
(2015) 09 CAL CK 0028
In the Calcutta High Court
Case No : WP 656 of 2006

Hahnemann Laboratory Ltd. and Others APPELLANT
Vs
Allahabad Bank and Others RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Constitution of India, 1950 — Article 226, 226 (1), 32

Citation : (2015) 09 CAL CK 0028

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya, Probal Mukherjee, Senior Advs., Satarup Banerjee, Sudip Deb, Arnob Mukherjee and Modhurima Mukherjee, for the Appellant; Partha Bhattacharya, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Arijit Banerjee, J—The writ petitioner company is aggrieved by a debit entry dated 16th January, 2004 in its A/c No. CA-300077 for the sum of Rs. 6,03,368.40/-. The petitioners contend that the said account has been wrongly debited by the respondent bank purportedly on the basis of a demand dated 10th January, 2004 under Section 27 of the Bihar Financial Act, 1981 made on the respondent No. 5. The petitioner prays for an order in the nature of mandamus directing the respondent No. 1 to reverse the said debit entry.

2. Shorn of unnecessary details, the material facts of the case are that the petitioner company maintains what it calls its principal account, with the Stephen House, Calcutta Branch of the respondent bank at 4 BBD Bag Calcutta-700001 being A/c No. CD-1290. It also maintains an account with the Muradpur Branch of the respondent bank at Patna being A/c No. CA-300077. It contends that at all material times the said Muradpur Branch account was operated by it through the principal account at the Stephen House Branch of the Bank in Calcutta.

3. The petitioner states that the respondent No. 5 which is a partnership firm and

the petitioner company at one point of time were both under the control of the same group of persons. However, disputes and differences arose amongst the members of the said group and since the year 2000 the petitioner company and the respondent No. 5 firm are controlled, managed and run by separate group of people. There is no connection between the businesses of the petitioner company and the respondent firm. The respondent firm also maintained an account with the Muradpur Branch of the respondent bank being A/c No. CT-6. However, the accounts of the petitioner company and of the respondent firm held with the Muradpur Branch of the respondent bank were separate and distinguished and there was no connection between the two.

4. From the statement of account pertaining to the petitioner company's A/c No. CA-300077 for the period of 31st March, 2003 to 31st March, 2005, the petitioner came to know that on 16th January, 2004 the respondent bank had debited a sum of Rs. 6,03,368.40 to the said account described as "to transfer comm. tax" and thereby reduced the credit balance in the said account to zero. By a letter dated 10th June, 2005, the petitioner company called upon the bank to explain how such a debit entry could be made. This was followed up by a reminder dated 13th July, 2005. Both the said letters remained un-responded.

5. The petitioner company then sent a legal notice dated 19th August, 2005 which was replied to by the bank by its Advocate's letter dated 23rd August, 2005. It appears from the said letter that the Bank had received a notice of demand under Section 27 of the Bihar Financial Act, 1981 from the office of the Deputy Commissioner of Commercial Taxes, Patna, South Circle vide Memo No. 24 dated 10/01/2004 and in compliance of such notice the bank debited the petitioner's A/c No. CA-300077 and paid whatever money was lying in the account to the Deputy Commissioner, Commercial Taxes, which amounted to Rs. 6,03,368.40/-.

6. By letters dated 26th August, 2005, 21st November, 2005 and 6th February, 2006 addressed to the respondent bank, the petitioner company contended that the demand that was raised by the Deputy Commissioner of Commercial Taxes was pertaining to the respondent No. 5 firm and had nothing to do with the petitioner company. Hence, the debit entry in the bank account of the petitioner company was wrongful and should be reversed. There was no reply to any of the said letters. Being aggrieved the petitioners have approached this Court by way of present writ application.

7. Ld. Counsel appearing for the respondent bank has urged only two points. Firstly, he argued that this court lacks jurisdiction to entertain this writ petition. He submitted that the concerned bank account of the petitioner No. 1 which according to the petitioners the bank has wrongfully debited, is maintained at Muradpur which is outside the territorial jurisdiction of this court. The said bank account has no connection with the bank account maintained by the petitioner company with the Stephen House Branch in Calcutta which is within this court's jurisdiction. No part of the alleged cause of action of the petitioners has arisen

within the jurisdiction of this Court. As such, this court has no jurisdiction to entertain this writ petition and only the courts in Bihar have jurisdiction to adjudicate upon the disputes between the parties.

8. In this connection, Ld. Counsel for the respondent bank relied on a decision of the Hon''ble Apex Court in the case of M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company, (1991) ACJ 1001 : AIR 1992 SC 1514 : (1991) 2 CompLJ 80 : (1991) 3 JT 337 : (1991) 2 SCALE 257 : (1991) 4 SCC 270 : (1991) 3 SCR 391 : (1991) 2 UJ 432 wherein the Hon''ble Supreme Court observed in the context of Section 20 of the Code of Civil Procedure that the language of the said Section, linking together the place where the cause of action arises with the place where a subordinate office of a corporation is located clearly shows that the intention of the legislature was that, in the case of a corporation, the location of the subordinate office within the local limits of which the cause of action arises, is to be the relevant place for the filing of a suit and not the corporation's principal place of business. Ld. Counsel also relied on a decision of the Hon''ble Supreme Court in the case of New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. and Others, (2004) 2 ACC 19 : (2004) ACJ 1324 : AIR 2004 SC 2154 : (2004) 98 CLT 81 : (2004) 121 CompCas 180 : (2004) 3 CTC 154 : (2004) 1 JT 294 Supp : (2005) 139 PLR 61 : (2004) 5 SCALE 73 : (2004) 4 SCC 677 : (2004) 1 SCR 623 Supp : (2004) AIRSCW 2379 : (2004) 3 Supreme 400 . Ld. Counsel relied on paragraphs 9 and 10 of the judgment which are set out hereunder:

"9. Normally, under clauses (a) to (c) the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the defendant and can file a suit at a place where the cause of action arises. If the defendant desires to be protected from being dragged into a litigation at some place merely because the cause of action arises there it can save itself from such a situation by an exclusion clause. The clear intendment of the Explanation, however, is that where the Corporation has a subordinate office in the place where the cause of action arises it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. Clauses (a) and (b) of Section 20 inter alia refer to a Court within 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.

10. On a plain reading of the Explanation to Section 20 CPC it is clear that the Explanation consists of two parts: (i) before the word "or" appearing between the words "office in India" and the words "in respect of", and (ii) the other thereafter. The Explanation applies to a defendant which is a Corporation which term would include even a company. The first part of the Explanation applies only to such Corporation which has its sole or principal office at a particular place. In that event, the Court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be 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 expression "at such place" appearing in the Explanation and the word "or" 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 has the jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

9. The second point urged by Ld. Counsel for the respondent bank is that the petitioner company and the respondent No. 5 firm are the alter ego of each other. The same group of persons run and manage both by the petitioner company and the respondent firm and if the principle of lifting the corporate veil is applied, it will be seen that the petitioner company and the respondent firm are actually one and the same entity. Hence, when a demand under Section 27 of the Bihar Financial Act, 1981 was served on the bank, it legitimately debited the account of the petitioner company since the account of the respondent firm had no credit balance.

10. Taking up the issue of territorial jurisdiction first, it may be noted that both the decisions of the Hon'ble Apex Court referred to by the Ld. Counsel for the respondent bank dealt with Section 20 of the Code of Civil Procedure which lays down as to which court would have territorial jurisdiction to entertain a suit. In my opinion, Section 20 of the Code has no manner of application to an application under Article 226 of the Constitution of India which is a public law remedy. Although Rule 53 of the Rules of the High Court at Calcutta relating to applications under Article 226 of the Constitution provides that save and except as provided by the said Rules and subject thereto the provisions of Code of Civil Procedure in regard to the suits shall be followed, as far as it can be made applicable, in my view, the principles of Section 20 of the Code cannot be imported for the purpose of deciding whether or not a High Court has territorial jurisdiction to entertain a writ petition. Article 226 of the Constitution itself makes it clear as to which High Court has territorial jurisdiction to entertain a particular writ petition. Article 226 (1) and (2) provides as follows:--

"(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose].

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court

exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

11. Upon a careful reading of the aforesaid two clauses of Article 226 of the Constitution it appears to me that jurisdiction of a High Court can be invoked either when the seat of the Government or authority or residence of the person against whom relief is sought, is situated within the territory in relation to which the High Court exercises jurisdiction or when whole or part of the cause of action arises within the territorial jurisdiction of the High Court. This court exercises jurisdiction throughout the territory of West Bengal. Hence, in my view, if the respondent authority has its registered office or head office or even branch office within West Bengal, this court would have jurisdiction to entertain a writ petition against such authority irrespective of whether or not any part of cause of action against such respondent has accrued within the territorial jurisdiction of this court. Situs of the respondent authority and accrual of whole or part of cause of action are two alternative and independent bases for invocation of the writ jurisdiction of a High Court. This view of mine finds support from a decision of the Hon'ble Division Bench of this Court in the case of Ashok Kumar Saboo (HUF) and Another Vs. Hindusthan Paper Corporation Limited and Others, (2007) 3 CHN 533 : (2007) 2 CTLJ 72 : 112 CWN 1163 . In that case, the Hon'ble Division Bench approved the findings of the Ld. Single Judge that no part of cause of action had arisen within the jurisdiction of this Court. The Division Bench then proceeded to consider as to whether or not the head office of the respondent was a factor for invocation of writ jurisdiction of this Court. After referring to Clauses 1 and 2 of Article 226 of the Constitution, the court held as follows:--

"18. Upon plain reading of the aforesaid two clauses it seems to us that the jurisdiction under Article 226 can be invoked in two situations viz. in case of accrual of cause of action whole and part, and in case where the seat of such Government or authority or residence of such person, to put it differently either the Court within whose territorial jurisdiction whole or part of cause of action has arisen can be approached, or the Court within whose jurisdiction the seat of such Government or authority or the residence of such person situates can be approached. The word "notwithstanding" used in Clause (2) has made it clear without any doubt that the situs of the respondents still remains one of the factors for invoking jurisdiction. Actually prior to the Constitution, 15th Amendment Act, 1963 this provision was not originally in the Article 226. Clause (1) of Article 226 was the only factor for deciding the question of jurisdiction. The language of Clause (1) is very clear that every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs etc., for the enforcement of any of the rights conferred by Part III and for any other purpose. So there is no room for

doubt that exercise of jurisdiction of the High Court under Article 226 was depending upon the seat for the respondents within its territory. Going by the aforesaid provision which stood before amendment the Supreme Court has explained in the case of Election Commission, India Vs. Saka Venkata Subba Rao and, AIR 1953 SC 210 : (1953) 4 SCR 1144 and in the subsequent cases of Khajoor Singh v. Union of India and Collector of Customs v. E.I. Commercial Co. that place of office and/or residence of the respondents was the only factor for invocation of the jurisdiction of Article 226. Taking note of the aforesaid judicial pronouncement the Constitution was amended as correctly contended by Mr. Mukherjee by the 15th Amendment Act, 1963 incorporating Clause (1A) and thereafter this Clause (1A) and Clause (2) stood consolidated and renumbered as Clause (2) by 42nd Amendment. It appears to us that the text of previous Clause (1A) of Article 226 and the language imparted in the present clause of Article 226 are absolutely same and there is no change at all.

19. Accordingly, we hold that the word "seat" of such Government or authority used in Clause (2) of the Article 226 means and connotes registered office or principal office or head office whatever may be terminology or even branch office, irrespective of the fact that these places of office have any relation and/or nexus with the accrual of causes of action. If the nexus and/or connection of the place of business with accrual of causes of action, is conceived as contended by Mr. Chatterjee then the situs of the residence becomes meaningless and in that case Constitution makers could have deleted the theory of situs altogether. Rather it could have been provided straightaway that accrual of causes of action either whole or part is the only factor for invocation of jurisdiction, not the place of residence or seat of the respondent. This proposition of law as enunciated by Mr. Chatterjee drawing a reference and/or analogy in the case of a civil matter is wholly misplaced in the public law field."

12. I am in respectful agreement with the decision of the Hon"ble Division Bench and indeed I am bound by the same. Article 226 of the Constitution itself stipulates as to which High Court would have territorial jurisdiction to entertain a particular writ petition and the principles of Section 20 of the Code of Civil Procedure are not relevant for this purpose.

13. It is not disputed that the respondent bank has its head office at 2, Netaji Subhas Road, Calcutta - 1 and branch office at Stephen House, 4 BBD Bag (E) Calcutta - 1 both within the jurisdiction of this court. Hence, the submission of Ld. Counsel for the respondent bank that this court lacks territorial jurisdiction to entertain the present writ petition, cannot be accepted.

14. Further, whether or not a High Court has territorial jurisdiction to entertain a writ petition has to be decided on the basis of the allegations made in the petition. The truth or otherwise of the allegations are immaterial at that stage. In the instant case it has been averred in paragraph 27 of the writ petition, inter alia, that moneys were transferred from the principal account of the company maintained in Calcutta within the jurisdiction of this court to the account

maintained in Muradpur branch of the bank and the wrongful debit of the said account amounted to debiting of the company's principal account maintained with the Stephen House branch within this court's jurisdiction. It has also been averred that wrongful debit of the company's account has resulted in loss to the petitioner No. 1 at its registered office within this court's jurisdiction. Thus, in my view, a part of the petitioner's cause of action arose in Calcutta within the jurisdiction of this court. In this connection, one may refer to the Division Bench decision of this Court in the case of Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, AIR 1983 Cal 307 : (1983) 1 CALLT 299 : 87 CWN 450 .

15. Hence, the issue of territorial jurisdiction is decided in favour of the writ petitioners and I hold that this court has jurisdiction to entertain and decide the instant writ petition.

16. Now let us come to the second question of whether or not the respondent bank could invoke the principle of lifting the corporate veil. The true legal position in regard to the character of a corporation or a company owing its incorporation to a statutory authority is not in doubt or in dispute. The corporation in law is equal to a natural person and has a legal entity of its own. This position has been well established ever since the decision in the case of Saloman v. Salomon & Co. reported in 1897 Appeal Cases 22. However, with the passage of time the doctrine that a corporation or a limited company has an independent legal entity has been subjected to various exceptions by applying the principle that the veil of the company can be lifted and its face examined in substance. Palmer in his book on Company Law (20th Ed., Pg. 136) states that the doctrine of lifting of the veil has been applied in five categories of cases: where companies are in the relationship of holding and subsidiary companies; where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors of the company on the ground that, with his knowledge, the company continued to carry on business six months after the number of its members was reduced to below the legal minimum; in certain matters pertaining to the law of tax debt duties and summarized, particularly where the question of "controlling interest" is in issue; in the law relating to exchange control; and in the law relating to trading with the enemy where the test of control is adopted.

17. Gower in his book Modern Company Law (2nd Ed. Pgs. 193 and 195) has similarly summarized this position observing that in a number of important respects, the legislature has pierced the veil woven by the Salomon case. He observed that Courts have construed statutes as "cracking open the corporate shell" when compelled to do so by the clear words of the statutes. At present, the judicial approach in cracking open the corporate shell is somewhat cautious and circumspect. It is only where the legislative provision justifies the adoption of such a course that the veil has been lifted. In exceptional cases where courts have felt themselves able to ignore the corporate entity and to treat the

individual shareholder as liable for its acts, the same course has been adopted. Summarizing his conclusions, Gower has classified seven categories of cases where artificial veil of a corporate body has been lifted. But it would be impossible to evolve a rational, consistent and inflexible principle which can be invoked in determining the question as to whether or not the veil of a corporation should be lifted. Broadly stated, where fraud is intended to be prevented or trading with an enemy is sought to be defeated, the veil of a corporation is lifted by judicial decisions and the shareholders are held to be responsible for the acts committed in the name of the corporation.

18. In the case of *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, AIR 1965 SC 40 : (1964) 34 CompCas 458 : (1964) 6 SCR 885 , the Constitution Bench of the Hon''ble Apex Court observed that the doctrine of the lifting of the veil marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognized exceptions to the rule about the juristic personality of a corporation. It may be that in course of time these exceptions may grow in number and to meet the requirement of different economic problems, the theory about the separate personality of a corporation may be confined more and more.

19. Pennington in his *Company Law* (4th Ed.) states that four inroads have been made by the law on the principle of separate legal personality of companies. By far the most extensive of this has been made by legislation imposing tax. The Government, naturally, enough, does not willingly suffer schemes for the avoidance of tax which depend for their success on the employment of the principle of separate legal personality, and in fact, legislation has gone so far that in certain circumstances tax can be heavier if companies are employed by the tax payer in an attempt to minimize his tax liability than if he uses other means to give effect to his wishes. The other inroads on the principle of separate corporate personality have been made by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members.

20. In the case of *Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta*, AIR 1998 SC 1631 : (1998) 60 ECC 471 : (1998) 99 ELT 202 : (1998) 2 JT 747 : (1998) 2 SCALE 576 : (1998) 3 SCC 681 : (1998) 2 SCR 570 : (1998) AIRSCW 1379 : (1998) 3 Supreme 403 , the Hon''ble Supreme Court observed that generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in realty part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object

sought to be achieved, impugned conduct, the involvement of the element of public interest, the effect on parties who may be affected etc.

21. In the case of P.C. Agarwala Vs. Payment of Wages Inspector, M.P. and Others, AIR 2006 SC 3576 : (2005) 127 CompCas 787 : (2005) 6 CompLJ 227 : (2005) 107 FLR 826 : (2005) 8 JT 544 : (2005) 7 SCALE 519 : (2005) 8 SCC 104 : (2005) SCC(L&S) 1089 : (2005) 63 SCL 109 : (2005) 3 SCR 514 Supp : (2006) 1 SLJ 24 : (2006) AIRSCW 146 : (2005) 7 Supreme 23 the Hon''ble Supreme Court referred to Palmer's Company Law (supra) and Gower's Modern Company Law (Supra) and reiterated the view expressed in the case of TELCO. v. State of Bihar (supra).

22. It will, thus, be seen from the discussion above that the approach of the Court in cracking open the artificial corporate veil is rather cautious and circumspect. Only under extreme circumstances the Court pierces the corporate veil of a limited company or a corporation to prevent fraud, evasion of tax trading with the enemy, etc. In the facts of the present case it does not appear that the petitioner company was indulging in any such wrongful activity which warranted lifting of the company's corporate veil. The petitioner company and the respondent No. 5 firm are clearly separate legal entities and a claim raised on the respondent firm by the Commissioner of Commercial Taxes could not be met by the respondent bank by debiting the account of the petitioner company. Such an act, in my opinion, was blatantly wrongful and unsustainable in law.

23. Further, it is exclusively in the domain of the courts to decide whether or not to ignore the independent personality of a company. If banks and other public authorities are allowed to lift the corporate veil as per their own sweet whims and wishes, the same would create a chaotic situation and would have an extremely adverse impact on the commercial system. The bank has not been able to establish that the petitioner company has committed any such act which justified cracking open its corporate shell and debit the account of the petitioner company for discharging a liability of the respondent firm.

24. In view of the aforesaid, this application succeeds. There will be an order in terms of prayer (a) and (b) of the writ petition. The bank shall pay interest to the petitioner on the sum of Rs. 6,03,368.40/- at the rate of 12 per cent per annum from 16th January, 2004 till the date of crediting the petitioner's company account with the aforesaid amount.

25. WP No. 656 of 2006 is accordingly disposed of.