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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 59 OF 2022

AND

CIVIL WRIT PETITION NO. 1696 OF 2022

MR. MANGESH MANUBHAI CHOKSHI

**....APPLICANT/
PETITIONER**

V/s.

MS. SMITA AMBALAL PATEL

.....RESPONDENT

Mr. Rushabh V. Thacker advocate for the Applicant/Petitioner

Ms. Smita Ambalal Patel Respondent in person

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 23, 2022.

P.C.:

1) Impugned in the Revision Application is order dated 09/12/2022 passed in Summons for Judgment No. 191/2019 whereby prayer of the Petitioner-Defendant for grant of unconditional leave to defend came to be partially allowed whereby Petitioner is directed to deposit principal amount of claim in Suit being Rs. 25,00,000/- subject to which leave to defend came to be granted.

2) As far as Writ Petition is concerned, impugned in the Petition are orders dated 26/11/2021 and 30/04/2021 whereby Notice of Motion No. 2005 of 2021 and Notice of Motion No. 3005 of 2021 came to be rejected on the ground that bundle of facts in the Plaint discloses cause of action which makes the Suit maintainable in the territorial jurisdiction of the Court with whom the Suit is initiated.

3) Heard learned counsel for the Applicant-Petitioner Mr. Thacker at length so also Ms. Smita Patel who is appearing in person.

4) Learned counsel for Applicant-Petitioner would urge that Court below committed an error of law in recording a finding that cause of action for initiation of the Suit has arisen in of territorial jurisdiction of the Bombay City Civil Court. So as to assail the said order, he would invite my attention to the pleadings in the Plaint in the summary suit so as to claim that amount which is alleged to have been lend by the Plaintiff-Respondent herein, was received in the bank account of Petitioner-Defendant in Ahmedabad, the alleged cheques are issued from Ahmedabad of the bank which is located in the Ahmedabad and the alleged meetings between the Plaintiff with the Petitioner taken place in Ahmedabad. As such, according to him,

even if, what has been stated in the Plaint for the sake of arguments is accepted (without admitting the contents), still the Suit is not maintainable in the jurisdiction of the City Civil Court at Mumbai. He would further claim that amount of Rs. 25,00,000/- alleged to have been received by the Petitioner was transferred from Santacruz branch of the Standard Chartered Bank of Plaintiff. In any case, said bank does not come within territorial jurisdiction of the Court below. As such, according to him, the Court below committed an error in rejecting Notice of Motion whereby holding that Suit is maintainable as within the jurisdiction of the Court below.

5) He would further claim that order in the Writ Petition passed in exercise of powers under Order XXXVII Rule 3(5) of Code of Civil Procedure, 1908 is also without any basis as transaction itself is under cloud and barred by limitation. According to him, since the Court below has no territorial jurisdiction, order of grant of conditional leave to defend is not sustainable. He has sought quashing of both orders which are impugned in Revision so also in Writ Petition preferred by invoking extraordinary jurisdiction of this Court.

6) Respondent party in person would urge that Petitioner-Defendant has won the confidence as relationship between the parties is of 2nd generation. According to her, Petitioner-Defendant is taking undue advantage of individuality of the Plaintiff, gained her trust and confidence and by practicing fraud has made her pay amount to Petitioner-Defendant which was released from Bombay branch of Standard Chartered Bank. According to her, not only the cause of action has arisen within the jurisdiction of the Court below but there is ample evidence to infer that Petitioner-Defendant has admitted his liability. According to her, for one reason or the other, Petitioner is delaying the proceedings in aforesaid commercial Suit. That being so, both these Application and Petition which are devoid of merit are liable to be rejected with cost.

7) Considered submissions.

8) This Court would first like to deal with the issue of territorial jurisdiction.

9) Fact remains that Plaint is based on transaction that took place between Petitioner-Defendant and Respondent-Plaintiff. It is the case of the Plaintiff that loan of Rs. 25,00,000/- was transferred from

saving bank account with standard chartered bank in Mumbai on 17/02/2016 by RTGS which was received by Defendant in his cooperative bank at Ahmedabad. She would further claim that recovery notices for the same were duly issued from Mumbai. According to her enough material is placed on record to infer that there is admitted liability as Defendant has issued not only the cheques but has acknowledged the liability by issuing confirmation letter.

10) This Court as such is required to be sensitive to the provisions of Section 20 of Code of Civil Procedure, 1908. The fact is, the bank from which Plaintiff has released amount is situated within the jurisdiction of Court at Mumbai where the Suit is initiated. Said undisputed fact very much gives jurisdiction to Court in Mumbai to try the Suit in question as substantial cause of action has arisen in Mumbai. The cause of action has accrued/began from the point of release of the amount by the Plaintiff from her bank account. The fact that cause of action in respect of payment of amount has arisen, particularly at the place where amount through RTGS was transferred from the account of Plaintiff with Standard Chartered

Bank, Mumbai sufficiently establishes the claim of the Plaintiff that Court at Mumbai had jurisdiction to entertain the Suit. Just because it is convenient to the Defendant to defend the Suit in Ahmedabad, that by itself will not take this Court to stretch the provisions of Section 20 of C.P.C. to the extent of holding that Suit at Mumbai is not maintainable for want of territorial jurisdiction. The fact about issuance of amount from saving bank account with Standard Chartered Bank is in fact not disputed by Petitioner-Defendant. That being so, Court below was justified in holding that it has jurisdiction to try the Suit.

11) In the aforesaid background, the claim put forth by the Defendant that only Court at Ahmedabad will have jurisdiction is rightly so rejected by learned Court below.

12) Apart from above, this Court is required to be sensitive to the provisions of Section 9 of C.P.C. A Civil Court has plenary jurisdiction under the said provisions and the Civil Court is armed with jurisdiction to try all the suits of civil nature except in suits of which cognizance is either expressly or impliedly barred. Nothing is brought to my notice by the Defendant to demonstrate that

jurisdiction of Small Cause Court, Mumbai is barred. Fact remains that Civil Court while trying summary suit exercises powers under Order XXXVII of the C.P.C. Such procedure which is prescribed under Order XXXVII could not make it a Court of limited jurisdiction even if the procedure prescribed therein is summary in nature. The fact remains that such Court remains Court of ordinary civil jurisdiction.

13) In the aforesaid background, as far as the claim that Court has no territorial jurisdiction to entertain the Suit, cannot be accepted and that being so, challenge in the Revision to that extent fails as no illegality or error of jurisdiction could be noticed. That being so, Revision stands dismissed.

14) As far as claim in the Writ Petition is concerned, it is an admitted position on record that Defendant has received the amount in his cooperative bank account at Ahmedabad from saving bank account of the Plaintiff which is with Standard Chartered Bank, Mumbai. In addition to above, there is enough material in the form of cheques issued by the Defendant, acknowledgment of debt which *prima facie* establishes that there exist an admitted liability against the Petitioner in regard to the Suit claim.

15) That being so, the Court below in my opinion was justified in passing impugned orders thereby directing the Petitioner-Defendant to deposit amount of Rs. 25,00,000/- while granting conditional leave to defend. In that view of the matter, I hardly see any reason which warrants interference in extraordinary jurisdiction. As such, Writ Petition also fails, stands dismissed.

[NITIN W. SAMBRE, J.]