(2013) 11 CAL CK 0046

In the Calcutta High Court

Case No : G.A. No. 2448 of 2013 and C.S. No. 179 of 2013

Fuel Sources India Private Limited — APPELLANT

Vs

Parekh Aluminex Limited and Others — RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 CAL CK 0046

Hon'ble Judges : N. Patherya, J

Bench : Single Bench

Advocate : Abhrajit Mitra, Ms. Rajshree Kajaria, Mr. Jishnu Chowdhury, Mr. S. Mukherjee, Mr. S. Ghose and Ms. Sonia Sharma, for the Appellant;Pratap Chatterjee, Miss. Pooja Das Chowdhury, P.K. Jewrajka, Suman Dutta, Aryak Dutta and Mr. Dipankar Das, for the Respondent

Final Decision : Dismissed

Judgement

N. Patherya, J.—This is an application filed by the defendant No. 1 under Order 7 Rule 11 CPC for rejection of the plaint filed in C.S. 179 of 2013 and for revocation of leave granted under Clause 12 of the Letters Patent. The case of the applicant/defendant No. 1 is that the plaint does not disclose any cause of action and the cause of action, if any, arose outside the territorial jurisdiction of this High Court. All the defendants reside in Mumbai, the office of the defendant No. 1 is also in Mumbai, the cheques and letters were also issued from Mumbai. It is only for purposes of invoking the jurisdiction of this Court that LSI Financial Services (P) Ltd. of Lindsay Street has been introduced but no transaction or money was received by it. The money was deposited through RTGS from Bank to Bank and the claim is not based on the 1st deposit made but is based on the deposit renewed in November, 2012 in respect of which fresh documents were issued.

2. "Renewal" has been described in Black?s dictionary as replacement of an old contract with a new contract as opposed to mere extension of a contract. There is also no pleading of renewal.

3. The cause of action is based on the second deposit which is a new agreement between the plaintiff and the defendant without the involvement of LSI Financial Services (P) Ltd. No part of the cause of action arose in Calcutta in respect of the second transaction and therefore this Court will have no jurisdiction. It has also not been stated where the new agreement was entered into or renewal took place as is the requirement as held in Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, . Payment through RTGS is immediate and in view of Ahuja Nandkishore Dongre Vs. State of Maharashtra and Another, the dishonour of cheque will not give rise to a cause of action. Therefore the leave granted under Clause 12 of the Letters Patent be revoked and the plaint be taken off the file of this Court.

4. In opposing the said application counsel for the plaintiff submits that Section 20(c) of the 1908 Code permits filing of a suit in a place where a part of the cause of action has arisen, as in this case. Payment was made from within and the agreement between the parties performed. The money was also repayable under the contract at Calcutta and has been paid. As part of the cause of action has risen within, this Court will have jurisdiction to entertain the suit as held in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, and Om Prakash Srivastava Vs. Union of India (UOI) and Another,

5. In paragraph 11 of the plaint breach has been pleaded and if traversed will have to be proved. Breach of agreement by dishonour of cheque by bank will give rise to part of a cause of action as held in Gouri Shankar Bajoria Vs. Ram Banka, . Reliance is also placed o Sandeep Polymers Pvt. Ltd. Vs. Bajaj Auto Ltd. and Others, . From the conduct of the parties extension of the deposit is evident. Much has been made of the word "renewal". The said is nothing but a red herring and a misnomer as renewal is nothing but a continuation of the old transaction as held in Protap Properties Private Ltd. Vs. State of West Bengal and Others,

6. (2007) 1 KLJ is distinguishable in view of 2013 Co. LJ 264 Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, is distinguishable on facts as the reported decision dealt with lease and was considered in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., In view of the aforesaid no order be passed on this application.

7. In reply counsel for the defendant No. 1 submits that Protap Properties Private Ltd. Vs. State of West Bengal and Others, is distinguishable on facts as it was a case of renewal of license under the Cinematography Act and was a statutory renewal as in V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore, . Contractual and statutory renewals differ.

8 Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, was a case of suing under a new agreement. In the instant case it has not been stated where the new agreement was renewed. Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., was a case of statutory renewal of license under the Motor Vehicles Act and is distinguishable on facts. 2013 Co. LJ

264 is a case u/s 138 of the Negotiable Instruments Act and distinguishable.

9. Having considered the submissions of the parties the only issue that needs to be considered is whether any part of the cause of action has arisen within the jurisdiction of this Court to enable filing of the suit in this Hon?ble Court. The relevant paragraphs relied on to invoke this Hon?ble Court?s jurisdiction are paragraphs 3, 4, 6, 7, 8, 9 and 11. The said paragraphs are set-out hereunder:-

3. In or around August, 2012, the defendant No. 1 approached the plaintiff through one ISI Financial Services (P) Ltd. and its sister concern Venus Orchards Pvt. Ltd. of 6/1, Lindsay Street, Suite No. 6K, Kolkata - 700087, within the jurisdiction aforesaid and requested for an inter-corporate deposit to tide over certain unforeseen financial difficulty.

4. There were discussions between the parties and it was ultimately agreed between the parties at 6/1, Lindsay Street, Suite No. 6K, Kolkata - 700087, within the jurisdiction aforesaid that the plaintiff would make inter-corporate deposits of such amounts as would be required by the defendant No. 1 from time to time in favour of the defendant No. 1 on interest at the rate to be agreed upon at the time such deposit would be made and for such period as would be mutually agreed upon between the parties at the time of deposit. Such agreement was entered into sometime in August, 2012 and the terms of the agreement would be evident from the dealings and transactions between the parties.

6. In terms of the agreement between the parties, the plaintiff made an inter-corporate deposit with the defendant No. 1 of a sum of Rs. 50,00,000/- on 7th August, 2012 for a period of 90 days on interest @ 18.50% per annum (hereinafter referred to as the first deposit) by RTGS through its Banker Axis Bank Ltd., Shakespeare Sarani Branch, Kolkata - 700 071, within the aforesaid jurisdiction. The defendant No. 1 also issued a Money Receipt for the said sum of Rs. 50 lacs on 7th August, 2012 and also executed a Demand Promissory Note dated 7th August, 2012 for the amount due and payable. Copies whereof are collectively annexed hereto and marked with the letter "B". The said Receipt and Demand Promissory Note were handed over to the plaintiff by the defendant No. 1 at 6/1, Lindsay Street, Suite No. 6K, Kolkata- 700 087 within the aforesaid jurisdiction.

7. In terms of the agreement between the parties, the plaintiff made a further inter-corporate deposit with the defendant No. 1 of a sum of Rs. 50,00,000/- on 10th October, 2012 for a period of 91 days on interest @ 18.50% per annum (hereinafter referred to as the second deposit) by RTGS through its Banker Axis Bank Ltd., Shakespeare Sarani Branch, Kolkata- 700 071 within the aforesaid jurisdiction. The defendant No. 1 also issued a Money Receipt for the said sum of Rs. 50 lacs on 10th October, 2012 and also executed a Demand Promissory Note dated 10th October, 2012 for the amount due and payable. Copies whereof are collectively annexed hereto and marked with the letter "C". The said Receipt and

Demand Promissory Note were handed over to the plaintiff by the defendant No. 1 at 6/1, Lindsay Street, Suite No. 6K, Kolkata-700 087 within the aforesaid jurisdiction.

8. The defendant transferred interest on 4th November, 2012 in respect of the first deposit amounting to Rs. 2,05,274/- by RTGS in the said Bank of the plaintiff within the aforesaid jurisdiction.

9. The said first deposit was renewed on 5th November, 2012 for a further period of 92 days from 5th November, 2012. The defendant No. 1 executed the said documents namely money receipt and Demand Promissory Note afresh on 5th November, 2012 and handed over the same to the plaintiff at 6/1, Lindsay Street, Suite No. 6K, Kolkata - 700 087 within the aforesaid jurisdiction. Xerox copies of the said money receipt and demand promissory notes are collectively annexed hereto and marked with the letter "D".

11. The plaintiff, upon the deposit becoming refundable in respect of the 1st deposit, presented the said two cheques which had been made over by the defendant No. 1. Both the said cheques bearing No. 271131 dated 5th February, 2013 for the sum of Rs. 2,09,836/- towards interest and the cheque No. 271129 dated 5th February, 2013 for Rs. 50,00,000/- towards principal drawn on Union Bank of India were dishonoured on presentation due to "insufficient fund". Xerox copies of the said cheques along with the copy of the memorandum of dishonour issued by the defendant No. 1?s banker Union Bank of India, Service Branch at 5, Chowringhee Road, 3rd Floor, Union Bank Building, Kolkata - 700 013 within the aforesaid jurisdiction are annexed hereto and collectively marked with the letter "E".

10. Paragraphs 6, 7 and 8 are not relevant as in respect of the initial deposit interest was paid and the principal sum once again given as advance. It is in respect of the 2nd deposit that a claim has been made by the plaintiff and therefore paragraph 9 of the plaint is relevant.

11. In paragraphs 3 and 4 of the plaint it has been specifically pleaded that discussions were held within the jurisdiction of this Hon?ble Court and agreement also took place within.

12. In paragraph 9 of the plaint it has been pleaded that the Receipt and the Demand Promissory Note in respect of the 2nd deposit were given also within the jurisdiction. These facts if traversed will have to be proved by the plaintiff.

13. Another important fact is that cheques were issued by the defendant No. 1 in favour of the plaintiff and the said cheques on presentation were dishonoured. The defendant No. 2 had issued cheques of Union Bank of India, payable at par at all its branches in India. The dishonour took place at the service branch of the Union Bank of India which is at 5, Chowringhee Road, Calcutta-700013. Intimation of dishonour or breach was intimated by the said service Branch at Calcutta to the plaintiff. Not only has breach of the agreement occurred within

the jurisdiction of this Hon?ble Court but intimation was also given from within. Breach constitutes a part of the cause of action as held in Gouri Shankar Bajoria Vs. Ram Banka, and as the same arose within the jurisdiction of this Court, this Court will have jurisdiction to entertain the suit.

14. Although stress has been laid on the term "renewal" by the applicant/ defendant No. 1 the same is of no assistance to it as the 2nd deposit was a separate transaction in respect of which a separate receipt and Demand Promissory Note was issued and handed to the plaintiff through LSI Financial Services within the jurisdiction.

15. Ahuja Nandkishore Dongre Vs. State of Maharashtra and Another, has been relied on by the defendant No. 1 applicant. The said decision is distinguishable on facts as it was dealing with a case u/s 138 of the Negotiable Instruments Act, 1881 which specifies the place where a proceeding can be filed. It also did not deal with a dishonoured cheque which was payable at par at all branches of the bank in India. In view of the aforesaid G.A. 2448 of 2013 merits no order and is dismissed.