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

Date of Decision: 7th March, 2018

+ **RFA 8/2017 & CM APPLs. 234/2017 & 236/2017**

ICICI BANK LTD

..... Appellant

Through: Mr. Punit K. Bhalla, Ms. Chetna Bhalla, Ms. Kashish Narang & Mr. Darpan Bains, Advocates (M-9810080772).

versus

VISHAL BAISLA

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

PRATHIBA M. SINGH, J. (Oral)

1. This is an appeal arising out of judgment dated 20th September, 2016 by which the suit filed by ICICI Bank (*hereinafter* 'Plaintiff Bank') has been dismissed on the ground of lack of territorial jurisdiction. The bank filed a suit for recovery for a sum of Rs.5,38,620.94/-.

2. In July, 2014, the Defendant approached the Plaintiff bank for a sum of Rs.5,11,200/- for purchase of a vehicle Maruti Swift VDI. The loan was repayable in 36 equal instalments of Rs.16,700/- each. Defendant paid merely two instalments and thereafter stopped making any payments. The Plaintiff bank issued a loan recall notice dated 13th January, 2015 and filed a suit for Rs.5,38,620.94/-. The details of the said amount are as under:

“10. The loan recall notice was issued on 13.01.2015, and thereafter suit was filed for the entire amount i.e. Rs. 5,38,620.94 as per following break up:

<i>Principal O/S</i>	<i>:Rs.485,848.00</i>
<i>Late payment penalty</i>	<i>:Rs.3,886.00</i>
<i>Cheque bouncing charges and other charges</i>	<i>:Rs.1,800.00</i>
<i>Interest for the month</i>	<i>:Rs.2,891.00</i>
<i>Prepayment charges @ 5.618% at O/S principal</i>	<i>:Rs.27,294.94</i>
<i>Interest in pending installments</i>	<i>:Rs.16,901.00</i>
<i>Cashback Amount</i>	<i>:Rs.0.00</i>
<i>Refunds</i>	<i>:Rs.0.00</i>
<i>Total amount payable</i>	<i>:Rs.538,620.94”</i>

3. The impugned judgment clearly records that the bank had placed on record all the relevant documents which are enumerated below:

*“Ex.PW1/1 - Copy of Power of Attorney (OSR)
Ex.PW1/2 - Credit Facility Application Form
Ex.PW1/3 - Unattested Deed of Hypothecation
Ex.PW1/4 - Irrecoverable Power of Attorney
Ex.PW1/5 - Copy of loan recall notice
Ex.PW1/7 - Prepayment of car loan account notice
Ex.PW1/8 - Copy of statement of account.
Ex.PW1/9 - Certificate under section 65 B of Indian Evidence Act, 1860”*

4. The Trial Court further records that the witness for the bank Mr. Mohit Grover proved the statement of account. However, since the Defendant is residing in Haryana, the Trial Court dismissed the suit on the ground of lack of territorial jurisdiction. Before the Trial Court, the judgment of this court in ***ICICI Bank v. Saurabh Agarwal*** **FAO No 133/2015 on 25th May, 2016** (hereinafter ***Saurabh Agarwal***) was cited. However, the Trial Court relied upon ***Dashrath Rup Singh Rathod v. State of Maharastra & Anr. 2014 (9) SCC 129*** and ***Patel Roadways Limited, Bombay v. Prasad Trading Company (1991) 4 SCC 270*** and therefore

dismissed the suit.

5. A perusal of the documents on record show that the credit facility application form clearly mentions the bank's address as New Delhi, VT which stands for the New Delhi office at Videocon Tower, Jhandewalan Extension. The dealer who has sold the vehicle is M/s. T.R. Sawheny Motors Pvt. Ltd, E-260, Amar Colony, Lajpat Nagar-IV, New Delhi. Schedule 1 of the attested deed of hypothecation mentions the ICICI Bank Ltd., Green Park, New Delhi as the bank's branch. The irrevocable Power of Attorney also mentions the VT Delhi as the zonal/branch office. Page 67 is the statement of account, the original of which is stated to bear the stamp of the Videocon Tower office, Jhandewalan Extension, New Delhi.

6. This court in ***ICICI Bank v. Astha Kumar & Anr (2015) 224 DLT 651(hereinafter 'Astha Kumar')*** has held that cause of action is a bundle of facts and there are several reasons why the court would have jurisdiction. In similar circumstances since the dealer through whom the disbursement was made was from Delhi and the statement of accounts bares the stamp of Videocon Tower, Jhandewalan Extension, this court held that the Trial Court had the territorial jurisdiction. The relevant portion of ***Astha Kumar (Supra)*** is extracted herein below:

"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

Dealer ☒ Manufacturer ☐ Seller ☐

Existing ☐ DMA ☐ DSA ☐
Financer

Other ☐ (tick whichever is applicable person

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 extraordinary 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.”

This view was echoed by this court again in **Saurabh Agarwal (supra)**. In both these cases, on similar facts, the court had held that the suit was maintainable under Section 20 of the Code of Civil Procedure 1908, as the cause of action had arisen in Delhi.

7. In the present case, all the documents referenced above clearly show that the Plaintiff bank disbursed the loan from its branch at Videocon Tower, the loan was disbursed through the dealer located at Lajpat Nagar, New Delhi. These facts are sufficient for the court to hold that the Trial Court had the jurisdiction and that the suit was erroneously dismissed. It is the settled position that even if a part of the cause of action arises in the court's jurisdiction, it is sufficient to confer jurisdiction. In these facts, the Trial Court's judgment is set aside.

8. The question that arises is as to whether the matter needs to be remanded back to the Trial Court. The Defendant was ex-parte before the

Trial Court. The Trial Court has also arrived at a finding in para 11 to the following effect:

“11. No doubt the plaintiff bank by unrebutted testimony of its Authorised Representative Sh. Mohit Grover has proved the statement of account maintained in the ordinary course, but Ld counsel for plaintiff was not able to meet the queries of the Court regarding lack of territorial jurisdiction over the matter.”

9. The Trial Court also records that various documents relating to the loan stood exhibited and the statement of accounts was also proved. Under such circumstances, no useful purpose is served by remanding it back to the Trial Court. The court has examined the loan documents. The fact that the Defendant paid some of the installments of the loan clearly shows that the loan transaction itself is not disputed. The Defendant has not cared to appear before the court or put up a defense and hence remained ex-parte. Under these circumstances, the suit is decreed for a sum of Rs.538,620.94/- and interest shall be payable @ 8% p.a. from the date of filing of the suit till the date of payment. Decree sheet be drawn accordingly.

10. The appeal and all pending applications are disposed of.

PRATHIBA M. SINGH
Judge

MARCH 07, 2018/Rahul