



2024:DHC:108-DB



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

% **Judgment reserved on: 02 November 2023**
Judgment pronounced on: 08 January 2024

+ **FAO (OS) (COMM) 19/2019**

TATA STEEL LIMITED Appellant
Through: Mr. Rajesh Banati, Mr. Adil
Asghar and Mr. Ashish Sareen,
Advocates.

versus

TYO TRADING ENTERPRISES & ORS. Respondents
Through: Mr. E.R. Kumar and Mr. D.P.
Mohanty, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. Plaintiff is the *Dominus Litis* but he can file a suit only at one or other places specified in the Code of Civil Procedure, 1908 [hereinafter referred to as, the “Code”] and not at any place where he desires. Sections 15 to 19 of the Code regulates the filing of the suit at the places where the cause of action has arisen and Section 20 of the Code operates, subject to the limitation contained under Sections 15 to 19 of the Code.

2. Section 20 of the Code reads as under:-

“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-



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(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 works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.”

3. Section 20 (c) of the Code clearly provides that the court in whose local limit the cause of action “wholly” or “in part” arises, would have territorial jurisdiction to try the suit. It is in this background, the present appeal has been filed by M/s. Bhushan Steel & Strips Ltd. (now known as Tata Steel BSL Ltd.) [hereinafter referred to as “Appellant”].

Factual background of the case

4. The suit for recovery of USD 4,09,183 equivalent to Rs. 1,79,38,582.72/- has been filed by the appellant against M/s Tyo Trading Enterprises [defendant No. 1 in CS (OS) No. 458/2000, hereinafter, “respondent no. 1”], Commercial Bank of Ethiopia [defendant No. 2 in CS (OS) No. 458/2000, hereinafter, “respondent no. 2”], M/s Arcadia Shipping Ltd. [defendant No. 3 in CS (OS) No. 458/2000, hereinafter, “respondent no. 3”] and M/s M.G. Trading Worldwide Pvt. Ltd. [defendant No. 4 in CS (OS) No. 458/2000, hereinafter, “respondent no. 4”]. It was the case of the appellant that respondent no. 1 placed an order for the supply of 400 MT Galvanised Steel, Corrugated sheets upon respondent no. 4, their agent in India and opened an irrevocable Letter of Credit [in short, “LC”] in their favour



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for a sum of USD 2,98,000/- . On instructions of the respondent no. 1, respondent no. 4 approached the appellant at Delhi to supply the said order which was acceded to. The irrevocable LC was transferred in the appellant's name. Pursuant to that, the appellant dispatched the material vide two invoice nos. E-98/033A to B/GC dated 23 June 1998 for USD 1,49,000 and E-98/033B to A/GC dated 23 June 1998 for USD 1,47,510. The shipment was sent through respondent no. 2 which was loaded by respondent no. 3 in their vessel Winco Pioneer (VOY-04/98) from Mumbai port to Djibouti port, Ethiopia vide Bills of lading. The appellant, thus fulfilled all their obligations in time.

5. It was further pleaded that the freight amounting to USD 8,400 and USD 8,316 respectively were prepaid by the appellant to respondent no. 3. Respondent no. 3 was directed to deliver the goods to the order of respondent no. 2 to whom the documents were submitted by the appellant through their banker Punjab National Bank, Connaught Place, New Delhi [hereinafter, "PNB"]. PNB negotiated the said documents and sent it to respondent no. 2 for making the payment thereof. After the dispatch of the goods on the ship and negotiation of the documents through their bankers, the appellant received a letter dated 29.07.1998 from the Citi Bank, Mumbai informing that respondent no. 2 had requested them to obtain acceptance of cancellation of the LC favouring the appellant and transferred by them vide their reference no. 9543 dated 09.06.1998 and requested the appellant to give consent to the cancellation. The appellant declined to accept the cancellation as the goods had already been shipped within the validity period of the LC.



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6. It was averred that the appellant has not been released the payment despite various correspondences with the respondent no.1 and others. Vide letter dated 07 September 1998, it was informed to the appellant by respondent no.1 that they had already made the payment last week. Despite that, no payment was released by respondent no.2. The respondent no.3 vide fax dated 25 August 1998 informed the appellant that both the shipments have been released to the consignee i.e. respondent no.1 against presentation of original bills of lading duly endorsed by respondent no.2 in favour of respondent no.1.

7. It was further alleged that despite that, PNB returned the original documents including the bills of lading to the appellant stating that the said documents had not been encashed and had been received back without encashment from respondent no.2. On enquiry from Djibouti Port, it was revealed that the goods were not lying there. Apparently, the said goods were released by respondent no.3 unauthorizedly.

8. It has been urged that despite the delivery of goods pursuant to the orders placed by respondent no. 1, the payment was not received by the appellant. Hence, a suit for recovery was filed by the appellant, which was placed before the learned Single Judge of this Court.

9. The suit was initially contested by respondents nos. 2 & 3 only. Respondents nos. 1 & 4 did not appear despite service and accordingly, they were proceeded *ex parte*. Respondent no.2 in the written statement denied his liability to make the payment to the appellant and urged that this Court had no territorial jurisdiction to entertain and decide the present suit. It was further urged that under the LC, the last date of shipment was 07 July 1998 and the required documents were to



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be negotiated by 28 July 1998. The appellant was repeatedly reminded to abide by the stipulations of the LC. The appellant, however, failed to comply with the requirements of the LC and there was delay in both - the shipments of the goods as well as negotiations of documents. The goods were shipped only on 17 July 1998 and the documents were presented for negotiations on 31 July 1998. On scrutiny of the documents forwarded by the negotiation bank i.e. PNB, the respondent no. 2 found discrepancies on the face of the documents and, therefore, rightfully refused to pay the LC amount.

10. Respondent no.2 in the written statement averred that it being an agent was not liable for the payment in the absence of the owner of vessel Winco Pioneer to have been impleaded as a party and that this Court lacks territorial jurisdiction. The obligation to deliver the cargo to the holder of the original bills of lading was that of M/s J. Kothari Company at Djibouti Port.

11. In replication to the written statements of respondents nos. 2 & 3, the appellant reiterated the version given in the initial plaint. Subsequently, respondent no. 2 became *ex parte* and thus, the suit was contested only by respondent no. 2.

12. On the basis of the pleadings of the parties and documents on record, the following issues were framed vide order dated 31st May 2010 which is as under:-

- i) Whether this Court has the territorial jurisdiction to try this suit?
OPD-2
- (ii) Whether the plaintiff is entitled to a decree for US \$ 1,49,000 equivalent to Rs. 1,79,38,582.72 as per the conversion rate at the time when suit was filed, if so, to what effect? OPP
- (iii) Whether the plaintiff is entitled to pendente lite interest @24%, if so, to what amount and for what period? OPP



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(iv) Relief.

13. The appellant examined PW-1 (P.K. Aggarwal) in its evidence, while respondent no. 3 examined Dinkar Malvankar as D3W1.

14. The learned Single Judge decided the aforesaid issues no. 2 & 3 together and held that respondent no. 1 M/s. Tyo Trading Enterprises and respondent no. 2/Bank of Ethiopia cannot be fastened with any liability in the absence of any positive evidence and respondent no. 3 M/s. Arcadia Shipping Ltd. is liable for the loss of the good in question and to make the payment of goods to the plaintiff without any interest. The relevant portion of the order passed by the learned Single Judge is reproduced hereunder:-

“23. Defendants No.1 & 2 thus cannot be fastened with any liability in the absence of any positive evidence on record that the goods were released to defendant No.1 as per the terms and conditions of the contract / Bills of Lading. Defendant No.2 cannot be held liable as there were discrepancies in the performance of terms and conditions of LC forcing the defendant No.2 to seek cancellation of LC.

25. Defendant No.3 has claimed that its only duty was to transport the goods to Djibouti Port safely. The obligation to deliver the cargo at the Djibouti Port to the holder of the original Bills of Lading duly endorsed by defendant No.2 was that of M/s. J.Kothari and Company Ltd. It is, however, not the case of defendant No.3 that the goods in question were delivered by them at Djibouti Port to M/s. J.Kothari and Company Ltd. The entrustment of the goods was to defendant No.3 at Mumbai Port with the clear undertaking that it would be safely transported to Djibouti Port. It was the bounden duty of the defendant No.3 to prove to whom the goods were handed over at Djibouti Port after the shipment reached its destination and if so, when and on the strength of which documents. All these aspects have not been established by defendant No.3. The defendant No.3 is thus liable for the loss of the goods in question and to make the payment of the goods in question to the plaintiff, of course, without any interest, in the absence of any stipulation to that effect.”



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15. Insofar as Issue no. 1 i.e. regarding the court having territorial jurisdiction to try the suit, the learned Single Judge decided in negative and returned the plaint to the appellant to be represented before the court with competent jurisdiction. The relevant portion of the order passed by the learned Single Judge in this regard is reproduced hereunder:-

“27. This Court agrees with defendant No.3’s contention that this Court lacks territorial jurisdiction to entertain and decide the present suit. Apparently, no cause of action arose against defendant No.3 within the jurisdiction of the Court to grant the relief prayed for. Defendant No.3 carries on its business at Mumbai. It is not at controversy that the goods in question were shipped / loaded at Mumbai; the freight charges were paid there. The goods were to be delivered at Djibouti Port, Ethiopia. Apparently, no cause of action whatsoever qua defendant No.3 arose in Delhi to attract the territorial jurisdiction of this Court. This Court has no jurisdiction to entertain and decide the present suit qua the defendant No.3. This issue is decided in favour of the defendant No.3 and against the plaintiff.”

16. The challenge in this appeal is only qua Issue No. 1. The learned counsel for the appellant has contended that the learned Single Judge has wrongly reached the conclusion that the Court has no territorial jurisdiction to entertain the present suit. It is argued that respondent no. 4 M/s. M.G. Trading Worldwide Pvt. Ltd., a Delhi based company placed the order on the appellant at Delhi on behalf of respondent no. 1 M/s. Tyo Trading Enterprises and as per the payment terms, the documents were negotiated at Delhi and that the said part of the cause of action arose at Delhi.

17. The learned counsel for the appellant also drew our attention to the relief granted by the learned Single Judge in the impugned order whereby the liability of respondent no. 3 M/s. Arcadia Shipping Ltd.



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for the loss of goods in question and to make payments of goods to the appellant without any interest has been established and the issue regarding the territorial jurisdiction being decided in the negative.

18. In our considered view, there is hardly any doubt in the legal proposition that a plaint can be instituted by the plaintiff within the jurisdiction of the court where the defendants or any of the defendant actually and voluntarily resides or carry on business, or personally work for gain or where the cause of action, wholly or in part, arises. The bedrock of the case of the appellant is also that the respondent no. 4 M/s. M.G. Trading Worldwide Pvt. Ltd., which is a company based in Delhi, placed an order on the appellant at Delhi on behalf of respondent no. 1 M/s. Tyo Trading Enterprises. This is a categorical averment on behalf of the appellant in the plaint and also in the evidence affidavit of PW-1. Neither respondent no. 2 nor respondent no. 3 controverted the contention of the appellant that the order was placed by respondent no. 4 on the appellant at Delhi.

19. It is important to note that learned Single Judge has categorically stated in the impugned order that the order for the goods in question was placed by respondent no. 1 upon respondent no. 4 – their agent in India and they opened Letter of Credit in favour of the respondent no. 4 for the sum of USD 2,98,000. Further, the onus to prove the lack of territorial jurisdiction was on respondent nos. 2 and 3. However, neither of them did cross examine the witness/PW-1 of the appellant on those lines to controvert the contention of the appellant regards the cause of action having arisen in Delhi. Thus, cause of action in part arose within the jurisdiction of this court.



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20. In view of the above, we hold that the Court has the jurisdiction to try the suit filed by the plaintiff, i.e. the appellant herein. The appeal is accordingly allowed. Since the findings on Issues No. 2 & 3 are in favour of the appellant, plaint is restored to its original number with direction to list the matter before the learned Single Judge on 18.01.2024 for further orders.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

08 January 2024/RM/SK/VP