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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 1st June, 2018
+ **RFA 577/2015 & CM No.24720/2018**

M/S. ICICI BANK LTD. Appellant
Through: Mr. Punit K. Bhalla, Advocate.
versus

GAURAV TANDON Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. A suit for recovery was filed by the Appellant/Plaintiff - ICICI Bank Ltd. (*hereinafter 'Plaintiff Bank'*) for a sum of Rs.6,69,591/- against the Respondent/Defendant, Mr. Gaurav Tandon (*hereinafter, 'Defendant'*) under Order XXXVII CPC. The said suit was dismissed vide judgment dated 21st March, 2015. The present First Appeal arises out of the said judgement dismissing the suit.

2. The case in brief of the Plaintiff Bank is that the Defendant is proprietor of M/s. Balaji Engineering. He approached the Plaintiff Bank for grant of overdraft credit facility (*hereinafter, 'OD facility'*) in February, 2008 to meet his normal business requirements. The said OD facility to the tune of Rs.6 Lakhs was sanctioned by the Plaintiff Bank. The Defendant agreed to repay the same in terms of the overdraft facility agreement along with interest “@ 1.25% per annum plus ICICI Bank Benchmark Advance Rate and the Cash Credit Risk Premium prevailing on each day that such Facility remain outstanding (the Applicable Rate – Overdraft Facility (ODF))”. Apart from the said interest, the interest tax and other statutory

levies, if any, were also to be paid by the Defendant. The Defendant maintained a current account with the Plaintiff Bank. Over a period it was noticed that the Defendant did not maintain the financial discipline required for availing of the OD facility and accordingly, the Plaintiff Bank called upon the Defendant to exit from the said facility. The Defendant also defaulted from repayment for several months and this resulted in the Plaintiff Bank recalling the OD facility by sending over draft recall notice dated 9th December, 2013. The Defendant did not reply to the said notice. As per the Plaintiff Bank, the Defendant was liable to pay a sum of Rs.6,69,591.03/- as on 1st December, 2013. The subject suit was then filed praying for recovery of the outstanding sum along with interest @ 17.5% per annum from the date of filing of the suit till its realisation.

3. On 6th June, 2014, upon hearing learned counsel for the Plaintiff Bank the suit was treated as an ordinary suit for recovery instead of a suit under Order XXXVII CPC. Upon summons being issued, the Defendant first appeared before the Court on 30th July, 2014, and thereafter continued to do so. The Defendant filed his written statement on 25th August, 2014. On 6th January, 2015, the Trial Court framed the following issues in the suit:

“1. Whether this court has no territorial jurisdiction to entertain and try the present suit, as alleged by the defendant? OPD

2. Whether the plaintiff has not come to the court and has suppressed material facts, if so, its effect? OPD

3. Whether the suit of the plaintiff is signed, verified and instituted by a duly authorised person? OPP

4. Whether the plaintiff is entitled to recovery of Rs.6,69,591.03p from the defendant, as claimed by the plaintiff? OPP

5. Whether the plaintiff is entitled to interest, if so, at

what rate and for what period? OPP

6. Relief”

4. On 20th March, 2015, the court recorded that the lawyers are abstaining from work, however, at 3:10pm the Court passed an order that since no affidavit of evidence was filed nor any witness appeared, the evidence of the Plaintiff Bank, accordingly, stood closed. The Defendant, on the same date, appeared in person, and his statement was recorded wherein he stated as under:

“I am the defendant in the present case. I am closing my evidence in affirmative since the plaintiff has failed to produce its evidence.

I also wish to state that this Hon’ble Court has no territorial jurisdiction to try this case since I am resident of B-233, Ground Floor, Greater Kailash-1, New Delhi 110048 and the Master Facility Agreement was executed at the ICICI Branch at W Block, Greater Kailash, Part-1, New Delhi. Further, I am having a current bank account bearing No.002905009765 at ICICI Bank, W-Block, Greater Kailash, Part – 1, New Delhi and the amount of Over Draft Facility was disbursed in the above account at ICICI Branch, Greater Kailash, Part-1, New Delhi, where I reside.”

5. The Trial Court, on 20th March 2015 passed the following order:

“Present: Proxy counsel for the plaintiff.

Defendant in person.

Advocates are abstaining from work today.

Sh. Dhruv Yadav, Advocate proxy from the Bar.

Neither the affidavit of evidence has been filed nor any witness is present.

Be awaited.

Sd/-

(Dr. Kamini Lau)

ADJ-02, Central/20.3.2015

3:10 PM

Present: None for the plaintiff

Defendant in person.

Advocates are abstaining from work today.

Sh. Dhruv Yadav, advocate proxy from the Bar.

Despite having kept the file pending, neither the affidavit of evidence has been filed nor any witness is present. Time is 3:10 PM. Evidence of the plaintiff is hereby closed. Defendant Gaurav Tandon is present in the court. He also close his evidence in view of the fact that the plaintiff has failed to lead evidence. He is however challenging the territorial jurisdiction to try this suit. His statement is recorded separately. The evidence of the defendant is closed in affirmative. Be listed for final arguments on 21.3.2015.

Sd/-

(Dr. Kamini Lau)

ADJ-02, Central/20.3.2015"

6. Thereafter, the trial court dismissed the suit on 21st March, 2015 on the following grounds:

- a) That the suit has not been filed in the court of proper jurisdiction.
- b) That the Plaintiff Bank failed to adduce any evidence, nor filed any filed any affidavit of evidence to discharge the onus upon them.

7. The Bank has clearly defaulted in leading its evidence. However, the Trial Court has also rushed to pass the order in as much as on the day when the order closing the evidence was passed, lawyers were on strike. Thus an opportunity ought to have been given to the Bank to adduce its evidence.

Instead, the Trial Court proceeded in a hurried manner and closed the evidence and recorded the statement of the Defendant on 20th March 2015 and dismissed the suit the very next day i.e., on 21st March 2015.

8. Since the Defendant had appeared on 20th March 2015, this Court is of the opinion, that the matter deserves to be remanded back to enable the Plaintiff to again serve the Defendant and lead evidence on all issues. The trial Court, while deciding the issue of jurisdiction shall bear in mind the judgements of this Court in **ICICI Bank Ltd. v. Astha Kumar (2015) 224 DLT 651**, wherein it was observed as under:

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 extra ordinary 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. v. Union of India (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. Jharia Talkies & Cold Storage Pvt. Ltd. (1997) CWN 122; S.S Jain & Co. v. Union of India (1994) CHN 445; 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 v. Amidayala Venkatappa 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.”

This judgment was considered and followed by this Court on 7th March, 2018 in **ICICI Bank Ltd. v. Yogesh Grover [RFA 31/2017]** and **ICICI Bank Ltd. v. Vishal Baisla [RFA 8/2017]**.

9. The Plaintiff Bank has filed the original loan documents on record. However, it has been quite callous in prosecuting the suit and the appeal. It

is noticed that sufficient steps are not taken to serve the Defendants and matters are repeatedly adjourned for want of Process Fees. Even those parties who maintain active accounts with the Bank are not served. Dasti notices have been prepared by the Registry in several of the Bank's cases but the same are not collected. Even where other details such as mobile numbers, PAN card numbers are filed on record, the bank does not take steps to trace and serve the defendants. Service by publication is resorted to mechanically. It is directed that the Bank ought to make proper efforts to serve the Defendants as the suits for recovery involve public money. Even the grounds of the appeal do not match the order passed. The Bank should ensure that it takes proper steps to trace the defendants and also take steps to prove its documents and electronic evidence in accordance with law.

10. The suit is remanded and restored to its original position as was prevalent prior to passing of the order dated 20th March 2015. The Defendant shall be served again. The Plaintiff shall be given an opportunity to lead evidence and thereafter the Defendant shall lead his evidence. The suit shall be decided in accordance with law. The appeal is allowed. Pending application also stands disposed of.

11. Parties to appear before the Trial Court on 30th July, 2018. Copy of this order be sent to the Defendant at B-233, Ground Floor, Greater Kailash-I, New Delhi 110 048. Original trial court record be sent back.

PRATHIBA M. SINGH
JUDGE

JUNE 01, 2018/dk