error committed by the trial

court, in as much as the statement of account placed on record bears a stamp of the Videocon Tower, Jhandewalan Extn., New Delhi. No doubt, the printed part of the statement of account does not expound where the branch is located except stating that it is a Delhi branch, the trial court could not have ignored the stamp on the document, especially, when it is accompanied by an assertion made by the appellant in paragraph 12 of the plaint that the payments were 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. 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.”

4. This Court is in complete agreement with the findings of this Court in the aforesaid judgment. Following the aforesaid judgment, this appeal is allowed and the impugned judgment and decree is set aside. The Trial Court shall issue notice to the respondent and recommence the proceedings.

5. Learned counsel for the appellant submits that the receiver be appointed in terms of the judgment of this Court in **ICICI Bank Ltd. v. Astha Kumar** (*supra*). The appellant's prayer is allowed and Mr. Rahul Nadir, a representative of the appellant is appointed as the receiver to take the possession of vehicle DUSTER/RXL85 PS bearing registration number UP 16 AN 3392.

6. The receiver shall take over the possession of the vehicle from the respondent at the address(es) given in the loan application. If the vehicle is not available at the said address(es), the receiver shall be at liberty to recover the vehicle wherever found. However, the receiver shall not stop a

running vehicle on the road to forcibly take out the driver to take the possession of the vehicle. The receiver shall also not make any attempt to block the passage of a car to bring it to a halt to take its possession.

7. The receiver shall avoid taking the possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member or an elderly, infirm or physically/mentally challenged person. In such cases, the receiver shall take the possession of the vehicle from the borrower's residence.

8. The receiver shall be at liberty to take the assistance of the local police, if required, for taking over possession of the vehicle. The concerned SHO shall provide assistance to the receiver as and when requested.

9. The receiver shall also ensure that the repossession of the vehicle does not result in any breach of peace. In the event of any breach of peace by the person occupying the vehicle, the receiver shall not proceed without assistance of police.

10. At the time of taking the custody of the vehicle, the receiver shall deliver copy of this order to the person from whom the possession is taken.

11. At the time of taking the custody of the vehicle, the receiver shall take the photographs of the vehicle from different angles along with the person(s) occupying the vehicle as well as the place of taking over the possession.

12. The receiver shall prepare an inventory of the articles/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the possession is taken.

13. After taking the possession of the vehicle, the receiver shall keep the vehicle in safe custody.

14. If the respondent makes payment of the outstanding instalments as on date of possession, the receiver shall release the vehicle in question to the respondent on *superdari*, subject to an undertaking by the respondent to the

receiver for regular repayment of future monthly instalments till the expiry of the tenure and a declaration not to part with the vehicle or create third party interest in the vehicle until the entire amount is paid.

15. If the respondent is not in a position to clear the entire outstanding instalments, the receiver shall give him another opportunity to pay the outstanding instalments within 30 days of taking over the possession of the vehicle and in case the respondent makes the payment of the outstanding instalments within the said period, the receiver shall release the vehicle to the respondent subject to the undertaking as aforementioned.

16. If the respondent does not make the payment of the outstanding amount to the appellant bank within 60 days, the receiver would be authorised to sell the vehicle in question in a public auction with prior written notice (to be sent by Speed Post AD) of the date of auction to the respondent at the address(es) mentioned in the loan agreement or the address from where the vehicle is taken into possession so that the respondent may also be able to participate in the auction to enable the appellant to fetch maximum amount from the sale of the vehicle. The receiver shall carry out video recording of the auction proceedings and shall submit the same before the Trial Court along with his final report.

17. That the receiver shall submit his first report before the Trial Court within 10 days of taking the custody of the vehicle along with the photographs and inventory mentioned above. The final report shall be submitted before the Trial Court within 10 days of the public auction along with the proceedings for public auction and video recording of the public auction.

18. The appellant shall appear before the learned Trial Court on 20th July, 2016.

19. The Trial Court record be sent back forthwith.

20. Copy of this judgment be given *dasti* to counsel for the appellant.

J.R. MIDHA, J.

MAY 25, 2016

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