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

\+ W.P.(C) 10436/2018

M/S ICICI BANK LIMITED ..... Petitioner
Through: Mr. Puneet K. Bhalla, Adv.

versus

NARESH YADAV AND ANR. ..... Respondents
Through:

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **01.10.2018**

CM. No. 40684/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 10436/2018 and CM No. 40685/2018 (for appointment of receiver

1. The present petition has been filed by the petitioner challenging the order dated 26th September, 2018 passed by the Debt Recovery Tribunal – 3, Delhi whereby the Tribunal has dismissed the Original Application filed by the petitioner herein holding that the Tribunal lacks territorial jurisdiction to entertain the same and directed the Registry to return the plaint of the petitioner along with court fees for filing before the appropriate DRT.

2. It is contended by Mr. Puneet Bhalla, learned counsel appearing for

the petitioner that the said order was passed on the first day itself without notice to the respondent. According to him, the conclusion of the Tribunal is contrary to the record inasmuch as on perusal of the loan documents, it can be seen that the loan documents were executed in Delhi. In this regard, he draws our attention to Pages 51, 59 and 61 of the paper book, which depicts that the place of execution of the agreement as Delhi. According to him, in view of the fact that the loan agreement has been executed in Delhi, the cause of action, even if the respondents are based in Gurgaon, having accrued in Delhi, the DRT-3, Delhi has the jurisdiction to adjudicate the Original Application filed by the Bank. That apart, he states the conclusion of the Tribunal that the loan document was executed in Gurgaon and the Branch Office of the Bank is also situated in Gurgaon is clearly untenable, without any basis. He would rely upon the judgment of this court in the case of ***ICICI Bank v. Astha Kumar, FAO 214/2015*** in support of his submission.

3. Having perused the documents as pointed out by Mr. Bhalla, it is clear that the documents were executed by the parties at Videocon Tower, Delhi.

4. We reproduce the relevant part of the loan agreement at Pages 51, 59 and 61 of the paper book to highlight the fact that the relevant documents

have been executed in Delhi as under:

Page 51
Name of the authorised Signatory: Sumesh Yadav
Designation:
Date: 5/3/2016
Place: Delhi
Page 59
DETAILS OF PLACE AND DATE OF EXECUTION OF THIS DEED
At: VT in the State: DELHI
Date: The 16 day of 3, Two Thousand and 16

Page 61
Name of the authorised Signatory:
Designation:
Date: 5/3/2016
Place: Delhi

5. Section 19 of The Recovery of Debts and Bankruptcy Act, 1993 stipulates as under:-

[19. Application to the Tribunal.—(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—
(a) The branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding, for the time being; or
(aa) the defendant, or each of the defendants where there are more than one, at the time of making the application, 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 making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in party, arises:

[Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004) for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.]

6. On perusal of Section 19(1), it is clear that an application can be filed by an applicant where it has a branch or any other office maintaining an

account in which debt claimed is outstanding for the time being [vide 6(a)] or at the place where cause of action, wholly or in part arises [vide 6(d)].

7. In the Original Application, under the heading "Jurisdiction of the Tribunal" (Para 3) the following averments have been made:-

> *"This tribunal has the jurisdiction under the act, since, the applicant bank is situated at Videocon Tower, Jhandewalan Extension, New Delhi-110055, the loan documents were executed at Videocon Tower, Jhandewalan Extension, New Delhi-110055, the loan was disbursed from New Delhi, the loan amount is repayable at New Delhi, the whole cause of action has accrued at New Delhi hence the Tribunal at Delhi shall has exclusive jurisdiction. Thus this Hon'ble Tribunal under the act and the rules has the territorial jurisdiction to try and entertain the present application."*

8. The veracity of the aforesaid averments in the Original Application, which are duly supported by an affidavit, cannot be doubted.

9. The aforesaid surely reveals, if not wholly, substantial part of cause of action has arisen in Delhi i.e. within the jurisdiction of the Tribunal. Mr. Bhalla is justified in relying upon the judgment of this Court in ***ICICI Bank Ltd. v. Astha Kumar & Anr. (supra)*** wherein a Single Judge of this Court has, on a similar issue, in a case arising from a Civil Suit filed by the ICICI Bank Ltd., which was not entertained on the ground of jurisdiction, in the

context of clause (c) of Section 20 of the CPC, which is *para materia* to Section 19(1)(c) of the Procedure Rules as reflected above, the learned Single Judge has held as under:-

> *"8. In this case though, since respondents/ defendants are individuals this problem does not arise. Therefore, all that the learned ADJ was required to see was, whether clause (c) of Section 20 of the CPC was triggered in the facts of the case.*
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> *8.1 In order to appreciate this aspect of the matter, one needs to understand what would constitute a cause of action. Cause of action, as commonly understood, is a bundle of facts which the plaintiff must prove, if traversed, to entitle him to a judgement, in his favour, by the concerned court. Cause of action has no relation whatsoever with the defence set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. In ascertaining as to whether or not the concerned court has territorial jurisdiction, the court should take the facts pleaded in support of the cause of action into consideration without embarking upon an enquiry, at that stage, as to the correctness or otherwise of the facts so stated. In this context, the following observations of the Supreme Court made in* ***Oil and Natural Gas Commission vs Utpal Kumar Basu & Ors. (1994) 4 SCC 711*** *at page 717, in paragraph 6 being apposite, are extracted hereinafter:*
>
> > *"....6. <u>It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove,</u>*

<u>if traversed, to entitle him to a judgment in his favour by the Court.</u> In Chand Kour v. Partab Singh Lord Watson said:

> *"... the cause of action 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. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."*

<u>Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial.</u> To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court…." (Emphasis is mine)

8.2 A more elaborate exposition of the expression cause of action is given in Rajasthan High Court Advocates' Association vs Union of India & Ors. (2001) 2 SCC 294. The relevant observations made in paragraph 17 at page 304, is extracted hereafter:

> *".....17. <u>The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action".</u> It has to be left to be determined in each individual case as to where the cause of action arises. The Chief Justice of the High court has not been conferred with the legislative competence to define cause of action or to declare where it would be deemed to have arisen so as to lay down artificial or deeming test for determining territorial jurisdiction over an individual case or class of cases...." (emphasis is mine)*

8.3 Reference in this behalf may also made to the observation of the Supreme Court in the case of The State of Madras vs C.P. Agencies & Anr. AIR 1960 SC 1309:

> *"……3. We have been referred to the well-known observations of Brett J. in Cooke v. Gill, (1873) 8 CP 107 and to the definition of "cause of action" given in Read v. Brown, (1888) 22 QBD 128 which are all referred to in 75 Ind App 121 : Lord Esher M. R., defined "cause of action" to mean*
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> *"Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.*
>
> *" Fry L. J. agreed and said:*
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> *"Everything which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause of action."*

9. In the context of what constitutes a cause of action, in respect of a suit arising out of a contract, one may advert to Explanation III, which was part of Section 7 of Act of 7 of 1888. This Explanation was, however, omitted. A reference to this explanation is found in paragraph 13 at page 171 in the judgement of the Supreme Court in the case A.B.C. Laminart Pvt. Ltd. vs A.P. Agencies, Salem (1989) 2 SCC 163. The relevant part of the Explanation III is extracted hereinbelow:

> *"....13. Under section 20(c) of the Code of Civil Procedure subject to the limitation stated theretofore, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. It may be remembered that earlier section 7 of Act of 1888 added Explanation III as under: "Explanation III--In suits arising out of contract the cause of action arises within the meaning of this section at any of the following places, namely:*
> *(1) the place where the contract was made;*
> *(2) the place where the contract was to be performed or performance thereof completed;*
> *(3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable...."*

9.1 A perusal of the explanation would show that in a matter concerning a contract, there may arise various kinds of causes of action. Amongst others, the place where the contract is made, or where in the performance of the contract any money was expressly or impliedly payable, would form, a part of the cause of action."

10. We agree with the aforesaid conclusion of the learned Single Judge, which is applicable to the facts of this case as well. It must be held that the substantial part of the cause of action has arisen in Delhi and the Tribunal should have entertained the Original Application. We accordingly, set aside

the order dated September 26, 2018 of DRT-III, Delhi and revive the Original Application being ***469/2018 titled as ICICI Bank v. Naresh Yadav and Anr.*** pending before it by directing the petitioner to appear before the Tribunal on 29th October, 2018, when the Tribunal shall proceed to decide the Original Application in accordance with law.

11. It is noted that the petitioner had sought a prayer, for appointment of a Receiver for taking control and possession of the said commercial vehicles before the Tribunal and in this petition. Accordingly, we appoint Mr. Anushrav Dixit, representative of the petitioner Bank as a Receiver. The said Receiver will take the possession of the following vehicles as described in Para 4 of the petition:

> **TATA LPK 3118 (CHASSE & BODY) bearing registration Nos. HR-55X-4330 and HR-55X-8344**

12. In the event the respondents pay the amount due and payable, the said vehicles will be released to the respondents on Superdari. The Receiver will issue a receipt in that behalf. If necessary, the Receiver will be entitled to take assistance of the concerned Police Station. The Receiver shall ensure that no inconvenience is caused to the respondents. The Receiver will extend due courtesy to the respondents while seeking to take the possession of the said vehicles. Receiver is directed to file a report before the DRT-III,

Delhi on 29th October, 2018, the date when the Original Application is listed. The petition stands disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 01, 2018/*jg*