
(2007) 05 DEL CK 0300

In the Delhi High Court

Case No : I.A. No. 5040 of 2007 in CS (OS) 1119 of 2001

GE Capital Services India

APPELLANT

Vs

G. Neuromed Diagnostic Centre Pvt. Ltd.

RESPONDENT

Date of Decision : 16-05-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)
Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3, 20
Contract Act, 1872 — Section 47, 48, 49

Citation : (2007) 98 DRJ 74 : (2010) 7 RCR(Civil) 2463

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Divyajot Singh, Manoj Nagar and Atul Bansal, for the Appellant; Anju Bhattacharya, for Defendant Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—By this application, filed by defendant Nos. 1 & 2 under Order 37 Rule 3 CPC, they seek leave to defend the present summary suit filed under Order 37 of CPC by the plaintiff for recovery of Rs. 88,23,687/- from the defendants.

2. Defendant No. 1 is a private limited company of which defendant Nos. 2 to 4 are the directors. Defendant No. 1 obtained a loan of Rs. 64,22,000/- from the plaintiff upon execution of various documents being : (1) an Equipment Master Security and Loan Agreement dated 17.6.1998 executed by defendant No. 2 in his capacity as the managing director of defendant No. 1 company; (for short the Loan Agreement") (2) Demand Promissory Notes executed by defendant Nos. 1 to 4 on the same date, i.e., 17th June, 1998 in favor of the plaintiff unconditionally promising to pay the principal amount of Rs. 64,22,000/- with interest thereon @ 23% per annum; (3) Individual guarantees executed by defendant Nos. 2 to 4 on 17th June, 1998 guaranteeing the repayment of the loan amount along with interest; (4) equitable mortgage created by defendant

No. 5 in respect of his immovable property situated at 85/73(1) Lakshmi Purva, Kanpur.

3. The disbursement of the loan is not disputed. The said loan was taken for the acquisition of Medical System Equipment called CT Cytec 1800i machine to be supplied by WIPRO GE Medical Systems Limited. The defendants had issued post dated cheques comprising the interest and part of the principal amount in accordance with the loan agreement.

4. It is alleged that from the beginning defendants failed to adhere to the time schedule and neglected in remittance of the Installments and thereby breached the agreement between the parties. The plaintiffs got issued a legal notice dated 4th April, 2001. Despite the notice, the defendants have failed to clear the outstanding liabilities. Consequently, the plaintiff filed the present suit on the basis of the Loan Agreement read with the promissory notes as aforesaid executed by defendant Nos. 1 to 4, and the individual guarantees of the same date furnished by defendant Nos. 2 to 4.

5. In support of the application, Counsel for the defendant nos, 1 & 2 urges that this Court has no territorial jurisdiction to try the suit and this aspect raises a triable issue which entitles the defendants to unconditional leave to defend the suit. It is urged that the defendants are all residents of Kanpur and working for gain in Kanpur. WIPRO GE Medical Systems Ltd. had approached the defendant Nos. 1 & 2 for supply of the aforesaid machine in December, 1997, in Kanpur. In that process, the plaintiff had offered to provide customer finance through their customer finance division at Kanpur in the month of January, 1998. The stamp papers for executing the loan agreement were also purchased at Kanpur. The loan agreement itself was executed at Kanpur. The plaintiff sanctioned the loan and the loan was disbursed by the plaintiff to the defendant at Kanpur on 17th June, 1998.

6. It is Therefore argued that no part of a cause of action has arisen within the jurisdiction of this Court and this Court would have no jurisdiction to entertain the present suit.

7. Counsel for the defendant/applicant relies upon GE Countrywide Consumer Financial Services Limited Vs. Surjit Singh Bhatia and Jaspal Kaur, . This was the petition u/s 11(6) of the Arbitration and Conciliation Act, 1996. The issue that arose for consideration before the Court was whether this Court would have jurisdiction to entertain an application u/s 11(6) of the said Act, merely because under the agreement, the arbitration proceedings were to be held in Delhi. The Court found that as a matter of fact no part of the cause of action arose in Delhi, and by relying on other decisions of this Court, it concluded that merely because the arbitration proceedings were to be held within Delhi, this Court would not have the jurisdiction to appoint an Arbitrator.

8. Defendants contend that merely because the registered office of the plaintiff is in Delhi, this Court would not have jurisdiction. They also rely on Engineering

Projects (India) Limited Vs. Greater Noida Industrial Development and Another, . In this case, the Court while dealing with a petition u/s 9 of the Arbitration and Conciliation Act held that even though the express terms of Section 20 CPC permit the filing of a suit against the Corporation at the place where its principal office is situated, primacy has to be accorded to the place where cause of action has substantially arisen over those places where it has incidentally or partially arisen.

9. Another decision of this Court relied upon by the defendant is reported as National Horticulture Board v. Flora Continental Ltd. and Ors. 2 (2004) BC 356. In this case, an issue of territorial jurisdiction had been raised by the defendant in his application for leave to defend the summary suit. It was contended by the defendant that at the time of filing of the suit, the defendant had already shifted its registered office from Delhi to the State of Haryana, and the defendant was not carrying on any business, nor working for gain within the jurisdiction of this Court. Admittedly the loan agreement, promissory notes and other documents were executed by the defendants in that case, in the State of Haryana. No part of the contract was executed in Delhi. The Court held that it is not sufficient for the plaintiff to state that it had not been given an intimation of the shifting of the registered office of the defendant from Delhi to Haryana. The Court held that the defendants had raised a bonafide defense which may be established by them at the trial. Consequently, the Court proceeded to grant unconditional leave to defend the suit. Counsel for defendant Nos. 1 and 2 have also urged that the plaintiff has failed to furnish the TDS Certificates despite the same being required to be furnished by it.

10. This is given as the reason for non-payment of the Installments by the defendants It is then contended by the applicant that the equipment supplied by M/s. WIPRO GE Medical System Ltd. was sub-standard and the defendants have been repeatedly making complaints in respect thereof, which have not been attended by the suppliers. In support of this submission, inter alia, the consumer complaint filed by the defendants against the supplier have been placed on record. It was lastly contended that this is not a suit based on a written contract or promissory notes, but is one based on a statement of account prepared by the plaintiff.

11. On the other hand, counsel for the plaintiff has drawn my attention, firstly to the terms of the Loan Agreement dated 17th June, 1998. Clause 10(g) of this agreement, inter alia, states that all disputes arising out of this agreement or any collateral schedule shall be subject to the exclusive jurisdiction of the Courts in Delhi. The debtor, that is, defendant No. 1 herein, waives any objection it may have against the jurisdiction of Court of Delhi over this agreement, or any collateral schedule attached thereto.

12. Counsel for the plaintiff submits that under the express terms of the promissory notes, the amounts there under were payable at the office of the plaintiff at Delhi. plaintiff submits that the loan transaction in question is one and

is comprised in the Loan Agreement coupled with the demand promissory note executed by defendant Nos. 1 to 4 on the same date, and the individual guarantees furnished by defendant Nos. 2 to 4 also on the same date. The plaintiff submits that on a co-joint reading of the loan agreement and the demand promissory notes it is clear that loans had to be repaid at Delhi at its registered office. He also submits that it is well settled that it is for the debtor to find the creditor, who is situated in Delhi. The failure to make repayment of the installments of loan has occurred in Delhi, and it is that failure which has given cause of action to the plaintiff to file the present suit in Delhi.

13. Counsel for the plaintiff relies on two decisions of this Court reported as *Globus Agronics Limited Vs. Banque National De Paris and Another*, and *L.N. Gupta Vs. Tara Mani*, . In *Globus Acronics Ltd.* (supra) this Court inter alia held:

Under Section 20 of the CPC a suit can be instituted in a Court within the local limits of whose jurisdiction the cause of action wholly or in part arises. In terms of the letter of credit the money was payable in Delhi. The place where money is payable will be a Forum for filing the suit, though the document itself was executed outside the jurisdiction of that Forum.

14. In *L.N. Gupta and Ors. v. Smt. Tara Mani* (supra), this Court held:

Under Section 20, Clause (c), CPC, a suit can be filed in a Court in whose jurisdiction the cause of action, wholly or in part arises. Place of performance in full or in part of the contract and Therefore, the place of payment or of part payment will give rise to a cause of action in that place. Such place can be specified at the time of making the contract, may be appointed later on, or may be implied. Indian Contract Act, 1872, Sections 47, 48 and 49 deal with the place of performance. So far as the stipulated place is concerned, there should ordinarily be no problem.

15. Having considered the submissions of the parties, I am of the view that the defendant Nos. 1 & 2 have failed to raise any triable issue in the suit.

16. Even if it were to be assumed that the loan agreement was executed in Kanpur (though this fact is disputed by the plaintiff), the fact of the matter is that the loan agreement itself states that the Courts in Delhi would have exclusive jurisdiction.

17. I find force in the submission of the plaintiff that the present is not a case of conferring jurisdiction on a Court which otherwise has none. This Court has jurisdiction to entertain the present suit, since the loan was repayable at Delhi. This is clear from a mere reading of the Loan Agreement coupled with the promissory notes executed by the defendant Nos. 1 to 4. The promissory notes have been executed by the defendants in pursuance of the terms of the loan agreement itself, and are not independent of it. It is not the case of the defendants that the liability of the defendants under the Promissory Notes are in addition to their liability under the loan agreement. The loan agreement has to

be read in conjunction with the promissory notes. Even though loan agreement itself does not state that the same is to be repaid at Delhi, or at any other designated place, a reading of the same along with promissory notes leaves no manner of doubt that the repayment of loan had to take place at Delhi. Even otherwise it is settled that it is for the debtor to find the creditor. see L.N. Gupta (supra) The loan agreement by itself does not, expressly or impliedly, provide that the repayment of loan would be in Lucknow or at any other place other than Delhi. In such a situation, the aforesaid legal principle would become applicable that the loan was repayable at the place where the plaintiff has its principle place of business, i.e., in Delhi.

18. The parties have expressly confined jurisdiction in this Court, which it is even otherwise possessed of.

19. The decisions relied upon by the defendants do not apply to the facts of the present case. GE Countrywide Financial Services (supra) was a case, where the Court found that no part of the cause of action had arisen within its territorial jurisdiction. This is not the case here. Engineering Project (India) Ltd. (supra) was a case which would not apply in the facts of this case, since the parties before me have expressly agreed to confine the jurisdiction to Courts in Delhi. National Horticulture Board (supra) is a case where, admittedly no part of cause of action had arisen in Delhi and the defendants had shifted out of Delhi even before the filing of the suit. In those circumstances, the Court granted unconditional leave to the defendants to defend the suit. This is not the case in hand. A part of the cause of action has arisen in Delhi upon the failure of the defendants to repay the loan Installments at the plaintiffs office in Delhi. I see no merit in this defense raised by the defendants.

19A. There is no material on record whatsoever to support the defense raised by the defendant Nos. 1 & 2 that the plaintiff had failed to furnish the TDS certificates to it. This plea appears to be wholly specious. No details of the amounts in respect of which the TDS certificates had to be issued by the plaintiff, nor the period to which they allegedly pertained, or when the same ought to have been issued, and not issued, has been disclosed. No correspondence in relation to this issue with the plaintiff has been pleaded, nor filed.

20. The submission that the equipment in question was defective and, Therefore, the defendants were justified in withholding the repayment of loan Installments is also without merit. This, to my mind, also does not raise any triable issue. The equipment supplier is a separate entity altogether. Merely because the defendants have outstanding issues of quality of the product and the services rendered by the supplier, that would not entitle the defendant to commit default in the repayment of its loan taken from the plaintiff.

21. I find no force in the last submission of the defendant that the suit is based on a statement of account and not on the written agreement and the documents executed along with it. The basis of the claim in the suit is the written loan

agreement, the promissory notes executed by defendant Nos. 1 to 4 and the individual guarantees executed by defendant Nos. 2 to 4. The statement of account merely sets out the outstanding amounts along with overdue interest computed by the plaintiff.

22. Counsel for the defendant fairly admits that the entries contained in the statement of account filed by the plaintiff have not been questioned in the defendant's present application. In any event, in my view, mere general denial of the statement of account filed by the plaintiff is not sufficient, and the defendants ought to have raised specific pleas in relation to the various entries which go to make the statement of account, if according to them, any, or all of them were incorrect.

23. In my view, the defenses as raised by the defendants are moonshine and frivolous and do not raise any triable issue. No useful purpose would be served in granting leave to the defendants to defend the suit, since the defenses raised, even if proceeded further for examination in a trial, cannot succeed as they are misconceived and untenable in law. Accordingly, I dismiss this application.

IA No. 10340/05

Counsel for the plaintiff wishes to take instructions whether to continue to press the present suit against the defendant No. 5, in view of the fact that the said defendant is neither a party to the loan agreement, nor has he furnished a promissory note, and has also not given a personal guarantee. Defendant No. 5 has only created an equitable mortgage in respect of his immovable property situated at Kanpur and the present is not a suit for foreclosure of the mortgage.

Adjourned to 12th October, 2007.

CS(OS) No. 1119/2001

Adjourned to 12th October, 2007.