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(1990) 05 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Consumer Education and Research Society APPELLANT

Vs

Canara Bank RESPONDENT

Date of Decision : 05-05-1990

Acts Referred:

Citation : 1991 2 CPJ 148 : 1993 1 CLT 439

Hon'ble Judges : S.A.Shah , Leelaben Trivedi J.

Final Decision : Ordered accordingly

Judgement

1. A very important question which will affect the interest of the consumers has arisen before us as to whether a consumer can file a petition of complaint against a Corporation which is carrying on its business in the local limits of Gujarat but whose sole or principal office is situated outside the State limits coupled with the fact that cause of action has not arisen within the territory of State of Gujarat. Had this question arisen before the Civil Court, the answer would have been simple taking recourse to explanation to Section 20 of the Civil Procedure Code (hereinafter referred to as the Code'') which provides; "A Corporation shall be deemed to carry on business at its sole or principal office in India or" One cannot dispute that in view of Clause (a) of Section 20, a suit can 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 again; or (b) xxx xxx xxx (c) the cause of action, wholly or partly arisen.

2. DIFFICULTY arises for the opposite party, a Bank, whose principal office is located at Bangalore/Madras and which is admittedly carrying on its business at Ahmedabad through its branch office, on account of absence of explanation in Section 11(2) of the Consumer Protection Act, 1986 (hereinafter referred to as ''the Consumer Act''). In order to appreciate the contentions and submissions of both the parties, some short facts are necessary to be reproduced, complainant No. 1 is a registered consumer association and complaint no. 2 is a consumer

who opened Letters of Credit with opposite party No. 2 through its Madurai Branch. The complainant found, while dealing with the letters of credit that the Bank had shown negligence and utter disregard to the interest of the complainant as a result of which complainant no. 2 had suffered heavy damages on various counts as stated in paragraphs 22 and 24 of the complainant which includes amount of compensation, refund, interest and other liabilities. Mr. Mishra, learned Counsel appearing on behalf of the opponent-Bank has raised the preliminary issue and submitted; (i) that the consumer is not residing in Gujarat, (ii) that the principal office of the opponent Bank is situated outside Gujarat, at Bangalore, (iii) that no cause of action has arisen wholly or partly within the territory of Gujarat and, therefore, the Commission has no jurisdiction within the meaning of Section 11(2) of the Consumer Act.

The learned officer of complainant no. 1 Association, Mr. Saraf, has submitted that the Canara Bank has a Divisional office at Ahmedabad which transacts business and earns profit which is a part of gross earning of the opponent no. 2 Bank and therefore, the opponent Bank is carrying on its banking business at Ahmedabad and squarely falls within the meaning of Clause (a) of Section 11(2) of the Consumer Act as well as within the meaning of Section 20(a) of the Code and since the explanation to Section 20 of the Code has been deliberately omitted by the legislature while enacting the Consumer Act, it suggests that the legislature has granted further protection to the consumers to file a complaint wherever the opposite party is carrying on business or wherever cause of action wholly or partly arises. In short, the complainants have based their argument on the ground that the opponent Bank is admittedly carrying on business through its divisional office at Ahmedabad within the local limits of this Commission and in view of the deliberate omission of the explanation by the legislature, this Commission has jurisdiction to hear and decide the dispute.

3. LET us now examine the arguments of both the parties in the light of the principle behind Section 11(2) of the Consumer Act and the decided cases under the provisions of Section 20(a) of the Code. All the three Clauses, namely (a), (b) and (c) of Section 20 of the code have been adopted in Section 11(2) of the Consumer Act with minor changes, that is to say, in the place of "defendant" "opposite party" and in the place of "Court" "District Forum" have been subsituted otherwise the scheme is the same with no difference. However, the explanation has been omitted and, therefore, we have to consider two aspects, namely, (i) the reason for omitting the explanation and (ii) the effect of such omission. Let us consider the scheme of Section 20 of the Code. There are three Clauses in Section 20 of the Code. The principle behind the provisions of Clauses (a) and (b) of Section 20 is that the suit be instituted at a place where the defendant may be able to defend the suit without undue trouble and Clause (c) thereof provides that a suit can be filed at the place where the cause of action wholly or in part has arisen. It may be noted that each of the Clauses (a), (b) and (c) is disjunctive and provides for distinct situation. So far as Clause (a) is concerned, it requires that the defendant or if there are more defendants than

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one, then each of the defendants at the time of commencement of the suit must be actually or voluntarily residing or carrying on business or personally working for gain within the local limits of the jurisdiction of a particular Court for a suit to be competently instituted in the Court. In short, a suit can be filed at a place where defendant resides or carries on business or personally works for again or at the place where cause of action wholly or partly arises. The legislature having given option to file a suit to the plaintiff has also taken care to see that the suit can be filed at the place where the defendant resides or carries on business so that he can defend the suit properly. Originally there were two explanations to Section 20. By Act 104 of 1976, first explanation was deleted with effect from 1.2.1977 and explanation II became explanation. So far as the private parties are concerned, which is not a Corporation, there is simple authority to show that a suit can be filed at every place where the defendant resides or carries on business. Since we are concerned with carrying on of business, we will refer to that portion of the decided cases only.

4. HOWEVER, in order to give some further protection to the Corporation, explanation has been added which restricts the right of the plaintiff and provides that in a suit against a Corporation, the Corporation is deemed to carry on business at its sole or principal office in India. The second part of the explanation that "or, in respect of any cause of Section arising at any place where it has also a subordinate office, at such place" appears to be merely explanatory inasmuch as under the provisions of Clause (c) of Section 20 a suit can be filed at the place where cause of action wholly or in part arises, independent of later part of the explanation. Mr. Saraf, learned officer appearing on behalf of the complainants relied upon the quotation of Prof. John Galbreth in respect of the position prevailing in U.S.A. that "Six hundred Corporations rule USA and they wrest cabined privileges from the State because of the vast money power they have".

He further stated that the mighty Corporations have acquired a concession in respect filing of a suit and a provision by way of explanation II was added in the nature of a fiction, that in a case of the Corporation, the suit can only be filed at the sole or principal office of the Corporation even though the Corporation is carrying on business at various places in India where they can properly defend the suit. According to Mr. Saraf, while enacting the Consumer Act, the legislature has given predominent importance to the consumer interest by not reproducing explanation to Section 20 of the Code in Section 11(2) of the Consumer Act and treated Corporation at par with individual. The deletion is intentional to enable the consumer to file a complaint against a Corporation at the place where there is a branch office. Mr. Saraf also draw my attention to the preamble of the Consumer Act which states that the Act has been enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers'' disputes and for matters connected therewith. He further argued that omission of Explanation is one of the protections.

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5. MR. Saraf has relied upon the decision in the case Kanshi Ram v. Dule Rai & Co. reported in AIR 1933 Lahore 11 which is an authority in support of his contention. In the said case, the suit was brought against a firm for rendition of accounts in the Court of the Subordinate Judge at Amritsar. The defendant-firm had its head office in Bombay and the evidence showed that it had a regular sub-office in Amritsar. The suit was filed by the plaintiff at Amritsar which was dismissed and the plaintiff, therefore, filed a revision application before the High Court. The High Court observed; "There is also evidence to the effect that in some cases the Amritsar sub-office passed receipts. It is no doubt true that the order placed by the customers with the Amritsar office was not binding until they had been accepted by the head office at Bombay, but this fact would be immaterial if it could be shown that the defendant firm was carrying on business "at Amritsar" (emphasis supplied). "In my opinion the evidence on the point is conclusive in favour of the petitioner".

His Lordship, therefore, held that "I hold, therefore, that the defendant in the present case was carrying on business at Amritsar and that the suit was properly instituted in the Court of the Subordinate Judge, there". To my opinion this is a clear authority for the proposition that the suit can be filed at the branch office of the Corporation if the Corporation is carrying on business at the branch office on true interpretion of sub-clause (a) of Section 20 and Section 11(2) (a) of the Consumer Act.

6. MR. Saraf also relied upon the decisions reported in AIR 1973 AP, page 390, AIR 1978 Punjab and Haryana, P. 156 and AIR 1980 Orissa P. 152. I have gone through these judgments where general observations are made regarding Explanation II which to some extent support MR. Saraf. However, there are some judgments which deal directly the point at issue which I deal with at length. It will be advantageous to consider some judgments which throw light on the purpose and reasons for inserting explanation (explanation II prior to 1977). In the case of Bharat Insurance Co. v. Wasudeo Ramchandra, reported in A.I.R. 1956 Nagpur, 203, the Division Bench was called upon to reconsider the decision in the case of Hindustan Cooperative Insurance Co. Ltd v. Nathu, 1941 Nagpur LJ 37(A) on the basis of which the trial Court held that the suit was within its jurisdiction. The ratio of the decision in the case of Hindustan Co-operative Insurance Co. has been reported in paragraph 5 of the judgment which reads as under: "In Hindustan Co-operative Insurance Co. Ltd. v. Nathu (supra), an insurance company which had its head office at Calcutta was sued in the Court at Nagpur. It was found that no part of the cause of action arose in Nagpur. It was, however, found that the Insurance Company was maintaining a branch office at Nagpur and doing various acts amounting to carrying on business at Nagpur. It was accordingly ruled that the Nagpur Court had jurisdiction over the action brought at Nagpur".

This judgment is a direct authority for the proposition that suit can be filed at the place where the branch office of the limited company is situated and carries on

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business.

However, in considering that case the Nagpur High Court did not consider explanation II and, therefore, the same High Court in this case did not approve the decision on the ground as mentioned in paragraphs 7 and 8. The relevant portion reads as under: "In view of Clause (a) as Sec. 20, Civil Procedure Code, a Corporation can be sued where it carries on its business and under Clause (c) it can always be sued at the place where the cause of action, wholly or in part arises. By reason, however, of the second explanation in the Section, a Corporation is 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 was also a subordinate office, at such place. The result of the explanation is to restrict the meaning of "carries on business" in Clause (a) in relation to Corporations. A Corporation can be sued at its sole or principal office in India. At any place where it has a subordinate office, it can be sued only in respect of a cause of action arising at such place. But in the presence of Clause (c), the purpose of the second part of the second explanation is obscure".

However that may be, where the suit is instituted at a place where a Corporation maintains subordinate office, the Court cannot dispense with the requirement that the cause of action must arise at such a place. The decision in Hindustan Co-operative Insurance Co. v. Nathu (A), (supra) having altogether ignored the second explanation, cannot be supported and must be overruled. It is much to be regretted that an insurance company should not be amenable to the jurisdiction of the Court at the place where it maintains a subordinate office irrespective of any question about the accrual of the cause of action". By this decision, the Nagpur High Court has overruled the previous decision not on the ground that a Corporation cannot be sued where it has a branch office under the provisions of Section 20(a) but on the construction of explanation II (as it was then) which has the effect of restricting the meaning of "carries on business" in Clause (a) in relation to Corporation.

7. THE next important ruling is in the case of Davies v. British Geon Ltd., (1957) I QB 1=1956 (3) AER 389. In the said case, a labourer working at the factory at Sully, within the district of Cardiff registry, under the defendant company which had its principal and registered office in Piccadilly, London. THE labourer contracted dermatitis and the Court issued a writ against the company in the Cardiff District Registry. THE question arose if, within the meaning of Order 12, Rule 4 of the Rules of the Supreme Court, the Company, on whose behalf appearance was entered in London, resided or carried on business within the district of the registry. In appeal before Denning and Birket L.JJ (Harman, J. dissenting). THEir Lordships reversed the judgment, of Pearson, J. wherein his Lordship Birkett, L.J. at page 395 of the report raised the following questions :- "(i) Is the view of Pearson, J. right that for the purposes of R.S.C. Ord. 12, R. 4 and R. 5, a Corporation is deemed to have only one place of business? (ii) Is the view of Pearson J., right that the one place of business is the principal place of

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business is the principal place of business "where the central management and control actually abides"?

(iii) Is the view of Pearson, J. right that for the purposes of R.S.C, Ord. 12,4 and R. 5, the defendant company does not carry on business at its factory in the Cardiff district? His Lordship answered the aforesaid questions in the following words: "I do not think that the question which arises in the present case has ever been before the Courts in this form. For the purposes of the present order and rules, I am of the opinion that the defendant company resided and carried on business in London within the meaning of the authorities, But that circumstance did not preclude it from carrying on business also at Barry in the County of Glamorgan; and I know of no authority which compels the Court to say that it does not carry on business, for the purpose of R.S.C, Ord. 12, R. 4 and R. 5, in the Cardiff District Registry. I would, therefore, allow the appeal".

Denning L.J. has also expressed similar view after considering certain authorities which were in respect of residence for the purpose of income-tax and railway where the decisions had been given as a matter of convenience and practice and held; "On the facts of this case I think that the defendant company resided in London but carried on business both in London and at Barry near Cardiff in the country of Glamorgan. THE defendant company ought, therefore, to have entered its appearance in the district registry. I would be in favour of allowing the appeal accordingly". So far as private citizen is concerned, the decision of Privy Council in the case of Haveli Shah v. Shaik Painda reported in A.I.R. 1926 Privy Council 88 is relevant. In the said case, the defendant was ordinarily resident in Punjab but was carrying on business at Quetta and the cause of action for the suit arose in Persia where the wrong was committed. Their Lordships observed; "Although Sundar Das appears to have been ordinarily resident in the Punjab there is no doubt that he carried on business at Quetta and their Lordships think that it was open to the respondent to sue him there under the provisions of Sections 19 and 20 Civil P.C."

The question therefore, arises for our consideration that if a suit can be filed against an individual at all the places where an-individual carries on business under the provisions of Clause (a) of Section 20 of the Code, why the same provisions cannot be made applicable to the Corporation especially when such a discrimination has been removed by the Consumer Act. Mr. Mishra has argued his case on the basis that the opposite party, namely, Canara Bank, is a Corporation. We may, therefore, examine the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 under which the existing Banks shown in the Schedule including Canara Bank, were nationalised and were resignated as corresponding new Banks. Under the provisions of Sec. 3(4) being relevant, read as under: - "(4) Every corresponding new bank shall be a body corporate with perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, and to contract, and may sue and be sued in its name".

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We, therefore, accept the argument of Mr. Mishra that the opponent Bank is a Corporation and explanation to Section 20 of the Code applies to the opponent Bank in Civil suits. That a judgment which is pronounced by the Calcutta High Court under its original jurisdiction and which is applicable on all fours is complete answer to the argument of Mr. Mishra, since the Calcutta High Court exercised territorial jurisdiction under Clause 12 of Letters Patent wherein the provision like explanation to Section 20, C.P. Code is not available, will govern the issue before us. Clause 12 of Letters patent reads as under : "And we do further ordain that the said High Court of Judicature at Fort William in Bengal in exercise of its original civil jurisdiction, shall be empowered to receive, try and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated or, in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such jurisdiction in cases falling within the jurisdiction of the small Cause Court at Calcutta in which the debt or damage or value of the property sued for does not exceed one hundred rupees (emphasis supplied).

8. IN the case of Babulal Choukhani v. Caltex (INdia) Ltd., reported in AIR 1967 Calcutta 204, one Mr. Babulal Choukhani filed a suit to recover from the defendant Co. a sum of Rs. 25,000/- as retention fee. The suit was filed in the original side of the Calcutta High Court. This case has a special importance because Clause 12 of the Letters Patent provides for original jurisdiction of the High Court has no provision like explanation (explanation II prior to 1977) which creates fiction and restricts the right of the plaintiff in respect of the suit to be filed against the Corporation. The defendant in the case raised objection regarding the jurisdiction and contended that the Company was incorporated outside INdia, that is, to say in Bahma Island and, therefore, a body corporate or a Corporation and they are being sued as such too. The contention, in short, was that Caltex carrying on business in Bombay where their head office is and, therefore, the suit at Calcutta was not maintainable. The learned Judge, therefore, posed a question in paragraph 17 as under: "Let this contention be examined. On June 1,1964, the time of commencement of the suit were Caltex, the defendant before me, carrying on business within the local limits of the ordinary original civil jurisdiction of this Court. If they were, Clause 12 of the Letters Patent empowers this Court "to receive, try and determine the suit in hand".

On evidence his Lordship came to the conclusion that there can be one and only one answer that they were doing commercial business on June 1,1964 and that they are going so even now. IN summing up His Lordship found as under:- "A. Caltex do carry on business in Calcutta. B. They did carry on business in Calcutta on June 1, 1964, when this suit was instituted. C. The general supervision of the

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head office at Bombay is no doubt there, as it must necessarily be. It does not, however, mean that the head office alone carries on business at Bombay and that the Calcutta District office does not".

Relevant portions from paras 22 and 23 of the said judgment read as under: "(22) I do not overlook Explanation II to Section 20 of the Procedure Code. Mr. De has referred me to. No doubt, it provides inter alia that a Corporation shall be deemed to carry on business at its sole or principal office in INdia. But Section 20 (surely inclusive of Explanation) (II) does not touch this litigation. It does not, because Section 20 of the Procedure Code prescribes that the provisions of Section 20 shall not apply to the High Court in the exercise of its original civil jurisdiction just the jurisdiction I am exercising here and now. (23) What touches, and indeed governs, this litigation is Clause 12 of Queen Victoria''s Letters Patent of December 28, 1965, which to quote from the judgment of P.B. Kukharji, J. in K.G. Kalwani v. union of INdia, 64 Cal. W.N. 765 at P. 768; AIR 1960 Calcutta 430 at P. 431, still exhibits surprising vitality though a hundred years has passed by the deeming provision of Explanation II to Section 20; that a Corporation shall be deemed to carry on business at its sole or principal office, no matter that it does carry on business here, there and everywhere, is not to be found in Clause 12 of the Letters Patent, with no such legal fiction there, the only test that has to be satisfied, in the context of the suit in hand, is; do Caltex carry on business in Calcutta. Or, to be exact in the context of the present litigation, did caltex carry on business in Calcutta on June 1,1964, the time of commencement of this suit. The findings I have come to in paragraph 21 ante upon a review of the evidence answer these questions in the affirmative and satisfy the test clause 12 of the Letters Patent provides for. I see no absurdity in caltex carrying on business in Calcutta, Bombay or in as many places as their business enterprise takes them to. Not to hold so is to shut one''s eyes to the reality plain to be seen."

The decision in the aforesaid judgment is the decision without explanation (Explanation II before 1977) under Clause 12 of the Letters Patent where the provisions are similar to the provisions of Section 11(2) of the Consumer Act and leave no doubt that in absence of the explanation the jurisdiction of the Commission is wide to include the Corporation which carries on business in Ahmedabad even though its principal office is situated outside the territory of Gujarat His Lordship has also considered the decision of Denning and Birket L.JJ. in Davies v. British Geon Ltd. (Supra) and observed : "It is neither reason nor common sense to say that "an individual can carry on business at more than one place while a company cannot", to quote from the observations of Denning L.J. in the course of arguments at the Bar at page 6 of the report. Therefore "the head office theory", unless backed by a legal fiction, as in the first part of Explanation II to Section 20 of the Procedure Code (the like of which is not there in Clause 12 of the Letters Patent), cannot alter the reality I see in Caltex carrying on business both in Bombay and Calcutta. Give the plain meaning to the plain English word "business". And you cannot but hold that Caltex do carry on

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business in both the places Bombay and Calcutta"..

On conspectus of the above authorities, the following proposition emerges :- (1) That a Corporation can carry on business at different places like an individual and will generally fall within the purview of Section 20(a) of C.P. Code; (2) That the present explanation (Explanation II before 1977) is a fiction which restricts the plaintiff from filling a suit against a Corporation at the place of their branch office and creates a deeming fiction to the effect that the Corporation is deemed to carry on business only at the sole or principal office. (3) That the second part of the explanation is obscure inasmuch as even without that part a suit can be filed against a Corporation at the place where cause of action arises by virtue of Clause (c) of Section 20 C.P. Code. (4) That the Consumer Protection Act, 1986 is an Act to provide for better protection of the interest of the consumer and for the settlement of consumer disputes and the provisions of Section 11(2) of the Act are a further protection giving right to the consumer to file a suit even against the Corporation if the Corporation is carrying on business within the territory of the district forum or the Commission. (5) That the scheme of the Consumer Protection Act and particularly Section 11(2) clearly suggests that the legislature, though reproduced all the three Clauses of Section 20 of the C.P. Code, omitted the explanation which can be inferred to be a conscious and INternational Act of the Legislature, since the consumer Act being a latter Act.

We, therefore, hold that the opposite party Bank is also carrying on business at Ahmedabad (which is not disputed by opposite parties) within the territory of the jurisdiction of this Commission, and, therefore, this Commission has territorial jurisdiction to hear the petition of complaint filed by the complainants. The preliminary issue is decided accordingly with no order as to costs. Ordered accordingly.

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