



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

% **Judgment reserved on : 22 April 2024**
Judgment pronounced on: 01 July 2024

+ **C.R.P. 102/2023 & CM APPL. 21018/2023**

MS METROPOLITAN STOCK EXCHANGE OF INDIA

..... Petitioner

Through: Mr. Ravi Bharuka, Mr. Rohit
Agarwal & Ms. Akriti
Jhunjhunwala, Advs.

versus

MS ABHIPRA CAPITAL LIMITED & ORS. Respondents

Through: Mr. Kamal Mehta, Mr.
Abhishek Chauhan, Advs. for
R-1.

Mr. Ashish Aggarwal, Mr.
Nishchay Kapoor and Mr.
Nishant Yadav, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This is a revision petition under Section 115 of the Civil Procedure Code, 1908¹ preferred by the petitioner, who is the defendant No.1 in the main suit bearing No. 83/2017² instituted by the respondent No.1/plaintiff before the learned Additional District Judge-04, Patiala House Courts, New Delhi³, assailing the impugned order dated 04.02.2023, whereby the learned Trial Court had dismissed the

¹ CPC

² Civil suit

³ Trial Court



application under Order VII Rule 11 of the CPC filed by the petitioner/defendant No.1.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, respondent No.1, who is the Plaintiff in the main suit before the learned Trial Court, applied for a trading membership with the petitioner/defendant No.1 and on 17.09.2012, paid an amount of Rs.11,34,836/- through cheque. The amount was paid towards securing membership of the petitioner/defendant No.1, which was subject to grant of a registration certificate by the SEBI⁴/defendant No.3. Further, *vide* letter dated 13.03.2013, the respondent No.1/plaintiff was intimidated that he had been admitted as a member in the Cash Market Equity, Futures and Derivatives segments of the petitioner/defendant No.1 on 12.03.2013. It is pertinent to mention here that the membership was incomplete till the requisite certificate was issued by the SEBI/defendant No.3.

3. It is the case of respondent No.1/plaintiff that they became aware of a fraud of Rs. 4,000/- crores during the intervening period pertaining to the National Stock Exchange of India Limited [“NSEI”]; and as a result, the plaintiff lost faith and the membership process was not concluded. Consequently, *vide* an e-mail dated 27.08.2013, the respondent No.1/plaintiff intimated to the petitioner/defendant No.1 that he was not desirous of the membership of stock exchange and wanted to withdraw from the same, and further, asked for clarification on the procedure for obtaining the full refund of the deposit amount of

⁴ Securities and Exchange Board of India



Rs.11,34,836/-, which was not responded.

4. It is stated that after repeated requests that went unanswered, a legal notice dated 10.11.2015 was served upon defendant No.1 by the respondent No.1/plaintiff to refund the aforesaid amount. The defendant No.1, in their response to the legal notice, issued a vague reply dated 19.11.2015 whereby, the defendant No.1 negated its liability to return/refund the said amount for various acts of default on the part of respondent no.1/plaintiff in not complying with the formalities for registration. Consequently, the respondent No.1/plaintiff approached respondent No.2/defendant No.2 i.e. Association of National Exchanges Members of India [“ANMI”], to act as a bridge between the participants, but in vain. Thus, the respondent No.1/plaintiff filed a suit for recovery for a sum of Rs. 11,34,836/- before the learned Trial Court. The petitioner/defendant No.1 moved an application under Order VII Rule 11 CPC primarily assailing the territorial jurisdiction of Delhi Courts to entertain and adjudicate upon the dispute.

THE IMPUGNED ORDER:

5. The learned Trial Court held that the issue of territorial jurisdiction would be a matter of trial and thus, dismissed the application under Order VII Rule 11 of the CPC filed by the petitioner/defendant No.1. It would be apposite to reproduce the germane observations given by the learned Trial Court in this regard:

“10.The case laws relied upon by the defendant would be distinguishable as in the present case it is the plaintiff’s case that the defendant no.1 has a regional office in New Delhi and the membership application and cheque was handed over at New Delhi. The role of the regional office of the defendant no.1 in the



transaction would be determined at trial. The contention of the defendant no.1 that the plaint only states that the application was 'made from Delhi' and does not state that the application was 'handed over in Delhi' also cannot be accepted, since the plaintiff has also relied upon the alleged acknowledgement dated 18/09/2012 on the application dated 17/09/2012, copy of which has been filed on record.

11. In *Baroda Oil Cakes Traders (supra)*, the suit was for damages for breach of contract. It is in these circumstances, that the Hon'ble High Court held that it is only the place from where the acceptance is posted which would have jurisdiction. In that case, the plaintiff who was in Baroda was dealing through telegram with the defendant who was in Kanpur. In *Baroda Oil Cakes Traders (supra)*, admittedly there was no regional office of the defendant. The present case is a suit for recovery of money which was paid towards membership and it is stated in the plaint that the defendant no.1 has a regional office in New Delhi and it is the plaintiff's case that the plaintiff was also dealing with the regional office. Hence, the question of territorial jurisdiction would be a matter of trial in the present case.

12. Insofar as the objection as to limitation is concerned, it is the case of the plaintiff that the cause of action for filing the suit for recovery of amount arose on 01.07.2014 when the request for refund was first refused by the defendant no.1. It has been submitted by the learned counsel for the plaintiff that prior to the communication of the refusal to refund, there was no occasion for the plaintiff to file the suit since its request was still pending. I would hold that on a bare reading of the plaint, the plaint cannot be said to be barred by limitation. The question of limitation in the present case would also be a mixed question of fact and law and would be a matter of trial.

13. In the result, the application of the defendant no.1 under Order 7 Rule 11 CPC for rejection of the plaint is dismissed. It is clarified that the findings in the present order are only for the purposes of adjudication of the application under Order 7 Rule 11 CPC based only on a reading of the plaint and documents filed therewith. Appropriate issues would be framed on the question of territorial jurisdiction as well as limitation, which would be a matter of trial and final adjudication."

LEGAL SUBMISSIONS ADVANCED AT THE BAR

6. The main contention raised by the learned counsel for the petitioner/defendant No.1 is that the Court has no territorial



jurisdiction to entertain the present matter as the cause of action has arisen in Mumbai. Learned counsel for the petitioner, referring to a decision in the case of **Baroda Oil Cakes Traders v. Parshotam Narayndas Bagulia**⁵ urged that the place from where the ‘offer’ is made is not relevant and instead, it is the place of ‘acceptance’ from where the cause of action arises as admittedly, the letter of acceptance dated 13.03.2013 was sent from Mumbai and not from Delhi. It was further averred that merely because the application for membership was made in Delhi and the cheque was sent from Delhi, the same would not constitute a cause of action in Delhi. Further, mere presence of a regional office of the petitioner/defendant No.1 in New Delhi would not confer any territorial jurisdiction upon the Courts in Delhi to entertain the present matter. The learned counsel for the petitioner, in support of his arguments, also relied upon the decisions in the case of **ONGC v. Utpal Kumar**⁶ and **Unimers India Limited v. The IFCI Limited**⁷.

7. *Per contra*, the learned counsel for the respondent No.1/plaintiff submits that even if a part of the cause of action has arisen within the territorial jurisdiction of the Court, then the Court has the jurisdiction to entertain the matter. It was stated that the petitioner had its regional office at New Delhi, whereat all the documents, applications and payments were received, which is evident from the advertisements issued by the petitioner in newspapers wherein it was stated that the

⁵ AIR 1954 Bom 491

⁶ (1994) 4 SCC 711

⁷ 2012 (129) DRJ 608



application for membership could be obtained from the regional office of the petitioner/defendant No.1. Further, as the application for membership was made at New Delhi and even the cheque, along with the application form, was handed over to the representative of the petitioner at New Delhi, the jurisdiction lies in Delhi. Lastly, it was urged that the plaint expressly states that the legal notice was served upon the petitioner at its Delhi address and thus, the cause of action arose in Delhi and the Court has the jurisdiction to entertain the present case. In this regard, learned counsel for the respondent No.1/plaintiff referred to the decisions in the case of (i) **Roadlines Corporation (P) Ltd. v. Oriental Insurance Co. Ltd.**⁸ (ii) **M/s Fedders Lloyd Corporation Ltd. v. KSS Petron Pvt. Ltd.**⁹ and (iii) **BCI Optical Disc Ltd. v. M/s Spinks India**¹⁰.

ANALYSIS AND DECISION:

8. I have bestowed my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also gone through the relevant records of the case as also the case laws cited at the Bar.

9. First things first, avoiding a long academic discussion on the law governing the application of Order VII Rule 11 CPC, it is well settled that the Court is enjoined upon to consider the averments in the plaint coupled with the documents relied upon as a whole in a meaningful manner so as to ascertain whether it discloses any 'cause

⁸ 2012 (4) ILR (DEL) 22

⁹ 2017 (162) DRJ 481



of action’ and it cannot travel beyond such pleadings so as to consider and thereby, appreciate the defence raised by the defendant in the written statement. It is also well ordained in law that ousting of jurisdiction of the Court at preliminary stage cannot be lightly inferred. Now, since in the instant matter, an issue is raised as to the absence of a cause of action so as to confer jurisdiction upon the Courts in Delhi, in order to appreciate the issues raised by the learned counsel for the parties, it would be expedient to reproduce the provisions of Section 20 of the CPC, which provides as under:-

“Section 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 works 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 ³ [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

10. A careful perusal of the above provision would show that the eventualities listed in the said provision are ‘disjunctive’ in nature, and

¹⁰ 2017 (245) DLT 472



therefore, it is but apparent that satisfaction of **any one of the clauses** would enable the Courts to assume jurisdiction. While the eventualities referred to *vide* sub-Clause (a) and (b) concern the place of residence and/or place of work of the defendant party, the third eventuality operates independently and when sub-clause (c) is read in conjunction with the explanation, it ordains that the jurisdiction would ordinarily lie at a place where the company is carrying on its business and is operating its principal office, however, if subordinate office is situated in a different territory and if the “proximate cause of action” or the *essential attribute* of a “cause of action” have arisen within the jurisdiction where the subordinate office of the company is located, then the jurisdiction of the Court will vest in the territory where the subordinate office is situated and not at a place where the principal office of the company is situated. Reference in this regard can be invited to a decision by the Supreme Court in the case of **Patel Roadways Limited, Bombay v. Tropical Agro Systems Pvt. Ltd.**¹¹ wherein it was observed as under:-

“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

¹¹ (1991) 4 SCC 270



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 words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which I.A. No. 13000/2010 in CS(OS) No.1656/2009 Page No.18 of 33 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 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".**

{Bold portions emphasized}

11. In view of the aforesaid proposition of law, reverting back to the instant matter, the learned Trial Court has rightly observed that the plea of the petitioner/defendant No.1 is more in the nature of return of the plaint rather than its rejection. In any case, the broad narrative of the pleadings by the parties leaves no scope for doubt that the advertisement for inviting membership to the Stock Exchange had been issued by the petitioner/defendant No.1 at Delhi also and it is an admitted fact that it has its regional office/subordinate office at Delhi. Evidently, the terms of the advertisement clearly stipulated that the applicants seeking membership were at liberty to apply with the



regional/subordinate office at Delhi. Although the bulk of the correspondence that ensued between the parties was addressed at the principal office of the petitioner/defendant No.1 at Mumbai, *prima facie*, it appears that the application form for membership besides the cheque for Rs. 11,34,836/- dated 17.09.2012 drawn on Punjab National Bank, Gujranwala Town, Delhi was handed over to the regional office of the company at Delhi. At this stage of the case, the said aspects are clearly borne out from the acknowledgment dated 18.09.2012 on the application dated 17.09.2012, a copy of which has been filed on the record and relied upon by the respondent No.1/plaintiff. Indeed, the acceptance to the offer in the nature of the application submitted by respondent No.1/plaintiff to become a member in the Stock Exchange was accepted from Mumbai, but then, at the same time, it cannot be overlooked that on becoming a member, trading in shares and other securities or for that matter, enjoying the privileges as a member of the Stock Exchange, were not restricted to or from Mumbai alone.

12. At this juncture, it may be stated that during the course of arguments, it was fairly conceded that the issue of claim being barred by limitation is not being pressed at this stage. Having said so, the plea that as per the 'Applicability Clause' under the Regulations framed by the petitioner/defendant No.1, it is provided that "*all members and participants shall be subject to the jurisdiction of the Courts of Mumbai irrespective of the place of the place of business of members in India*" and therefore, it specifically ousts the jurisdiction of other Courts, also does not cut much ice since the respondent



No.1/plaintiff is not yet a member of the Stock Exchange, for whatever reasons that may or may not be attributed to it, and invariably, such a clause could have come into effect only when the respondent No.1/plaintiff was a member of the Stock Exchange.

13. Lastly, reverting to the case laws relied upon by the learned counsel for the petitioner/defendant No.1, it may be stated that no *ratio decidendi* or proposition of law pronounced by the superior Courts can be read *de hors* in the contextual background of the matter that led to such pronouncement. Suffice to state that the decision cited at the Bar by the learned Counsel for the petitioner/defendant No.1 are clearly distinguishable on facts. Insofar as the decision in **ONGC v. Utupal Kumar (supra)** is concerned, it was a case where the plant was located in Gujarat and the contractual work was to be performed in Gujarat only but the plaintiff, merely on the basis of an advertisement that was circulated in Kolkata, West Bengal, instituted the civil proceedings at Kolkata. It is in the said context it was held that merely because the plaintiff read the advertisement at Kolkata and submitted the offer and made the representation from Kolkata, would not constitute facts forming an ‘integral part’ or ‘essential part’ of the ‘cause of action’.

14. Likewise, no mileage can be wrested by the learned counsel for the petitioner/defendant No.1 from the decision in the case of **Baroda Oil Cakes Traders (supra)** since evidently, the acceptance to the offer had emanated from Kanpur and the plaintiff, who had been sending telegrams from Baroda, instituted a suit seeking recovery of damages for breach of contract at a Civil Court in Baroda, which was *returned*



for want of territorial jurisdiction by the learned Civil Judge. It was in the said circumstance alone where neither any regional or subordinate office of the defendant company was located in Baroda nor any work was to be performed at Baroda and that the Supreme Court, after analysing a plethora of decisions, held that weight of the judicial decision points overwhelmingly to the conclusion that posting or telegraphing of an offer from a particular place does not give rise to a part of cause of action for the purpose of jurisdiction, and therefore, it was held that no part of cause of action arose within the jurisdiction of Courts at Baroda.

15. Coming to the other cited case of ***Unimers India Limited (supra)***, it was a case where the plaintiff had its registered office at Mumbai and was carrying on its business from Mumbai alone and there was no subordinate office in Delhi, whereas, the defendant had its registered office at Delhi but was having its regional/subordinate office at Mumbai and all the documents came to be executed between the parties at Mumbai only as also the fact that the payment had been made in Mumbai and the property against which the debentures were secured was also situated in Mumbai. It is in the said background it was held that the Court at Delhi cannot assume jurisdiction since the material facts constituting the part of action had arisen in Mumbai.

16. To conclude at the cost of repetition, the aforesaid facts of issuance of an advertisement in Delhi *inter alia* providing an option to deal with the regional/subordinate office at Delhi, acceptance of the application and payment at Delhi besides free dealing in shares and securities, apart from entailment of other privileges from Delhi on



becoming a member, are such essential facts which would be sufficient at this stage to assume that the cause of action has wholly or partly arisen in Delhi. Thus, the learned Trial Court has rightly opined that the role of regional/subordinate office at Delhi could only be deciphered by leading evidence of the parties on their respective claims and defences during the course of trial.

17. In view of the aforesaid discussion, this Court unhesitatingly finds that the impugned order dismissing the application of the petitioner/defendant No.1 under Order VII Rule 11 CPC does not suffer from any patent illegality, perversity or incorrect approach in law. Thus, the instant Revision Petition is bereft of any merits and the same is hereby dismissed. The pending application also stands disposed of.

18. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

DHARMESH SHARMA, J.

JULY 01, 2024

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