

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****M.A No.40 of 2017****Reserved on 09.08.2021**
Pronounced on 24.08.2021

Jayant Jha S/o Shri Ramakant Jha, Prop. Ritika Enterprises, Railway Crossing Road, Bijuri, Distt. Anuppur M.P. At Present R/o Ward No.1, Manendragarh, Distt. Koriya, ChhattisgarhPlaintiff

---- Appellant**Versus**

1. South Eastern Coalfields Limited Through Chief General Manager, S E C L, Hasdeo Area, South Jhagrakhand Ledri Distt. Koriya, Chhattisgarh
2. Sub Area Manager, S E C L, Hasdeo Area, Bijuri Sub Area, Bijuri, Distt. Anuppur M.P.
3. Sub Area Engineer, S E C L, Hasdeo Area, S E C L, Hasdeo Area, Bijuri Sub Area, Bijuri, Distt. Anuppur M.P.
4. Manager Somna Colliery, Bijuri, Anuppur M.P.
5. Colliery Engineer, Somna Colliery, Bijuri, Distt. Anuppur M.P.Defendants

-----Respondents

For Appellant:

Shri Parag Kotecha, Advocate.

For Respondents:

Shri Vinod Deshmukh, Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J
C A V Order

1. This Miscellaneous Appeal has been preferred by the Plaintiff under Order 43 Rule 1(a) of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the legality and propriety of the order dated 23.12.2016 passed in Civil Suit No.16-B/2011 whereby, the trial court has directed for return of the Plaint holding it to be barred by territorial jurisdiction under Section 20 of CPC. The parties to this Appeal shall be referred hereinafter as per their description before the Court below.

2. Briefly stated, the facts of the case are that the Plaintiff, who is the

Proprietor of Ritika Enterprises, instituted a suit claiming recovery of Rs.7,47,499/- by submitting *interi alia* that he supplied spare parts of the machine described in Plaint schedule-'A' to the Defendants i.e. Somna Colliery, Bijuri, District Anuppur (M.P.). According to the Plaintiff, the Defendants have failed to make their payment despite the delivery of the alleged materials, which led to the issuance of the Demand Notice dated 16.09.2009. However, in spite of that, the same was not paid, therefore, he has been constrained to institute the suit in the instant nature instituted on 25.09.2010.

3. While contesting the claim, an objection was raised by the Defendants regarding territorial jurisdiction of the Court by submitting *inter alia* that the Plaintiff's office is at Bijuri and the disputed materials alleged to have been delivered was at Somna Colliery, Bijuri, District Anuppur (M.P.), which is beyond its jurisdiction, therefore the suit as framed and instituted, is barred by jurisdiction.

4. Based upon the aforesaid objection, an issue namely issue No.3 was framed which reads as under:-

“Whether the Court has territorial jurisdiction to entertain the suit ?”

5. After considering the aforesaid issue, it was observed by the trial Court while taking note of the explanation to Section 20 of CPC and that by relying upon the principles laid down by the Supreme Court in the matter of Patel Roadways Limited, Bombay vs. Prasad Trading Company reported in (1991) 4 Supreme Court Cases 270 that since the cause of action has arisen at Somna Colliery, Bijuri, District Anuppur (M.P.), where the disputed materials alleged to have been delivered, therefore, the cause of action has arisen at the said place which is beyond the territorial

jurisdiction of this Court and accordingly, the claim as made has been held to be barred by jurisdiction under Section 20 of CPC and the Plaint has been directed to be returned in exercise of the powers enumerated under Order 7 Rule 10 of CPC for its presentation before the competent Court having its territorial jurisdiction by its separate order, which was passed on the same day, i.e. 23.12.2016. This is the order, which has been impugned by way of this Appeal.

6. Learned Counsel for the Appellant/Plaintiff submits that the Court below, while misinterpreting the provisions prescribed under Section 20 of CPC, has erred in holding that it has no jurisdiction to entertain the suit. According to him, the suit can be instituted where Defendants reside or where the cause of action arises and since the business of Defendants is at Manendragarh, therefore, the suit ought not to have been held to be barred by jurisdiction.

7. On the other hand, learned Counsel appearing for the Respondents has supported the order under Appeal as passed by the Court below.

8. I have heard learned Counsel for the parties and perused the entire record carefully.

9. From perusal of the averments made in the Plaint and the notice issued by the Plaintiff on 16.09.2009, it appears that the alleged spare parts of the machine were supplied to Defendant No.5 i.e. at Somna Colliery, Bijuri, District Anuppur (M.P.). According to the Plaintiff, when payment was not made despite delivery of the said materials, he has been constrained to institute the suit for recovery of the said amount. The cause of action thus appears to have arisen at Bijuri, District Anuppur (M.P.) where the Defendants' alleged Colliery i.e. Somna Colliery is situated and

not the Court where its Head Office is situated.

10. Section 20 of CPC is relevant for the purpose at this juncture, which provides as under:-

“20. Other suits to be instituted where defendants reside or cause of action arises.-- 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.”

11. Clause (c) refers to a court within local limits of whose jurisdiction the cause of action, wholly or in part, arises. Explanation to the aforesaid provision is relevant in the instant matter in order to determine the jurisdiction of the court and the interpretation of it has been dealt with by the Supreme Court in the matter of Patel Roadways Limited, Bombay vs. Prasad Trading Company (supra) at para-9 as under:-

“9..... The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction

the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. 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".

And that by considering the intention of the legislature in enacting the Explanation to the said provision, it was observed further at paragraphs-12 and 13 as under:-

"12.....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".

"13.....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. It would be a great hard-ship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one."

12. The aforesaid principles have been reiterated by the Supreme Court in the matter of New Moga Transport Co. through its Proprietor Krishan Lal Jhanwar vs. United India Insurance Co. Ltd and others reported in (2004) 4 SCC 677 : AIR 2004 SC 2154 at paragraphs 10 to 12, which read as under:-

"10. On a plain reading of the Explanation to Section 20 CPC it is clear that the Explanation consists of two parts: (i) before the word "or" appearing between the words "office in India" and the word "in respect of", and (ii) the other thereafter. The Explanation applies to a defendant which is a corporation, which term would include even a company. The first part of the Explanation applies only to such corporation which has its sole or principal office at a particular place. In that event, the court within

whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. 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 expression "at such place" appearing in the Explanation and the word "or" 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 has the jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

11. Section 20, before the Amendment by CPC in 1976, had two Explanations being Explanations I and II. By the Amendment Act, Explanation I was omitted and Explanation II was renumbered as the present Explanation. Explanation which was omitted reads as follows:

"Explanation 1.-- Where a person has a permanent dwelling at one place and also temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence."

12. This Explanation dealt with the case of place of residence of the defendant and provided with regard to a person having a permanent dwelling at one place and also temporary at another place, that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. The language used in Explanation II, on the other hand, which is the present Explanation, was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places, the language used in Explanation II would have been identical to that of Explanation

I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place.”

13. Applying the aforesaid principles to the case in hand where admittedly no cause of action, either wholly or in part as provided under clause (c) of Section 20 CPC arose in the Court of Manendragarh, the Head Office of the Defendants, and as the disputed spare parts of the machine alleged to have been supplied to the Office of Somna Colliery, Bijuri, District Anuppur (M.P.), the cause of action has, therefore, arisen at the said place, which is beyond the territorial jurisdiction of the Court below. In view of the said background, the trial Court has not committed any illegality in returning the Plaint in exercise of the powers under Order 7 Rule 10 of CPC and I do not find any legal infirmity in the same so as to call for any interference in this appeal. The concerned trial Court shall return the Plaint to the Plaintiff/Appellant along with all the necessary papers with appropriate endorsement under its seal for its presentation before the Court having its territorial jurisdiction.

14. The Appeal is accordingly dismissed with the aforesaid observation. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE