

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

% *Date of Decision: 23.10.2018*

+ **C.R.P. 208/2018**

OCTAGA GREEN POWER & SUGAR CO LIMITED..... Petitioner

Through: Mr. K.K. Khurana, Advocate.

versus

WELL TRANS LOGISTICS PRIVATE LIMITED Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

JUDGMENT (Oral)

VINOD GOEL, J.

CM No.40153/2018 (for exemption)

1. Allowed, subject to all just exceptions.

CM No.40154 of 2018 (delay)

2. For the reason stated in the application, the delay in re-filing the petition is condoned. The application stands disposed of.

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3. The order dated 27.03.2018 passed by the Court of learned Additional District Judge-05 (ADJ), Patiala House Court, New Delhi is the subject matter of challenge in this Civil Revision Petition.

4. The respondent/plaintiff filed a civil suit for recovery of Rs.8,39,171/-

against the petitioner. The petitioner/defendant, in its written statement, *inter-alia*, pleaded that the Court in Delhi has no jurisdiction to try the suit. The petitioner also filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for the rejection of the plaint on the plea that no cause of action has accrued in Delhi and the suit is barred under Section 20 (c) of the CPC.

5. Learned counsel for the petitioner, Sh. Khurana contends that the pleadings of the respondent contained in paras 4 and 17 of the plaint suggesting that all negotiations that took place between the parties in Delhi are false and concocted; the entire cause of action took place at Mumbai where the respondent provided the petitioner their professional services regarding custom clearance, freight forwarding etc.; the learned ADJ did not consider the statement of account dated 30.01.2014 filed by the respondent along with the plaint reflecting the transactions having taken place between the parties at Mumbai; the respondent has filed the suit with *mala fide* intention to trouble the petitioner to travel thousands of kilometres from Mumbai to Delhi; even if it is assumed that some part of cause of action accrued in Delhi, it is writ large on the face of the record that major cause of action accrued at Mumbai and it is only the courts at Mumbai, which have the jurisdiction to try the suit between the parties and lastly that no cause of action, wholly or in part, has accrued in Delhi. Learned Counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court in **(1) Patel Roadways Limited vs. Prasad Trading Company and Others, AIR 1992 SC 1514, (2) Unimers India Limited Vs. The IFCI Limited and Ors., 197 (2013) DLT 693, and (3) T. Arivandandam V. T.V.**

Satyapal 1977 (4) SCC 467, to urge that the suit is not maintainable in the Courts at Delhi.

6. While dismissing the application of the petitioner/defendant by the impugned order dated 27.03.2018, the learned ADJ after referring to Para 7 and 17 of the plaint observed as under: -

“It is settled law that for deciding whether the court has got jurisdiction to entertain and try the suit, only the averments made in the plaint are to be seen. From the averments made in the plaint, a part of cause of action arose at the Delhi office of the plaintiff. Determination of jurisdiction is a mixed question of law and fact which is to be decided after the evidence is led by the parties. The judgments relied upon by Ld. Counsel for the defendant are not applicable to the facts of the present case. The application is therefore, dismissed. No order as to costs.”

7. In **A.B.C. Laminart (P) Ltd. vs. A.P. Agencies, (1989) 2 SCC 163**, while defining ‘cause of action’, the Hon’ble Supreme Court observed as under: -

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment

must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

8. Sections 16 to 20 of the CPC deal with the territorial jurisdiction of the court (place of suing). Whereas Sections 16 to 18 relate to immovable property, suits for compensation for wrongs to persons or movables have been dealt with under Section 19. Section 20 of the CPC is a residuary provision and covers all cases not falling under Sections 16 to 19.

9. The relevant para of Section 20 reads as under: -

“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.”

10. A bare reading of sub-section (c) of Section 20 CPC leaves no room for doubt that a suit would lie in a court within the local limits of whose

jurisdiction the cause of action has arisen, wholly or partly. In fact, Section 20 CPC has been designed to secure that justice might be brought as near as possible to every man's hearthstone and that the defendant should not be put to the trouble and expense of travelling long distances in order to defend himself.

11. It would be relevant to reproduce the relevant para of the plaint: -

“4. That the defendant through its authorized representatives had approached the Plaintiff at their Registered Office at Delhi and proposed and agreed to engage the professional services of the Plaintiff. The plaintiff had provided the Defendant their professional services from their Delhi as well as at Mumbai office.”

“17. That the professional services of the plaintiff had been engaged by the defendant after negotiations at Delhi Office of the Plaintiff, the Plaintiff had rendered its professional services from Delhi and Mumbai office, the defendant had issued letter dated 03.03.2014 addressed to the Delhi Office of the Plaintiff and handed over at Delhi and that the cause of action for the purpose of filing of the present suit has arisen in Delhi and hence the honorable court has the territorial jurisdiction to entertain the present dispute between the parties.”

12. The aforesaid paragraphs of the plaint unambiguously indicate that a part of the cause of action has accrued to the respondent within the local limits of Delhi. This certainly provides privilege to the respondent to file the suit in the courts at Delhi.

13. Very recently in **Chhotanben and Another. Vs. Kirtibhai Jalkrushnabhai Thakkar and other**, (2018) 6 SCC 422, the Hon'ble

Supreme Court has held that what is relevant for answering an application under Order VII Rule 11(d) CPC, is to examine the averments made in the plaint as a whole. The defence available to the defendants or plea taken by them in the written statement or application cannot be the basis to decide the application under Order VII Rule 11 CPC. Para 15 of the said judgment reads as under: -

“15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane.”

14. In **Ramesh B. Desai and Others. Vs. Bipin Vadilal Mehta and Others, (2006) 5 SCC 638**, the Hon’ble Supreme Court, while considering Order VII Rule 11 CPC, held “16..... *to attract application of Order 7 Rule 11 CPC. The principle is, therefore, well settled that in order to examine whether the plaint is barred by any law, as contemplated by clause (d) of Order 7 Rule 11 CPC, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence.....*”

15. The Hon’ble Supreme Court in **Saleem Bhai and Ors. Vs. State of Maharashtra and Ors., 2003 (1) SCC 557**, held that *the trial court can exercise its power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at*

any time before the conclusion of the trial and for the said purpose averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

16. Similarly, in **Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others, (2006) 3 SCC 100**, the Apex Court reiterated that to consider the rejection of plaint, the court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court. Para 12 of the said judgment reads as under: -

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers

under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”

17. While considering the present facts as pleaded in Para 4 and 17 of the plaint on the touchstone of the law, laid down by the Hon’ble Supreme Court, it is clear enough that the part of the cause of action as pleaded in the plaint has accrued to the plaintiff against the petitioner in Delhi. Further, the learned ADJ has rightly observed that determination of the jurisdiction is a mixed question of law and fact, which can be adjudicated only after the parties adduce their respective evidence.

18. In view of the above discussion, I do not find any illegality or infirmity in the petition. The same is accordingly dismissed with no order as to costs.

VINOD GOEL, J.

OCTOBER 23, 2018
“sandeep/shailendra”