

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

+ **RFA No. 593/2017**

% **Reserved on: 12th July, 2017**
Pronounced on: 19th July, 2017

RANA SUGARS LIMITED Appellant
Through: Mr. Ravi Gupta, Sr. Adv. with
Mr. Nikhil Rohtagi and Mr.
Shashank Khurana, Advocates.

versus

BAJAJ ELECTRICALS LIMITED Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the trial court dated 27.3.2017 by which the trial court has decreed the suit of the respondent/plaintiff for an amount of Rs.45,29,582/- along with interest at 9% per annum.

2. The facts of the case are that the respondent/plaintiff/company is engaged in the manufacturing, marketing, sale and supply of electrical equipments and appliances for industrial and domestic purposes. In the plaint it is pleaded that the

appellant/defendant approached the respondent/plaintiff for supply of electrical equipments. The appellant/defendant is pleaded to have placed purchase orders on the respondent/plaintiff which were received by the respondent/plaintiff at New Delhi. The respondent/plaintiff supplied the material as per the purchase orders issued by the appellant/defendant. The material was supplied to the works/offices of the appellant/defendant situated in different places at Uttar Pradesh. With respect to the supplies a total of 17 invoices were raised from the period 8.2.2007 to 30.4.2007 totaling to Rs.45,29,582/-. The appellant/defendant had issued C-Forms acknowledging receipt and acceptance of the material sent by the respondent/plaintiff against the subject invoices. The respondent/plaintiff on account of non-payment of its dues ultimately issued a legal notice dated 3.5.2008 but since the same failed to yield any result, the subject suit came to be filed.

3. The appellant/defendant contested the suit and pleaded that the goods were supplied after a long delay though time was the essence of the contract and that the appellant/defendant had rightly rejected the goods. It was pleaded in the written statement by the appellant/defendant that in the purchase order dated 23.3.2007, six items out of 21 items were supplied on time and the remaining items were delayed by about three/four weeks. It is pleaded that even if the

appellant/defendant had accepted the deliveries, in terms of Clause 1 of the purchase order dated 8.1.2007 a penalty of 1% per week had to be paid by the respondent/plaintiff to the appellant/defendant. It is further pleaded that the respondent/plaintiff did only 50% of the commissioning and erection work and the appellant/defendant had to get the commissioning and erection work done from others resulting in huge delays and additional costs. It was pleaded that the issuance of C-Forms by the appellant/defendant was not an admission of liability but only indicated confirmation of the receipt of the goods. It was also pleaded that the courts at Delhi had no territorial jurisdiction because in terms of Clause 13 of the purchase order disputes between the parties were subject to the jurisdiction of the Chandigarh courts alone.

4. After pleadings were complete the trial court framed the following issues:-

- “1. Whether the plaintiff is entitled to a decree in the sum of Rs. 60,24,345/- against the defendant? OPP
2. Whether the plaintiff is entitled to an award *pendente lite* and future interest @ 18% p.a. If so, to what effect? OPP
3. Whether this Hon’ble Court has got territorial jurisdiction to entertain the present suit, in view of clause 13 of the purchase order? Onus on parties.
4. Relief.”

5. As regards issue no.1 of merits of the matter, the court below has given a finding that the goods were supplied to the appellant/defendant as proved through the invoices Ex.P-1, Ex.P-6, Ex.P-8 to Ex.11, Ex.P-13 to Ex.16 and Ex.P-22. The court below further holds that the appellant/defendant had issued C-Forms vide Ex.P-25 and thereby the appellant/defendant has admitted to the delivery and receipt of the goods. The court below further has held that there is no delay because the witness of the appellant/defendant DW-1 admitted in his cross-examination that no letter of communication has been filed by the appellant/defendant on record whereby the appellant/defendant company has raised an objection/grievance regarding the delay in supply of the goods in the five purchase orders. It was also admitted by DW-1 that there is no letter of communication on record whereby the appellant/defendant company had raised any objection regarding non-completion of the commissioning and erection work in all the five purchase orders. Similarly, it was also admitted by DW-1 that the appellant/defendant never issued any letter putting forward its alleged stand of supply of defective goods. DW-1 further admitted that the appellant/defendant has not paid the amount of 80% of the cost of the goods supplied and that the appellant/defendant had duly issued the C-Forms. The court

below has then referred to Section 42 of the Sale of Goods Act, 1930 and as per which provision if no complaint is raised with respect to the goods for a reasonable period of time, goods which are sold are deemed to be accepted. On merits the respondent/plaintiff was thus held entitled to the suit amount.

6. I completely agree with the findings and conclusions arrived at by the trial court and in fact no arguments have been urged on behalf of the appellant/defendant before this Court to in any manner question or endeavor to dislodge the findings and conclusions of the trial court. The relevant findings and conclusions of the trial court are contained in paras 26 to 28 of the impugned judgment dated 27.3.2017, and the same read as under:-

“26. PW-1 has testified through his evidence that the goods were supplied to the defendant through invoices Ex.P-1, Ex. P-6, Ex. P-8, Ex. P-9, Ex. P-10, Ex. P-11, Ex. P-13, Ex. P-14, Ex. P-15, Ex. P-16 and Ex.P-22. The defendant has issued C-forms in respect of the abovesaid invoices through Ex. P-25 meaning thereby that the defendant has admitted the delivery and receipt of the goods supplied through the abovesaid invoices.

27. The defence taken by the defendant that the goods were not only defective but goods were not delivered within time and DW-1 has testified that only six items out of 21 in the purchase order dated 23.03.2006 were delivered in time and the remaining were delayed about 3-4 weeks. DW-1 has further testified that plaintiff did only 50% of the commissioning and erection as against the cent percent which plaintiff was supposed to be done, as per clause-8 of the purchase order dated 08.01.2007 and plaintiff further failed to furnish the performance bank guarantee, as per clause-3 of this purchase order. Therefore, 10% amount is to be deducted by the defendant. DW-1 has admitted in his cross-examination that he cannot say which 15 items in the purchase order dated 23.03.2007 were supplied late and he did not having any knowledge when the alleged 15 items were alleged to be delivered. DW-1 further admitted that he cannot tell exact date when the goods were required to be supplied and were actually supplied in all the five purchase orders placed by the defendant to the plaintiff. DW-1 has also

admitted that there is no letter/communication on the record whereby the defendant company raised any objection/grievance regarding the alleged delay in supply of the goods in all the five purchase orders. DW-1 further admitted that there is no letter/communication on record whereby the defendant company raised any objection regarding alleged non-compilation of commissioning and erection in all the five purchase orders and defendant has never issued any letter putting forward its grouse for alleged defective goods supplied by the plaintiff. DW-1 admitted that the plaintiff company supplied the goods against the five purchase orders issued by the defendant after raising 17 invoices. DW-1 has also admitted that defendant has not paid the amount of 80% of the cost of the goods supplied and defendant issued C-forms.

28. Admittedly, the defendant has not filed any document on record showing complaints in the goods supplied by the plaintiff. It may be noted that the defendant has never issued any notice under section-42 of Sales of Goods Act, as per which once after a reasonable period of time, the buyer did not complaint about the goods but in fact, utilized the goods, the buyer as a defendant be prevented from raising any objection as to the quality of goods. Therefore, the goods are deemed to have been accepted by the defendant. The defendant was served with the legal notice issued by the plaintiff and defendant did not respond to the same. The defendant has never pointed-out that the goods were defective even at the time when the C-form was supplied by defendant to the plaintiff. Therefore, the version of the defendant appears to be improbable because had the goods been defective, the defendant would not have issued C-Form to the plaintiff. Therefore, plaintiff has proved that it has supplied the goods to the defendant but defendant has paid the amount of Rs.45,29,582/-. So far as pre-suit interest on the said amount to the tune of Rs.14,94,762/- is concerned, the plaintiff has not proved on record any agreement between the parties for such contractual interest. Therefore, the plaintiff is not entitled to pre-suit interest. In this regard, reliance is placed upon Zile Singh Vs. Mangloo Ram Bansal judgment passed by HHC in RSA No.195/2004 in which in paras no.15 and 18, it has been observed as under:-

“15. The provisions contained in the Interest Act, 1978 are almost similar to the provisions contained in the Interest Act, 1839. While considering the question of payability of interest for the period prior to the date of filing of the suit, the Privy Council in the decision reported as Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji and Ors. AIR 1938 Privy Council 67 observed as under:-”...The crucial question however is whether the Court has authority to allow interest for the period prior to institution of the suit; and the solution of this question depends, not upon the Civil Procedure Code, but upon substantive law. Now, interest for the period prior to the date of the suit may be awarded, if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usage of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to recover interest, as for instance, under Section 80, Negotiable Instruments Act, 1881, the Court may award interest at the rate of 6 per cent per annum, when no rate of interest is specified in the promissory note or bill of exchange. There is in the present case neither usage nor

any contract express or implied to justify the award of interest. Nor is interest payable by virtue of any provision of the law governing the case. Under the Interest Act, 32 of 1839, the Court may allow interest to the plaintiff, if the amount claimed is a sum certain which is payable at a certain time by virtue of a written instrument.

18. There is no dispute that in the present case there is no written instrument under which the debt is payable at a certain time. The plaintiff has also not averred in the plaint that there was any agreement with the defendants regarding payment of interest or there is any usage having the force of law regarding payment of interest. In the absence of any proof of agreement, either express or implied, or usage having the force of law regarding payability of interest, and in the absence of any written instrument, the claim of interest can be sustained only if it is proved that a written notice of demand to that effect has been issued.”

But the plaintiff is certainly entitled to the interest @ 9% p.a. from the date of filing of the present suit till realization on the said amount of Rs.45,29,582/-. Accordingly, both these issues are decided in favour of the plaintiff and against the defendant.” (underlining added)

7. It is therefore clear that the court below has rightly decreed the suit for recovery of monies on account of goods supplied to the appellant/defendant but not paid for by the appellant/defendant.

8. The only issue argued on behalf of the appellant/defendant before this Court was that the courts at Delhi had no territorial jurisdiction. It is argued that admittedly there is a Clause 13 in the purchase orders and as per which the courts at Chandigarh had exclusive jurisdiction. Accordingly, it is argued that the trial court at Delhi had illegally passed the impugned judgment decreeing the suit for recovery of money.

9.(i) Learned senior counsel for the appellant/defendant to argue that courts at Delhi had no territorial jurisdiction has referred to

this Court the provision of Section 20 CPC with its Explanation and has also cited para 6 the judgment delivered by this Court in the case of ***Bigtree Entertainment Pvt. Ltd. Vs. Saturday Sunday Media Internet and Ors. 226 (2016) DLT 497*** to argue that this Court has held in terms of para 6 of the judgment in the case of ***Bigtree Entertainment Pvt. Ltd. (supra)*** that the suit cannot be filed as against a company even if a cause of action arises at Delhi if the defendant company did not have a branch office at Delhi. Para 6 of the judgment in the case of ***Bigtree Entertainment Pvt. Ltd. (supra)*** which is relied upon reads as under:-

“6. A reference to para 12 of the judgment in *Patel Roadways Limited’s* case (*supra*), especially the italics portion as given by the Supreme Court itself, shows that the Supreme Court has held that where the suit is filed against a company, carrying on business by a company can only be along with existence of a head office or a registered office or a principal office or a branch office at the place when the cause of action arises. Putting it in other words, arising of cause of action, when a plaintiff or a defendant (as discussed below) is a company, has to be taken not independently of arising of cause of action in itself as sufficient but carrying on of business has to be taken alongwith the existence of a principal office or a head office or a registered office or a branch office of the company which is either a plaintiff or a defendant in the suit, and which legal position cannot be in doubt on account of the categorical language contained in para 12 of the judgment in the case of *Patel Roadways Limited, Bombay (supra)*.”

(ii) Reliance is also placed on behalf of the appellant/defendant on the judgment of the Supreme Court in the case of ***Patel Roadways Limited, Bombay Vs. Prasad Trading Company (1991) 4 SCC 270***.

10. On behalf of the appellant/defendant, it is urged by relying upon the affidavit of evidence filed on behalf of DW-1 Sh. Sanjeev Sharma and which states that the principal office of the appellant/defendant company is situated at Chandigarh and that there is no cross-examination of this part of the deposition of DW-1 with respect to the appellant/defendant company having its principal office at Chandigarh, and accordingly it is argued that once parties have agreed to the exclusive jurisdiction of the courts at Chandigarh, where the principal office of the appellant/defendant company is situated, the courts at Delhi would not have territorial jurisdiction.

11. The provision of Section 20 CPC with its Explanation is reproduced below:-

“20. Other suits to be instituted where defendants reside or cause of action arises .- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

Explanation: 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.”

12. It is seen that the provision of Section 20 CPC allows filing of a suit against a defendant under two broad heads. The first broad head is with regard to arising of whole or part of cause of action and where a contract is entered into between the parties then cause of action arises wholly or in part where the contract is executed or where performance under the contract has to be done or where payment is made or is to be made under the contract and at such three places the courts would have territorial jurisdiction to decide the disputes arising between the parties to the contract. The first broad head is the subject matter of sub-section (c) of Section 20 CPC. The second broad head of Section 20 CPC is that a suit can be filed against a defendant where the defendant resides and/or voluntarily works for gain and/or carries on business. The second broad head allows filing of a suit even if cause of action has not accrued at the place where the defendant resides and/or works for gain and/or carries on business. The second broad head is the subject matter of sub-sections (a) and (b) of Section 20 CPC.

13. *Patel Roadways (supra)* judgment, it is seen, interprets and lays down the ratio, when dealing with sub-sections (a) and (b) of Section 20 CPC and the Explanation to Section 20 CPC holding that the suit has to be filed as against a company either where the

sole/principal office is situated or if the defendant company has a branch office then at the courts where the branch office is situated provided a cause of action has accrued where the branch office is situated i.e the ratio of the judgment in the case of *Patel Roadways (supra)* is that mere existence of a principal office/head office would not entitle a company to be sued at the place where the principal office/head office is situated once it is found that where the cause of action has arisen the defendant company has a branch office. The relevant paras of *Patel Roadways (supra)* case are paras 9 to 13 and 15 and which read as under:-

“9. Clauses (a) and (b) of Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently **Clause (c) is not attracted to the facts of these cases.** What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly

suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

10. Here we may point out that the view which we take finds support from a circumstance which, in our opinion, is relevant. Section 20 of the Code before its amendment by the CPC (Amendment) Act, 1976 had two Explanations being Explanations I and II. By the Amendment Act Explanation I was omitted and Explanation II was renumbered as the present Explanation. Explanation I so omitted read as hereunder:

"Explanation I: Where a person has a permanent dwelling at one place and also 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."

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 office (within the limits of which a cause of action arises) are to be deemed to be places 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 for the corporation's place of business, not an additional one.

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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 purpose 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." (emphasis added)

14.(i) The interpretation by the Supreme Court of the provision of the Explanation to Section 20 CPC in the judgment in the case of *Patel Roadways (supra)* and in the later judgment in the case of *Indian Performing Rights Society Limited Vs. Sanjay Dalia and Another (2015) 10 SCC 161*, while dealing with sub-sections (a) and (b) of Section 20 CPC and not with sub-section (c) thereof, is on the issue only of filing of a suit with respect to existence of a branch of a company (and thus the residence of a defendant company) and thus carrying on through the branch the business by the defendant company and/or working for gain by the defendant company where it is found that the suit is filed where the cause of action accrues wholly or in part and where the branch office is also situated. Neither in *Patel Roadways* case (*supra*) nor in *Sanjay Dalia's* case (*supra*) Supreme Court has held that the suit against a company cannot be filed even where the cause of action has arisen wholly or in part, unless and until there is additionally also a branch where the cause of action arises. Arising of the cause of action wholly or in part, under sub-section (c) of Section 20 CPC, is not to be linked to the existence of the branch office of the defendant company. As already stated above in the judgment in the case of *Patel Roadways (supra)*, there is the expression 'or' appearing between sub-sections (b) and (c) of Section

20 CPC, and that the provision of Explanation to Section 20 CPC is only relatable to sub-sections (a) and (b) of Section 20 CPC and not to sub-section (c) of Section 20 CPC.

(ii) The first six lines of para 9 (especially the sixth line) of the judgment of *Patel Roadways* case (*supra*) makes it clear that the Supreme Court in the said case was not dealing with a case which fell under sub-section (c) of Section 20 CPC i.e filing of suit under sub-section (c) is independent of sub-sections (a) and (b) thereof.

15. I cannot agree with the arguments urged on behalf of the appellant/defendant that even if a suit is filed on the basis of arising of whole or a part of cause of action then the suit cannot be filed even if cause of action has accrued within the territorial jurisdiction of the court which tries the suit, merely because as argued by the appellant/defendant that the defendant company does not have a branch office at Delhi where the cause of action arises. The ratio of the judgment of the Supreme Court in the case of *Patel Roadways* (*supra*) when dealing with sub-sections (a) and (b) of Section 20 CPC is that the suit cannot be filed against a defendant company at the place where the sole office or principal office is situated if it is found that the defendant company has a branch office where the cause of action has arisen. The Supreme Court in the case of *Patel Roadways* (*supra*) was

not concerned with the position of law as would prevail when a suit is filed only with reference to sub-section (c) of Section 20 CPC and this judgment has not laid down the ratio that a suit cannot be filed against the defendant company within the jurisdiction of the court, when the cause of action has arisen within the jurisdiction of that court, unless and until there also is found to exist a branch office of the defendant company at the place where part or whole of cause of action has arisen. I have not found any such ratio or observations of the Supreme Court in the case of *Patel Roadways (supra)* which holds and observes to be that the suit against a defendant which is a company cannot be filed at the place though the whole or part of the cause of action has arisen merely because the defendant company does not have a branch office where the cause of action has arisen. It is not necessary that besides arising of the cause of action the defendant company must also have the branch office where the cause of action arises. In fact, the argument urged on behalf of the appellant/defendant is completely destructive of the expression “or” which appears between sub-section (b) and sub-section (c) of Section 20 CPC, and it is seen that existence of the word ‘or’ shows that a suit is filed against the defendant either where the cause of action arises wholly or in part or where the defendant resides and/or carries on business and/or works for gain i.e

qua a company existence of a branch office from where the business of the company would be carried on. The Explanation given in Section 20 CPC as regards Corporations is only that a suit cannot be filed against a corporation at its sole or principal office if the cause of action arises wholly or in part at a place where there is a branch office, and in which case the suit has to be filed where the branch office exists and on account of arising of cause of action where the branch office is situated.

16. The observations of this Court in the case of ***Bigtree*** (*supra*) has necessarily to be read in the context of the facts of that case only and which were with respect to interpretation of expression carrying on business appearing in Section 134 of the Trade Marks Act, 1999 i.e expressions as found in sub-sections (a) and (b) of Section 20 CPC, and it was held that carrying on of business *qua* a company is relatable to the existence of a principal or branch office of a company and that there cannot be carrying on of a business by a company (i.e its residence) without there existing a branch or principal office. Section 134 of the Trade Marks Act provides an exception to the general law contained in Section 20 CPC and which provides that a suit can only be filed where the defendant resides and/or works for gain and/or carries on business, and as per the exception contained in Section 134 of the

Trade Marks Act, a suit can be filed by a plaintiff company at a place where it resides/carries on business i.e it has a branch/principal office although the defendant does not reside in the territorial jurisdiction of the court where the suit is filed and although also that whole or part of the cause of action does not arise within the jurisdiction of the court where the suit is filed i.e the suit can be filed only and simply on the basis of existence of the branch/principal office of the plaintiff company and hence the plaintiff company residing or carrying on business or working for gain. The judgment in the case of ***Bigtree (supra)*** was concerned with expressions found in sub-sections (a) and (b) of Section 20 CPC and this judgment in no manner deals with disjunction between sub-sections (a) and (b) of Section 20 CPC on one hand with sub-section (c) of Section 20 CPC on the other hand and the *factum* of disjunction existing on account of expression “or” appearing in between sub-section (b) and sub-section (c) of Section 20 CPC. The ratio in the case of ***Bigtree (supra)*** was clearly confined to entitling filing of a suit, in terms of sub-sections (a) and (b) of Section 20 CPC and not sub-section (c) of Section 20 CPC thereof, i.e a case where the plaintiff is a company or defendant is a company, and on the basis of the residence or carrying on business or working for gain by the company having a branch/principal office existence of territorial

jurisdiction is asserted, without further requirement of whole or part of the cause of action arising at the place where the suit is filed. The vice versa is not true nor decided in the case of ***Bigtree (supra)*** (because that case was not covering territorial jurisdiction as per sub-section (c) of Section 20 CPC) that if the cause of action arises at the place where the suit is filed against a defendant company, then, additionally there must exist branch/principal office where the cause of action has arisen i.e it cannot be argued that the suit could not have been filed at that court although the cause of action has arisen there wholly or in part and simply because the plaintiff company or defendant company does not have a branch office where the cause of action has accrued wholly or in part. It is settled law that ratio of a case is facts dependant vide ***Padma Sundara Rao (Dead) and Others Vs. State of T.N. and Others (2002) 3 SCC 533*** wherein the Supreme Court has clearly laid down that ratio of a case is facts dependant and change of even a single fact can make difference between the ratios of the two cases.

17. (i) Accordingly, it is held that the issue of linking of residence (existence of branch/principal office) of a plaintiff or defendant company with respect to a cause of action is where the suit is filed by or against a company, under sub-sections (a) and (b) of Section 20 CPC, on the basis of the residence and/or carrying on business

and/or working for gain on account of having a branch/principal office and the linking of the cause of action to the residence of the company (i.e the existence of a branch office of the company) is not required where a suit is filed in a court where cause of action arises wholly or in part being a suit under sub-section (c) of Section 20 CPC.

(ii) The sum and substance and the net effect as regards the legal position is that linking of a branch office to a cause of action is where a suit is filed by or against a company invoking sub-section (a) or (b) of Section 20 CPC and there is no requirement of mandatory linking existence of a branch office of a company with the cause of action when the suit is filed against a company invoking sub-section (c) of Section 20 CPC. Where plaintiff invokes sub-section (c) of Section 20 CPC against the defendant which is a company, then for existence of territorial jurisdiction arising of whole or part of cause of action at a place is enough and it is not required that even if whole or part of cause of action has arisen against a defendant company then at such place a branch office of a defendant company must also exist for territorial jurisdiction to exist.

18. In the facts of the case, it is seen that the appellant/defendant has only made a self-serving statement through DW-1 of having a principal office at Chandigarh but no documentary

evidence whatsoever has been filed by the appellant/defendant to show that it has a principal office at Chandigarh. The statement made in the examination-in-chief has been controverted by the respondent/plaintiff by putting a general suggestion that the deposition in the examination-in-chief is false. In my opinion, it is not required that for each and every averment of the plaint and each and every averment of the written statement, when a witness of the plaintiff is being cross-examined, each aspect has to be specifically put, and depending upon the facts of each case it is enough even if there is general suggestion at the end of cross-examination of the false deposition by the witness given as per his examination-in-chief. This is all the more so with respect to technical issues of territorial jurisdiction of the Court once otherwise on merits the respondent/plaintiff is found entitled to the suit amount on account of the appellant/defendant having received goods purchased from the respondent/plaintiff. Accordingly I hold that the appellant/defendant had failed to discharge his onus of proof of it having a principal office at Chandigarh inasmuch as oral statement is not discharge of onus of proof of existence of a principal office of the appellant/defendant company at Chandigarh.

19. Learned senior counsel for the appellant/defendant then argued that as per the issue framed the onus was put on both the

parties, and therefore, onus was upon the respondent/plaintiff to show that the appellant/defendant company did not have a branch office at Chandigarh, however, it is seen that the issue framed by the trial court being issue no.3 as regards the territorial jurisdiction of courts at Delhi, that onus was on the parties, and what it means is really that the main onus has to be upon the appellant/defendant which pleads existence of its principal office at Chandigarh. It is only after the appellant/defendant has discharged its onus and proved to the satisfaction of the civil court that it has a principal office at Chandigarh would then the onus shift upon the respondent/plaintiff to show otherwise, and as already held above oral self-serving statements cannot be taken as discharge of onus of proof. In law even if a defendant in a case is *ex-parte* yet the court always calls upon the plaintiff to lead such evidence which will satisfy the judicial conscience of the civil court for discharging the onus of proof which is upon the plaintiff. I therefore hold that the court below has rightly held that Courts at Delhi had territorial jurisdiction.

20. At this stage, it is required to be noted that there is no dispute that part of cause of action arises at Delhi because the appellant/defendant placed purchase orders upon the respondent/plaintiff at Delhi. The purchase orders placed upon the

respondent/plaintiff were in the nature of the offers of the appellant/defendant to purchase the goods from the respondent/plaintiff and it is only when the offer is accepted at Delhi that the contract is entered into. Since the offer was given to the respondent/plaintiff at Delhi, acceptance will be at Delhi, and therefore contract is executed at Delhi and once contract is executed at Delhi, part of cause of action arises at Delhi and hence Delhi courts had territorial jurisdiction vide *A.B.C. Laminart (P) Ltd. Vs. A.P. Agencies, Salem (1989) 2 SCC 163*.

21. In view of the above discussion, I do not find any merit in the appeal, more so because it is only a technical desperate attempt to somehow or the other avoid payment of liability by the appellant/defendant company towards the respondent/plaintiff although the appellant/defendant company has received goods of a huge amount of over Rs.42 lacs from the respondent/plaintiff.

22. Appeal is accordingly dismissed, leaving the parties to bear their own costs.

JULY 19, 2017

VALMIKI J. MEHTA, J