(2006) 03 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : Civil Suit No. 41 of 2001

Agro Industrial Packaging India Ltd. — APPELLANT

Vs

Haryana Petro Chemicals Ltd. — RESPONDENT

Date of Decision : 17-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 7 Rule 10, 20
Constitution of India, 1950 — Article 226, 52(1), 52(2)

Citation : (2006) 2 ShimLC 41

Hon'ble Judges : K.C. Sood, J

Bench : Single Bench

Advocate : D.N. Ronta, for the Appellant; K.D. Sood, for the Respondent

Judgement

K.C. Sood, J.—The plaintiff, is a Government Company incorporated under the provisions of the Companies Act with its registered office at Shimla. The defendant is a company with its office at 54-62 HUDA, Industrial Area, Delhi-Rewari Road, Rewari 123 401 in the State of Haryana.

2. The plaintiff company has laid this suit for recovery of Rs. 14,42,366/ - on account of cartons supplied to the defendant company.

3. The case of the plaintiff company is :

4. The plaintiff company is engaged in production/manufacturing of carton for packing of fruit and other products etc. The defendant company placed an order for the supply of cartons for packing of their product (Polyester yarn). The plaintiff company supplied 3950 cartons to the defendant at the agreed rate of Rs. 62/- per carton, 12530 Cartons @ Rs. 65/- per carton and 10530 cartons @ Rs. 68/- per carton. In all 27010 cartons were supplied to the defendant company by the plaintiff company by different bills.

5. The total amount of the cartons supplied to the defendant company is worked out at Rs. 17,75,390/- but the defendant company paid only Rs. 8,58,000/- and did not pay the balance amount of Rs. 9,17,390/- in spite of reminders.

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6. The plaintiff company claims amount of Rs. 9,17,390/- from the defendant company alongwith interest @ 18% per annum from 28th September, 1997 till 31st March, 2001, amounting to Rs. 5,24,976/-. Plaintiff Company also claims Rs. 550/- as costs. The total amount claimed is Rs. 14,42,366/-. Plaintiff company claims future interest @ 18% per annum on the amount of Rs. 14,42,366/-.

7. The defendant company in their written statement deny the allegations and has taken up a plea that this Court has no jurisdiction to try the suit. An issue to this effect was settled on 23rd October, 2002, on an application made by the defendant company which has been tried as preliminary issue, as per orders dated 20th December, 2002.

Preliminary additional issue 12-A reads:

Whether this Court has no jurisdiction to try the suit?

8. The parties have led evidence on this issue.

9. Heard Mr. K.D. Sood, learned Counsel for the defendant and Mr. D.N. Ronta, learned Counsel for the plaintiff.

10. My finding on the aforesaid issue are:

The case of the plaintiff company as spelled in the plaint, in paragraph 14 is, that this Court has jurisdiction as the cause of action arose within the jurisdiction of this Court. Para 14 reads :

14. That the Hon''ble Court has got jurisdiction to decide the suit as the cause of action has accrued within its jurisdiction. No same or similar suit on the same cause of action has been filed or is pending in any Court.

11. Mr. K.D. Sood, learned Counsel for the defendant company says that no part of cause of action arose in Shimla or for that reason in any part of Himachal Pradesh and, therefore, this Court has no jurisdiction to try the suit. On the other hand, Mr. Ronta, learned Counsel would contend that the cause of action arose in Shimla as the payments used to be made by the drafts payable at Shimla.

12. It is the evidence of Mr. Suresh Kumar (DW-1) that the purchase orders used to be prepared in Delhi and delivered to the plaintiff company in Delhi. The payments used to be made to the plaintiff company through its Marketing Agent Mr. Satish Kumar at Delhi. The purchase orders were used to be received by Mr. Satish Kumar, Marketing Agent, at Delhi and goods were delivered by the plaintiff company at Rewari. In cross-examination this witness admits that on some occasions the payments were made by drafts payable at Shimla but he qualifies such drafts were handed over to the Agent of the Plaintiff Company at Delhi.

13. Desh Bandhu, Assistant Manager Marketing of the plaintiff company, appearing as PW-1, says that the supply order dated 23rd February, 1995 Ex. PW-1/A was received by the Company at its Head Office in Shimla and similarly

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other orders including Ex. PW-1/B, Ex. PW-1/C and Ex. PW- 1/D were also received at the Head Office in Shimla. He also says that their factory is located in District of Shimla and that company has no office in Delhi.

14. The witness, however, admits in cross-examination that the letters Ex.PW-1/A to Ex.PW-1/D though are required to be diarized but have not been diarized in Shimla office. He also admits that letter Ex.PW-1/A has not been marked to any officer or official, though under the practice of the Government Company letters which are received by post are required to be diarized and marked to the concerned person. The witness also admits that Satish Kumar was the Agent of the plaintiff Company at the relevant time. Witness denies the suggestion that the letters regarding supply of cartons by the defendants were delivered to Satish Kumar at Delhi and no letter was sent to Shimla. According to him, all these letters were received by them in their office at Shimla by post.

15. Ramesh Verma (PW-2) in the cross-examination candidly admits that Satish Kumar was their Agent, who used to collect the cheques and send the same to them. All the cheques were deposited in their bank account, which is maintained in Delhi. Ajay Kumar (PW-3) admits that the supply of the cartons was made at the plant of the defendant company through transport either owned by the plaintiff company or through Kotkhai Trucks Union, i.e. the entire evidence on record.

16. Section 20 of the CPC provides that subject to limitations every suit is to 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.

17. The evidence discussed above, particularly the evidence of Ramesh Verma (PW-2) clearly shows that the orders were sent to the plaintiff company by the defendant company from Delhi. The payments used to be collected by Satish Kumar, Agent of the plaintiff company and the payment so received used to be deposited in the Bank account of the defendants company, maintained at Delhi. PW 3 (Ajay Kumar) admits that the supply orders of the cartons were to be made

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to the defendant company from the Plant at Kotkhai through the transport either owned by the plaintiff company or the Kotkhai Trucks Union. In these circumstances, by no stretch it can be said that any part of cause of action arose within the territorial jurisdiction of Himachal Pradesh to which territorial jurisdiction of this Court extends.

18. Normally a suit against a Company is to be instituted at a place where the registered office of the Company is situate because domicile of a Company is determined by its place of registration and not where its property is located.

19. In Halbury''s Laws of England, 4th Edn.Vol. 7, P. 55, para 83, it is stated:?

When incorporated, the company is a legal entity or persona distinct from its members, and its property is not the property of the members. The nationality and domicile of a company is determined by its place of registration. A company incorporated in the United Kingdom will normally have both British nationality and English or Scottish domicile, depending upon its place of registration, and it will be unable to change that domicile. A company incorporated in the United Kingdom will nevertheless be regarded, as having an enemy character if the persons in de facto control of its affairs are resident in an enemy country, or, wherever resident, are adhering to the enemy or taking instructions from or acting under the control of enemies. The residence of a company is of great importance in revenue law, and the place of incorporation is not conclusive on this question. In general, residence depends upon the place where the central control and management of the company is located. It follows that if such central control is divided, the company may have more than one residence. The locality of the shares of a company is that of the register of shares. The head office of a company is not, however, necessarily the registered office of the company, but is the place where the substantial business of the company is carried on and its negotiations conducted. Like an individual or a firm, a company can, for the purposes of the Rules of the Supreme Court, carry on business in more places than one.

20. Mr. Ronta, learned Counsel for the plaintiff Company insist that part of the cause of action arose at Kotkhai, as the Cartons were supplied from Kotkhai.

21. The contention is misplaced. The evidence led by the parties clearly indicates that supply orders for the purchase of cartons were placed from Delhi or Rewari in Haryana. These supply orders used to be handed over to the Agent of the plaintiff''s Company Satish Kumar.

22. Indeed the plaintiff''s Company is dominus litus of its own case and is allowed to choose its own forum where there is more than one Court in which the suit can be instituted. It is also true that the cause of action has no relation to the defence which may be set up by the defendant. However, the cause of action for the purpose of jurisdiction is only referable to the grounds put forth by the plaintiff in the plaint.

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23. As already noticed, the plaintiff Company in para 14 of the plaint merely says that this Court has jurisdiction to decide the suit as the cause of action has accrued within its jurisdiction. It does not say, how and under what manner, the cause of action has arisen within the territorial jurisdiction of this Court. The cause of action has no relation as noticed earlier to the defence which may be set up by the defendant. It refers entirely to the grounds set forth in the plaint as the cause of action. There is not a whisper not a word how any part of cause of action arose within the territorial jurisdiction of this Court.

24. It is bundle of facts which constitute the cause of action in a civil suit though it does not comprise every fact which may be proved in evidence. It is only material facts which must be proved by the plaintiff before he can obtain a decree that constitute the cause of action. The plaintiff company has not pleaded any material fact, in para 14 of the plaint, which may show existence of cause of action within the territorial jurisdiction of Himachal Pradesh.

25. In any event, the Court has power and jurisdiction to decide the correctness of the averments made in the plaint and to come to a conclusion whether it had jurisdiction to entertain the suit or not.

26. In the absence of any material fact in. the plaint which may clothe this Court with jurisdiction it cannot be said that this Court has jurisdiction to try the suit particularly when registered office of the defendant company is located at Delhi.

27. In Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others, , the registered office of the Company was at Ludhiana (Punjab). It filed a petition, under Article 226 of the Constitution in the High Court of Calcutta where it was having a branch office though no cause of action either wholly or partly had arisen at Calcutta.

28. Disapproving the practice adopted by the petitioner, the Supreme Court held:

Having regard to the fact that the registered office of the Company is at Ludhiana and the principal respondents against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court. The writ petitioners however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs which is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port. An inevitable result of the filing of writ petitions elsewhere than at the place where the concerned offices and the relevant records are located is to delay prompt return and contest. We do not desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of the Company is in the State of Punjab and all the principal respondents are in Delhi.

29. Their Lordships disapproving the practice observed:

But we do feel disturbed that such writ petitions are often deliberately filed in

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distant High Courts, as part of a manoeuvre in a legal battle, so as to render it difficult for the officials at Delhi to move applications to vacate stay where it becomes necessary to file such application. More about this later.

30. In State of Rajasthan and Others Vs. Swaika Properties and Another, the petitioner-company was having its registered office at Calcutta (W.B). The Company owned certain land on the outskirts in Jaipur City (Rajasthan). The Special Officer, Town Planning, Jaipur, issued a notice for acquisition of land for public purpose. The notice was served on the Company at its registered office at Calcutta. The Company challenged the acquisition proceedings by invoking jurisdiction of the High Court of Calcutta under Article 226 of the Constitution. It was contended that since notice was issued upon the Company at Calcutta, the Calcutta High Court was having territorial jurisdiction to hear the petition. The High Court entertained the petition and granted interim relief. The State approached the Apex Court. The question before the Apex Court was whether the service of notice u/s 52 (2) at the registered office of the respondents was an integral part of the cause of action and was sufficient to invest the Calcutta High Court with jurisdiction to entertain the petition challenging the impugned notification of State of Rajasthan u/s 52 (1).

31. Their Lordships, answering the question in negative, stated :

We are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim exparte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired.

32. In the present case, I am of the view that no part of cause arose within the jurisdiction of this Court. The cartons at best were dispatched from Kotkhai, in the State of Himachal Pradesh by the plaintiff company to the defendant company at Rewari in Haryana. The orders were placed by the defendant company with the plaintiff company at Delhi and the payments were also received by the plaintiff, company at Delhi.

33. In this view of the factual position it cannot be said that part of cause of action arose in Kotkhai within the State of Himachal Pradesh. Dispatch of cartons from Kotkhai to Rewari is no part of cause of action in the facts of the present suit.

34. In Bloom Dekor Limited Vs. Subhash Himatlal Desai and Others, , "A" filed suits against "B" Company in Morvi and in Baroda Courts restraining the company from making allotment of shares. The registered office of the Company was situated at Ahmedabad. The Supreme Court held that neither the Morvi Court nor the Baroda Court had territorial jurisdiction inasmuch as no cause of action had arisen at Morvi or at Baroda and the registered office of the Company was located at Ahmedabad. The Apex Court held:

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If the matter is viewed, as a contract no fart of cause of action has arisen within the jurisdiction of Morvi Court. The same principle will be applicable to the suit before the Civil Court (Senior Division), Baroda; more so, in the light of Explanation to Section 20 the appellant-company having its registered office in Ahmedabad. Therefore, we could expect the Court to examine these aspects before granting an interim order. So much for cause of action.

35. In Board of Trustees for the Port of Calcutta and another Vs. Bombay Flour Mills Pvt. Ltd. and another, , "A" imported goods at Calcutta. The goods were not released because port charges were not paid by "A". "A" laid a suit in the District Court at Bharatpur, Rajasthan and obtained a mandatory injunction. It was contended by the Port Authorities that as the office of the defendant was at Calcutta; the liability of payment of dues arose at Calcutta and since no part of cause of action arose at Bharatpur, the District Court, Bharatpur, had no jurisdiction to entertain the suit. This contention of the Port Authority was upheld. The Supreme Court set aside the order by observing that the order was "without jurisdiction and void".

36. In State of Bihar Vs. Barakar Engineering and Foundry Works Ltd. (Oriental Coal Co), , the respondent Company had its registered office at Calcutta, paid sales tax for the assessment years to the appellant-State of Bihar by cheques, which were encashed in Calcutta. An appeal against the payment was allowed by the appellate authority in Calcutta. When an application for refund of the amount was rejected, a suit was filed in the High Court of Calcutta invoking its jurisdiction on the following grounds:

(i) the payment was made in Calcutta; and

(ii) the order of refund was passed by the appellate authority in Calcutta;and

(iii) the registered office of the company was in Calcutta.

37. Considering various provisions of the Bihar Sales Tax Rules, 1949 the Apex Court held that the High Court of Calcutta had no territorial jurisdiction to entertain the suit. Their Lordships held :

the entire cause of action in respect of the claim for refund on the basis of the appellate authority''s order arose only within the State of Bihar and no part of that cause of action arose outside Bihar.

38. Looking to the evidence on record, as discussed above, the averments made in the plaint and settled position of law, I am of the considered view that no part of cause of action arose within the jurisdiction of this Court and this Court has no jurisdiction to hear and try the suit. The issue is accordingly decided.

In view of my finding above, the plaint shall be returned to the plaintiff company in terms of the Order 7 Rule 10 after due endorsement in terms of Rule 2 of Order 10 of the Code of Civil Procedure.

The suit stands disposed in the terms indicated above.

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