

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

% *Date of decision: 20th November, 2018*

+ W.P.(C) 12415/2018

M/S HDFC BANK LIMITED Petitioner
Through: Mr. Punit K. Bhalla, Adv.

versus

FAIM KHAN AND ORS. Respondents
Through:

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

V. KAMESWAR RAO, J. (ORAL)

CM. No. 48141/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 12415/2018

1. The present petition has been filed by the petitioner Bank challenging the order dated 3rd October, 2018 passed in Original Application No. 684/2017 dismissing the OA on the ground of territorial jurisdiction and directed the Tribunal to return the plaint to the petitioner Bank along with certificate of court fee for filing the same before the appropriate Debt Recovery Tribunal.

2. It is the submission of Mr. Punit K. Bhalla, learned counsel for the petitioner that the Tribunal has erred in holding that it has no territorial jurisdiction on the ground that the documents were executed in NOIDA and the loan was disbursed from NOIDA Branch. He has drawn our attention to page 79 onwards to show the stamp of the Bank is of Express Building, ITO, Bahadur Shah Zafar Marg, New Delhi, the place from which the loan was disbursed. He has also shown to us Para 3 of the OA relating to the jurisdiction of the Tribunal wherein it is specifically stated that the loan facilities were granted to the respondents from the Retail Asset Operation Branch of Bank at Bahadur Shah Zafar Margh, ITO, New Delhi. We reproduced the same as under:

“The Loan Applications of the Defendants have been processed and loan facilities were granted to the Defendants from the Retail Asset Operation Branch of the Applicant Bank at Bahadur Shah Zafar Marg, ITO, Delhi, i.e. within the jurisdiction of this Hon’ble Tribunal and also as part cause of action has arisen within the jurisdiction of this Hon’ble Tribunal; and as the Application is for the recovery of more than Rupees Ten Lakh, therefore this Hon’ble Tribunal has a pecuniary and territorial jurisdiction to try and entertain the present Original Application.”

3. He relied upon the judgment of this court in the case of ***ICICI Bank Ltd. v. Manjeet Kumar Singh, W.P.(C) 11477/2018***

decided on 26th October, 2018, wherein on a similar issue, we had allowed the writ petition reminding the Tribunal that similar writ petitions are being filed challenging the orders of different DRTs which have been passed without taking into consideration the facts pleaded in the Original Applications.

4. According to us, Page 145 of the paper book which is a legal notice got issued by the petitioner through his counsel does also indicate that the loan facility was granted from the branch of the petitioner Bank situated at Bahadur Shah Zafar Margh, ITO, New Delhi. The reliance placed by Mr. Bhalla on the judgment of the ***Manjeet Kumar Singh (supra)*** also governs the case in hand, wherein we have on similar facts have held that the Tribunal has the jurisdiction. Not only this, earlier also we have passed several orders on similar lines. The relevant portions of the judgment in the case of ***Manjeet Kumar Singh (supra)*** are reproduced as under:

“4. Having heard Mr. Bhalla and noted the judgment as referred above, we are in agreement with the submission made by Mr. Bhalla and noting the relevant provisions of loan agreement and the averments made in the OA, there cannot be any dispute that the agreement was executed at Videocon Tower, Jhandewalan Extension, New Delhi, which is enough to confer jurisdiction on the DRT-III to entertain the Original Application. It is not understood on what basis, the Tribunal held that the Bank is situated at Tilak Nagar.

That apart, it may be true that the defendant is residing in Tilak Nagar, but that cannot be the only relevant consideration when the issue of jurisdiction is examined. For this purpose, the issue needs to be seen from the perspective of Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, which 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 partly, 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 Securitization 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.]

5. *In the judgment relied upon by Mr. Bhalla in the case of **Naresh Yadav and Anr. (supra)** we have dealt with similar issue, wherein we have referred to a judgment of the learned Single Judge in the case of **ICICI Bank v. Astha Kumar, FAO 214/2015** and agreed with the conclusion drawn by the learned Single Judge in the said judgment. The relevant portion of the judgment reproduced as under:*

“6. Mr Bhalla, who appeared on behalf of the appellant, submitted that the learned ADJ had failed to take into account the provisions of Section 20(c) of the Code of Civil Procedure, 1908 (in short the CPC), which were, clearly applicable in the facts of the present case.

6.1 It was the learned counsel’s submission that having regard to the facts obtaining and pleaded in the plaint, it could not have been held that no cause of action arose within the territorial jurisdiction of the trial court. The facts, to which, my attention was drawn by Mr Bhalla, were: the date and place of execution of the loan agreement along with the security documents. The statement of account of the concerned branch of the bank (i.e. the Videocon Tower branch, located at Jhandenwalan Extension, New Delhi), which was, according to him, demonstrative of the fact that the EMIs which were paid, and those, in respect of which there were defaults – were payable at the said branch.

6.2 Furthermore, Mr Bhalla, drew my attention to paragraph 12 of the, plaint where an assertion has been made to the effect that the agreement, [which in this case would include the loan agreement, and the attendant documents (i.e. the security documents)] was arrived at the appellant’s office located at 2 nd Floor,

Videocon Tower, Block – E1, Jhandewalan Extn., New Delhi. Learned counsel also laid stress on the assertion made in the very same paragraph that the payments were made within the territorial jurisdiction of the concerned court.

6.3 Based on these assertions, Mr Bhalla contended that the learned ADJ ought to have accepted the veracity of the averments made in the plaint which was backed by an affidavit, and not, gone on to reject the plaint, at the very threshold.

6.4 In substance, it was Mr Bhalla's submission that the conclusion reached by the learned ADJ was not in consonance with the provisions of the law and hence it ought to be reversed.

7. I have perused the plaint filed before the trial court and the documents placed on record by the appellant. In so far as the case set up by the appellant before the trial court is concerned, the broad parameters, have already been etched out by me, in the narration made hereinabove. The core issue is: whether the concerned trial court had jurisdiction in the matter?

7.1 Undoubtedly, in so far as the appellant, like any other plaintiff, was concerned, it had the choice to file a suit in any of the forums which answer the requirements of clause (a), (b) and (c) of Section 20 of the CPC. In so far as clause (a) of Section 20 is concerned, the plaintiff may file a suit against a defendant where the defendant actually and voluntarily resides, or carries on business or personally works for gain. Clause (b) of Section 20, while following the same measure, provides that where there are more than one defendant to a suit, and one or more of them do not reside or carry on business or personally work for gain, within the territorial jurisdiction of the court within which the suit is instituted, then the plaintiff, is required to take leave of the court, or such defendant(s) acquiesce in the institution of the suit against them.

7.2 As against this, clause (c) of Section 20 of CPC gives liberty to a plaintiff to file a suit in a court within whose jurisdiction the cause of action wholly or in part arises.

7.3 The explanation to the section provides, in so far as a corporation is concerned, it 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.

7.4 It is no longer res integra that corporation includes a company. [See Hakam Singh vs Gammon (India) Pvt. Ltd. (1971) 1 SCC 286]. Furthermore, the explanation only expounds on the concept of “business” carried on by a corporation. Therefore, if a corporation is sued in a place where its sole or principal office is located, it cannot be heard to say that the suit will not lie in that court because it does not carry on business at its sole or principal office, in view of the deeming fiction created by the explanation. Similarly, the second part of the explanation attracts itself to a set of circumstances where the cause of action arises and the subordinate office of the defendant-corporation is located. Therefore, if in a given case, a principal office of the defendant was located, say at place „A“, and the cause of action arose in place „B“, where the defendant also had its subordinate office located, the jurisdiction for filing the suit would lie in place „B“ and not in place „A“. [See Patel Roadways Ltd., Bombay vs Prasad Trading Company (1991) 4 SCC 270 at page 277, 278 paragraph 12]

“....12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the

provisions of clauses (a), (b) and (c) together with the first part of the Explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under clause (c) (irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose of the explanation. The Explanation is really an explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the Explanation would have read "and in respect of any cause of action arising at any place where it has a subordinate office, also at such place...." (emphasis is mine)

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.

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. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. 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."

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. 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. 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”. 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*

"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:

"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. In the instant case, in paragraph 12 of the plaint, there is a specific averment that the agreement, (which comprises of the loan agreement and the attendant documents such as the unattested hypothecation deed and the irrevocable power of attorney), were executed at the appellant's branch office located in Videocon Tower, Jhandewalan Extn., New Delhi. It is further averred that payments were made within the territorial jurisdiction of the court. In the body of the plaint, as indicated in my narration above, there is assertion in paragraph 11 of the plaint, that a cause of action arose against the respondents i.e. the defendants, each time they defaulted in the payment of EMI and furthermore, when, despite the

demand notice dated 13.01.2015, no payments were made.

10.1 While the loan agreement does not set out the place of its execution, the unattested deed of hypothecation under clause 1(a) reads as follows:

“..1A DETAILS OF PLACE AND DATE OF EXECUTION OF THIS DEED

*At: Delhi in the State of Delhi, Videocon Tower
Date: The 20 day of 01, Two Thousand and 12...”*

10.2 The statement of account, appended to the plaint, is facially suggestive of the fact that it was generated by the Videocon Tower, Jhandewalan Extn., New Delhi Branch. To my mind, the aforesaid assertions made in the plaint, when read along with the contents of the documents appended therewith, do establish at this stage, that cause of action does arise within the territorial jurisdiction of the court. The learned ADJ should have accepted, at this stage, the veracity of the assertions made in the plaint, which in any event are supported by an affidavit. In my view, the learned judge has erred in observing that the loan agreement and the attendant documents do not appear to have been executed at the Videocon Tower, Jhandewalan Extn., New Delhi branch. This aspect, in my view, was a matter for trial and the learned Judge could not have, at the threshold, returned the plaint on a mere impression.”

6. The afore position of law shall govern the case in hand as well. It is a case where part of cause of action has arisen at Videocon Tower, Jhandewalan Extension, New Delhi. Suffice to state the DRT-III, Delhi has the jurisdiction to entertain the Original Application. We accordingly revive the Original Application being 469/2017 titled as ICICI Bank v. Manjeet Kumar Singh and list the matter before the DRT-III on 15th November, 2018, when the petitioner shall appear before the Tribunal and the Tribunal shall proceed with the OA in accordance with law. The petitioner shall be

at liberty to press its prayer for appointment of a Receiver before the Tribunal.”

5. The aforesaid conclusion of our is also applicable to the facts of this case as the Branch from which the loan facilities were given is in ITO, New Delhi and as such, the DRT, Delhi will have jurisdiction. The place of execution of the agreement at NOIDA is inconsequential or not relevant, as the case in hand shall be governed by Section 19 (1)(a) of the Act.

6. Accordingly, the impugned order is set aside. The Original Application being 684/2017 is revived and shall be listed before the Tribunal on 3rd December, 2018 when the petitioner shall appear before it. The Tribunal thereafter shall issue notice to the respondents and proceed in accordance with law.

The petition stands disposed of.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBE 20, 2018/jg