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

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Date of Order: 07.12.2018

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FAO 359/2017

VIVEK SHARMA

..... Appellant

Through: Ms. Payal Chawla & Mr. Maneesh
Gumber, Advocates.

Versus

CARGILL GLOBAL TRADING INDIA PVT. LTD & ANR.

....Respondents

Through: Mr. Shadan Farasat, Adv. for R-1.
Mr. Ashwath Sitaraman, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

1. The impugned order dated 08.06.2017 passed by the court of learned Additional District Judge-04, South District, Saket, New Delhi ('ADJ') in Civil Suit No.6470/2016 titled as *Vivek Sharma vs. Cargill Global Trading India Pvt. Ltd. & Anr.*, deciding the preliminary issue '*Whether this court has no territorial jurisdiction to entertain the present suit?*' in favour of respondents/defendants and returning the original plaint under Order VII Rule 10 of the Code of Civil Procedure, 1908 ('CPC') to the appellant/plaintiff along with the original documents to be presented before the courts at Gurgaon, Haryana, is the subject-matter of challenge in this appeal filed under Order XLIII Rule 1 (a) CPC.

2. The brief facts of the case as noticed by the learned ADJ in the impugned order are reproduced as under :-

“2. The brief facts of the case are that on 24.06.2003 the plaintiff had joined Cargill Global Trading India Pvt. Ltd., as Assistant Director, Trade Finance. On 30.10.2007, the plaintiff was transferred to the employment of defendant no.1, Cargill Capital & Financial Services India Pvt. Ltd. The plaintiff was awarded a bonus award of USD 2,00,000 for the fiscal year 2008-2009 vide a letter dated 27.07.2009 issued by defendant no.2. Out of USD 2,00,000, an amount of USD 1,00,000 was paid to the plaintiff by the defendant no.1 on 31.07.2009. Another amount of USD 50,000 was paid to the plaintiff in July 2010. On 23.07.2010, the plaintiff was again awarded the bonus of USD 1,00,000. USD 50,000 was paid in July 2010 by defendant no.1. The plaintiff resigned from the employment of defendant no.1 on 29.12.2010. The plaintiff was informed vide letter dated 31.01.2011 that his resignation was accepted and he had to contact HR for his full and final settlement of accounts. The plaintiff was not paid USD 52,430, the remaining bonus awarded for the fiscal year 2008-2009 and USD 51,104, the remaining bonus award for the fiscal year 2009-2010. Hence, the present suit was filed to recover USD 1,03,534 alongwith interest.”

3. In para 16 of his plaint, the plaintiff has pleaded that ‘It is pertinent to mention that bonus award was paid to the Plaintiff as part of his salary from Defendant No.1 in Indian Rupees from the Defendant No.1’s bank account in New Delhi and received in Plaintiff’s bank account in New Delhi with TDS deducted and Form 16 issued accordingly’.

4. The appellant/plaintiff has pleaded the facts with regard to the jurisdiction in para No.35 of the plaint as *“That this Hon’ble court has jurisdiction to entertain and try the present suit as the office of the Defendant No.1 is situated within the territorial jurisdiction of Delhi and the legal notice was sent from Delhi to the office of the Defendant No.1 at Delhi. That the Defendant No.1 through their counsel replied to the legal notice from Delhi. That major policy matter and decisions including in the present matter were decided from the office at Delhi. That the Bonus/salaries/incentives were made from Defendant No.1’s account in New Delhi to the salary account of the plaintiff in New Delhi.....”*

5. The pleadings of the appellant with regard to payment of his bonus/salary/incentives from defendant No.1’s account in New Delhi to his salary account in New Delhi is not disputed in corresponding paras 16 and 35 of the written statement filed by respondent No.1.

6. As per the case of respondent No.1, it carries out business from its corporate office in Gurgaon and not from its registered office in Saket which has now shifted to Hauz Khas.

7. I have heard learned counsel for the parties.

8. For appreciating the rival contention of the parties, it would be relevant to refer to Section 20 of the CPC which reads as under :-

“20. 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.”

9. The above said provision was considered by the Hon'ble Supreme Court in ***Patel Roadways Limited, Bombay vs. Prasad Trading Company; (1991) 4 SCC 270*** and it was held that ‘9..... 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. Further para No.13 of the judgment reads ***‘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.’***

11. While interpreting Section 20 (c) CPC, the Hon’ble Supreme Court in ***A.B.C. Laminart Pvt. Ltd. and Another vs. A.P. Agencies, Salem; (1989) 2 SCC 163*** held that ***‘15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of, its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made.. Part of cause of action arises where money is expressly or impliedly payable under a contract.....’***

12. Recently in ***BCI Optical Disc Ltd. vs. M/s. Spinks India; 2017 SCC OnLine Del 9153***, the learned Single Judge of this court while dealing with the same issue of the jurisdiction where the payment was made in Delhi held *‘As regards the argument urged before this Court as also before the trial court as regards the lack of territorial jurisdiction of the courts at Delhi, the same was subject matter of*

issue no.1, and the trial court has rightly held that courts at Delhi would have territorial jurisdiction inasmuch as payment was made in Delhi. Before me also it is not disputed on behalf of the appellant/defendant that cheque was issued by the appellant/defendant at Delhi and realized at Delhi, and therefore, once payment is made at Delhi, the courts where payment is made is a court where part of cause of action arises and therefore there is jurisdiction on the courts at Delhi to try the suit in view of sub-section (c) of Section 20 CPC and the ratio of the judgment of the Supreme Court in the case of **A.B.C. Laminart (P) Ltd. vs. A.P. Agencies, Salem (1989) 2 SCC 163** and which holds that in contractual matters part of cause of action arises where either the contract is executed or the contract has to be performed or where the payment has to be or is made or where breach occurs with respect to the contract. Accordingly, I reject the argument urged on behalf of the appellant/defendant that courts at Delhi no territorial jurisdiction.'

13. Learned counsel for the respondents have relied upon the judgment of the Hon'ble Supreme Court in **South East Asia Shipping Co. Ltd. vs. Nav Bharat Enterprises Pvt. Ltd. and Others; (1996) 3 SCC 443** holding that 'It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a court of law. The cause of action means, therefore, 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 claim 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 would possibly accrue or would arise. In view of the admitted position that contract was executed in Bombay, i.e., within the jurisdiction of the High Court of Bombay, performance of the contract was also to be done within the jurisdiction of the Bombay High Court; merely because bank guarantee was executed at Delhi and transmitted for performance to Bombay, it does not constitute a cause of action to give rise to the respondent to lay the suit on the original side of the Delhi High Court. The contention that the Division Bench was right in its finding and that since the bank guarantee was executed and liability was enforced from the bank at Delhi, the Court got jurisdiction, cannot be sustained.'

14. ***South East Asia Shipping Co. Ltd. (supra)***, in essence, held that the execution of a bank guarantee in Delhi does not give cause of action to file the suit in Delhi. However, it did not consider payment under a contract. Even in a subsequent judgment titled as ***A.V.M. Sales Corporation vs. Anuradha Chemicals Private Limited; (2012) 2 SCC 315***, the Hon'ble Supreme Court has held that '*since the invoices for the goods in question were raised at Vijayawada, the goods were dispatched from Vijayawada and the money was payable to the respondent or its nominee at Vijayawada, in our view, the same comprised part of the bundle of facts giving rise to the cause of action for the suit.....*' Even in another judgment of the Hon'ble Supreme Court in ***Dashrath Rupsingh Rathod vs. State***

of Maharashtra & Anr.; (2014) 9 SCC 129 relied upon by the learned counsel for the respondents to urge that suit alone can be filed at Gurgaon where substantial cause of action has accrued, in para 12 has observed that *'This Court has harmonised the various hues of the conundrum of the place of suing in several cases and has gone to the extent of laying down that it should be courts' endeavour to locate the place where the cause of action has substantially arisen and reject others where it may have incidentally arisen. Patel Roadways Ltd., Bombay v. Prasad Trading Co. prescribes that if the defendant corporation has a subordinate office in the place where the cause of action arises, litigation must be instituted at that place alone, regardless of the amplitude of options postulated in Section 20 CPC. We need not dilate on this point beyond making a reference to ONGC v. Utpal Kumar Basu and South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd.'*

15. In fact, ***Dashrath Rupsingh Rathod*** (*supra*) supports the case of the appellant instead of the respondents. Salary/incentives/bonus are not casual payments by an employer to its employee. At least salary is payable regularly every month to an employee and, therefore, substantial cause of action accrues in Delhi as the payment used to be made in Delhi.

16. It is a rule of pleading that if a particular allegation of fact in the plaint, if not denied specifically or by necessary implications by the defendant in his pleading, shall be deemed to have been admitted.

Reference can be made to Order VIII Rule 5 (1) CPC which reads as under :-

“1 Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

***Provided** that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission:*

***Provided further** that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.*

17. This rule came to be interpreted very recently in ***Jaspal Kaur Cheema v. Industrial Trade Links***, 2017 (8) SCC 592 and following its earlier judgments in ***Badat and Co. v. East India Trading Co.***, AIR 1964 SC 538, ***Sushil Kumar vs. Rakesh Kumar***, (2003) 8 SCC 673 and ***M. Venkataramana Hebbar v. M. Rajagopal Hebbar***, 2007 (6) SCC 401, the Hon’ble Supreme Court held that ‘In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short “the Code”), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission.’

18. In the present case, the specific pleadings of the appellant in paras 16 and 35 of his plaint to the effect that the bonus, salary, incentives were made from defendant No.1's account in New Delhi to his salary account in New Delhi, remains unrebutted and unchallenged in corresponding para of written statement of the respondents/defendants and thus amounts to an admission on the part of the defendants. Therefore, in view of the judgment of the Hon'ble Supreme Court in *A.B.C. Laminart Pvt. Ltd. (supra)*, *A.V.M. Sales Corporation (supra)* and of this Court in *BCI Optical Disc Ltd. (supra)*, a part of cause of action has obviously accrued to the appellant/plaintiff in Delhi. Admittedly, the respondent/defendant had its registered office in Saket (now in Hauz Khas). In terms of *Patel Roadways Limited (supra)*, the respondent cannot state that it cannot be sued there because it does not carry on business at that place.

19. In view of the above discussion, I find that the court in South District, Saket, New Delhi has territorial jurisdiction to entertain the present suit and as such, the impugned order dated 08.06.2017 is set aside. Accordingly, the appeal is allowed with cost. The parties are directed to appear before the trial court on 10th January, 2019.

(VINOD GOEL)
JUDGE

DECEMBER 07, 2018
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