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

\+ FAO 217/2015 & CM APPL. 20919/2016

ICICI BANK LTD

..... Appellant

Through: Mr. Punit K. Bhalla, Advocate and Ms. Chetna Bhalla, Advocate.

versus

M/S UNISNAR PETROLUBES (P) LTD & ORS

..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 07.03.2018

This appeal seeks setting aside of an order dated 30.04.2015 passed by the learned Additional District Judge returning the plaint on the ground that the plaint is not maintainable for want of territorial jurisdiction. The learned counsel for the appellant submits that this was done at the pre-notice stage, hence notice would not be necessary to the respondent for the decision of the present appeal. In the circumstances, notice to the respondent is dispensed with.

It is the appellant’s case that an overdraft facility, i.e., a loan of Rs. 4 lacs was extended to the defendant in his existing Current Account bearing no. 629405033486 with the operational Branch Office of ICICI Bank Limited , at 65 & 66, Jyoti Building and Chandra Bhawan, Nehru Place, New Delhi-110019. The respondent failed to repay the outstanding amount, hence, the suit for recovery was filed. The credit arrangement letter shows that the loan was disbursed from Delhi. Therefore, a cause of action arose in

Delhi and the averments made in the complaint would *prima facie* have to be relied upon for the issuance of summons.

The reason for the returning of the plaint was that since neither the Nehru Place branch is under the jurisdiction of the Trial Court nor does the defendant reside in Delhi. Therefore, no cause of action arose in Delhi. The Trial Court also referred to the judgment of the Supreme Court in ***Dashrath Rupsingh Rathod vs State Of Maharashtra & Anr*** 2014 9 SCC 129.

The learned counsel for the appellant submits that the said judgment would not be applicable as it dealt with a case under section 138 of the Negotiable Instrument Act, whereas, the instant suit has shown a cause of action arising in Delhi. In any case, now the statute has been amended and the suit can be filed even under section 138 of Negotiable Instrument Act at a place where the complainant has a bank account.

The reasoning of impugned order is erroneous because the loan documents were executed in Delhi, i.e., at Videocon Tower, Jhandewalan Extension, New Delhi and the loan was disbursed from Delhi. Ex facie cause of action arose in Delhi too; in the circumstances, on the basis of the averments, the suit would be maintainable in Delhi.

In a similar case filed by the appellant bank, this Court held in ***ICICI Bank Ltd. vs. Astha Kumar & Anr.*** in FAO No. 214/2015 decided on 06.11.2015 and ***ICICI Bank Ltd. vs. Suresh & Anr.*** in FAO 51/2017 decided on 28.02.2017, that the Delhi Courts would have jurisdiction to adjudicate the lis. The learned counsel for the appellant submits that in view of the above, the Trial Court would be bound to go by the averments as made in the plaint. The veracity of the averments in the suit would, however, be decided after the leading of evidence.

In view of the aforesaid, the Court finds that there are sufficient grounds for the Trial Court to proceed to adjudicate the matter. Accordingly, the appeal is allowed and the impugned order dated 30.04.2015 is set aside. The Trial Court is directed to recommence the proceedings and issue notice to the respondent, provided the suit is otherwise in order.

The Trial Court record be returned and the matter be listed before the Trial Court on 10.04.2018.

The appeal and the pending application stand disposed off.

NAJMI WAZIRI, J

MARCH 07, 2018

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