

10.04.2024
Court No. 3
S/L. No. 6
Sourav/
Suvayan

FAT 89 of 2024
With
CAN 1 of 2024
With
CAN 2 of 2024
Kundan Prasad
Vs.
The IDBI Bank Ltd. & Ors.

Mr. Dibyayan Banerjee
Mr. Abhrajit Roy Chowdhury

... for the appellant.

Mr. Chayan Gupta
Mr. Koushik De
Mr. Raghav Munshi
Ms. Mohini Majumdar
Mr. Roshan Pathak

... for the respondent Bank.

1. Heard learned Counsel for the parties.
2. Challenge in this appeal is the order no. 3 dated 22.03.2024 as passed in Title Suit No. 447 of 2024 by the learned Judge, 6th Bench, City Civil Court at Calcutta whereby and whereunder the said trial Court by the impugned order has passed an order for return of plaint under the provision of Order VII Rule 10 of the Code of Civil Procedure.
3. In support of the instant appeal, Mr. Banerjee, learned Counsel appearing on behalf of the plaintiff/appellant at the very outset draws our attention to the copy of the plaint as filed in Title Suit No. 447 of 2024. It is argued that the plaintiff/appellant being an employee of the

respondent no. 1/Bank has been illegally transferred from Bardhaman to Channai and such transfer order has been communicated to the plaintiff/appellant by the respondent no. 5 through email dated March 11, 2024, copies of which have been forwarded to the Kolkata Zonal Office of the respondent no. 1/Bank as well as to the respondent nos. 2 and 3 who are the responsible officers of the Bank sitting in the Zonal Office at Kolkata.

4. It is submitted by Mr. Banerjee, learned Counsel for the appellant that the learned trial court while passing the impugned order has failed to visualize the true implication of Section 20 of the Code of Civil Procedure vis-à-vis the role of the defendant nos. 2 and 3 who according to the plaintiff are to execute the order of transfer as communicated to the plaintiff by the defendant no. 5 through email.
5. It is submitted further on behalf of the plaintiff/appellant that since part of the cause of action arose in Kolkata, the trial court is the competent court within the meaning of Section 20 of the Code of Civil Procedure to entertain the suit for declaration and permanent injunction as has been filed by the plaintiff/appellant.
6. In course of his argument, Mr. Banerjee, learned Counsel for the plaintiff/appellant places his

reliance upon the following three reported decisions; i) ***Patel Roadways Limited, Bombay Vs. Prasad Trading Company*** reported in ***(1991) 4 SCC 270***, ii) ***South East Asia Shipping Co. Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd. & Ors.***, reported in ***(1996) 3 SCC 443*** and iii) ***Kusum Ingots & Alloys Ltd. Vs. Union of India & Anr.*** reported in ***(2004) 6 SCC 254***

7. *Per contra*, Mr. Gupta, learned Counsel for the defendants/respondents submits before this Court that the learned trial court is very much justified in passing the impugned order for return of plaint since it has been noticed by the learned trial Court that the plaint as filed before the learned trial court is totally silent as to how the said court assumes territorial jurisdiction to entertain the Title Suit No. 447 of 2024 as filed by the plaintiff/appellant.
8. It is further submitted on behalf the defendants/respondents that since no part of cause of action arose in Kolkata, learned trial court is very much justified in passing the impugned order.
9. For effective adjudication of the instant appeal, we propose to look to the provisions of Section 20 of the Code of Civil Procedure and the same is reproduced hereunder in verbatim:

“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, arise.

[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.”

10. On perusal of the provisions of Section 20 of the Code of Civil Procedure, it appears to this Court that it is the legislative intent that every suit other than those mentioned in Sections 16 to 19 shall be instituted in a Court within the local limits of whose jurisdiction – i) the defendant or all the defendants at the time of the

commencement of the suit actually or voluntarily resides or carries on business, or personally works for gain; ii) any of the defendants (where there are more than one defendant) at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, however, in that case either the leave of the Court is to be taken or the defendants who do not reside or carry on business or personally work for gain in the territorial jurisdiction where the suit is proposed to be instituted their acquiescence is required to be obtained and iii) the cause of action wholly or in part, arises. The explanation to Section 20 of the Code of Civil Procedure, however, says that if a suit is to be instituted against a corporation it can be filed at the place where its principal office is situated in India or at the place where it has its subordinate office, if cause of action arose there.

11. Coming to the factual aspects of the case, it appears that prior to filing of the Title Suit No. 447 of 2024, the plaintiff was posted at Bardhaman as a Teller Service Executive and by the impugned mail dated March 11, 2024, he has been transferred to Chennai as Assistant Manager Retail Asset Operation. It appears that the said mail has been sent by the respondent

no. 5 sitting at her office at Mumbai and such mail has been delivered to the plaintiff/appellant at his email address while he was working at Bardhaman.

12. Such being the position, in view of the provision of Section 20 of the Code of Civil Procedure though a part of the cause of action arose in Mumbai but by no stretch of imagination it can be said that part of the cause of action arose in Kolkata since copies of the said email has been sent to the Zonal Office of the defendant no. 1 at Kolkata since the Zonal Office of the defendant no. 1 had not role of play in the proposed transfer of the plaintiff/appellant.
13. In considered view of this Court, the plaintiff/appellant also cannot get the advantage of the provision of explanation of Section 20 of the Code of Civil Procedure, in view of the dictum of the Hon'ble Apex Court in the case of ***Patel Roadways Limited, Bombay (Supra)*** wherein the Hon'ble Apex Court expressed the following view:

“9. Clauses (a) and (b) of Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia “carries on business”. Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been

urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently clause (c) is not attracted to the facts of these cases. What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the word "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation, which term, as seen above, would include even a company such as the appellant in the instant case. 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 the 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.

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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 the 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 or 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 the 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.”

14. In view of the above discussion, it is clear that no part of cause of action has arisen in Kolkata where the Zonal Office or Branch Office of the defendant/respondent no. 1/Bank is/are situated and, therefore, the reported decision so relied on by the learned Counsel for the appellant has no application in the present case.
15. The other two reported decisions namely ***South East Asia Shipping Co. Ltd. (Supra)*** and ***Kusum Ingots & Alloys Ltd. (Supra)***, in considered view of us are no way helpful to the plaintiff/appellant inasmuch as the facts and circumstances as involved in these two reported decisions are quite distinguishable from the facts and circumstances in the present *lis*.
16. In view of the discussion made hereinabove, we have thus no hesitation to hold that the learned trial court is perfectly justified in passing the impugned order for return of plaint and thus, the same requires no interference from our end.

17. As a result, the instant appeal being **FAT 89 of 2024** fails and the interim applications being **CAN 1 of 2024** and **CAN 2 of 2024** are dismissed.
18. The impugned order no. 3 dated 22.03.2024 as passed in Title Suit No. 447 of 2024 by the learned Judge, 6th Bench, City Civil Court at Calcutta is hereby affirmed.
19. There shall be no order as to costs.
20. Urgent xerox certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)