

(1978) 07 PAT CK 0013
In the Patna High Court
Case No : A.F.O.O. No. 153 of 1975

Hindustan Malleables and Forgings Ltd.	APPELLANT
Vs	
Indian Furnace Co. Ltd.	RESPONDENT

Date of Decision : 10-07-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Sales of Goods Act, 1930 — Section 19, 19(1), 19(2), 23, 23(1)

Citation : AIR 1979 Patna 146

Hon'ble Judges : S.K. Jha, J;B.P. Jha, J

Bench : Division Bench

Advocate : Shreenath Singh and Bishwanath Agrawal, for the Appellant; H.K. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Jha, J.—The plaintiff-company preferred an appeal under Order XLIII, Rule 1 (a) of the Civil P. C., against an order passed under Order VII, Rule 10 of the Civil P. C. returning a plaint to be presented to the proper Court. By virtue of an order dated 28th June, 1975, the Subordinate Judge I, Dhanbad, returned the plaint on the ground that the Dhanbad Civil Court had no territorial jurisdiction to try the suit of the plaintiff as no part of the cause of action arose within the district of Dhanbad. In the opinion of the Court below, the entire cause of action arose in Bombay.

2. The plaintiff-company filed a suit for recovery of Rs. 1,50,000 as damages on account of non-supply of the parts of furnace to the plaintiff. The plaintiff-company is a public limited company duly incorporated under the Companies Act, 1956, having its registered office at Jalan Nagar, P.O. Bhuli, district Dhanbad. The defendant-company is also a public limited company having its registered office in Lotus Cinema Building, 12-A, Annie Besant Road, Bombay. According to the plaint, the plaintiff was in need of an Induction Melting Furnace (model ZTS-20/500) for melting of special steel. M/s. A. L. Chopra of 6/3, Madan Street,

Calcutta had already issued an order on 19-2-71 upon the defendant-company for purchasing model ZTS-20/500 (Induction Melting Furnace) for melting special steel. The defendant-company made an acknowledgment (Exhibit 8) of the order placed by M/s. A. L. Chopra. By virtue of the agreement between M/s. A. L. Chopra and the defendant-company, the "Induction Melting Furnace" was to be delivered at Bombay and M/s. A. L. Chopra had to make payment by cheque at Bombay (see Exhibit A). Thereafter the plaintiff requested M/s. A. L. Chopra to transfer the order of the Induction Melting Furnace (model ZTS-20/500) in favour of the plaintiff-company. By virtue of Exhibit A/1, dated 3rd August, 1971, M/s. A. L. Chopra agreed that the Furnace ordered by M/s. A. L. Chopra be delivered to M/s. Hindustan Malleables and Forgings Ltd., Jalan Nagar, P.O. Bhuli, district Dhanbad. In Exhibit A/1, it was also mentioned that the plaintiff had agreed to take over the order on the same terms and conditions of the order as placed by M/s. A. L. Chopra. In view of Exhibit A/1, the defendant-company has agreed to send the Induction Melting Furnace (model ZTS-20/500) to the plaintiff-company.

3. On these facts, the Court below returned the plaint under Order VII, Rule 10 of the Civil P. C. and held that the Dhanbad Civil Court had no territorial jurisdiction to try the suit as no part of the cause of action arose in the district of Dhanbad.

4. Learned counsel for the appellant contends that the cause of action arose in Dhanbad for not supplying parts of the Furnace to the plaintiff at Dhanbad.

5. The short question for decision in this appeal is:

1. What is the meaning of cause of action?

2. Whether the cause of action arose in Dhanbad or not?

The expression "cause of action" has been defined by Brett, J., in *Cooke v. Gill* (1873) 8 CP 107 as follows:

" "Cause of action" has been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed, every fact which the defendant would have a right to traverse."

Lord Esher, M. R. has also defined the "cause of action" in *Read v. Brown* (1888) 22 QBD 128 as follows:

"Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

The Supreme Court in *The State of Madras Vs. C.P. Agencies and Another*, followed the decisions of Brett, J., in *In Re: D. Lakshminarayana Chettiar and Another*, a Full Bench of the Madras High Court held that "cause of action" means the bundle of essential facts which is necessary for the plaintiff to prove before he can succeed in the suit.

6. The next question for decision is: Where the cause of action arose? In the present case, it is conceded by counsel of the appellant that by virtue of the agreement between M/s. A. L. Chopra and the defendant-company each part of the cause of action arose at Bombay. It was also agreed between M/s. A. L. Chopra and the defendant-company that A. L. Chopra would take delivery of goods at Bombay and he would also make payment by cheque at Bombay (see Exhibit A). Exhibit A is a letter dated 24th July, 1971, written by the defendant-company to M/s. A. L. Chopra. In that letter, the Company suggested to M/s. A. L. Chopra to take delivery of the goods at Bombay and to make payment by cheque at Bombay. It is also conceded by the counsel of the appellant that the contract between M/s. A. L. Chopra and the defendant-company took place at Bombay. In this circumstance, the admitted position is that the contract between M/s. A. L. Chopra and the defendant-company took place at Bombay.

7. By virtue of Exhibit A/1, dated 3-8-71, M/s. A. L. Chopra transferred their order dated 19th Feb., 1971, in favour of the plaintiff-appellant with a request that the goods be transferred to the plaintiff-company at Dhanbad. In Exhibit A/1, it was also mentioned that the plaintiff had agreed to take over the order placed by M/s. A. L. Chopra on the same terms and conditions of the order placed by M/s. A. L. Chopra. If it is so, in my opinion, the plaintiff-company stepped into the shoes of M/s. A. L. Chopra. It is, therefore, clear that the whole cause of action between the plaintiff and the defendant-company arose at Bombay. In this view of the matter, it is the Civil Court at Bombay which has jurisdiction to try the present suit between the parties.

8. There is another aspect of the matter and that is this: By virtue of Exhibit 2, dated 4-8-71, the plaintiff-company requested the defendant-company to deliver the equipment at Dhanbad through road transport (see paragraph 5 of Exhibit 2). It is relevant to quote para 5 of Exhibit 2, which runs as follows:

"5. Since the delivery of the equipment will be made at Dhanbad, through road transport, the documents are to be negotiated through our bankers, United Commercial Bank, Dhanbad, for delivery against the payment of the balance value of the equipment, in terms of pro forma invoice referred to above."

It is, therefore, clear that the plaintiff-company requested the defendant-company to deliver the goods to a carrier at Bombay. It is also conceded by counsel for the appellant that while sending the Induction Melting Furnace (model ZTS-20/500) to Dhanbad, the Induction Melting Furnace was delivered to a carrier (truck) at Bombay which brought the goods to Dhanbad. If it is so, the goods delivered to a carrier (truck) at Bombay will be deemed to be a delivery of the goods to the plaintiff-company at Bombay. In this connection, Section 39(1) of the Sale of Goods Act, 1930 (Act 3 of 1930) was referred to, which runs as follows;

"39. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier,

whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer."

Relying on Section 39(1) of the Sale of Goods Act, I hold that the delivery of the goods to a carrier at Bombay will be deemed to be a delivery of the goods to the plaintiff at Bombay. In the present case, it is conceded by the counsel of the appellant that the plaintiff made payment of the goods at Bombay. If it is so, in my opinion the whole cause of action arose at Bombay and not at Dhanbad. No part of the cause of action arose at Dhanbad as goods were not delivered at Dhanbad in view of Section 39(1) of the Sale of Goods Act. This view is also being supported by Section 23(2) of the Sale of Goods Act,

9. Learned counsel for the appellant contends, relying upon Exhibit 2 (b), that the defendant-company agreed to supply the balance of materials to the plaintiff at Dhanbad. It is on the basis of this letter that learned counsel for the appellant contends that the defendant-company agreed to supply the parts of the Furnace at Dhanbad. It is for this reason, learned counsel for the appellant contends, the cause of action arose at Dhanbad. In this connection, he also relies on Exhibit 5, dated 30-7-71. This is a letter written by the defendant-company. In this letter the defendant-company stated as follows:

"Please receive the undermentioned goods and return the original of this note duly receipted."

It is on the basis of this letter that learned counsel for the appellant contends that the goods delivered by the defendant-company shall be received at Dhanbad and, therefore, the cause of action arose at Dhanbad for not supplying the parts of the Furnace. It is conceded by the counsel of the appellant that the Induction Melting Furnace (model ZTS-20/500) was delivered to a carrier at Bombay at the request of the plaintiff-company (see para 8 of Exhibit 2 quoted at para 8 of this judgment). The balance part of the Furnace could not be delivered by the defendant-company and this suit has been filed by the plaintiff for delivery of the balance part of the Furnace. According to the request of the plaintiff in Exhibit 2, the defendant shall deliver the goods to a carrier at Bombay. If it is so, the delivery of the goods to the carrier at Bombay shall be deemed to be a delivery of the goods to the plaintiff at Bombay. If Exhibit 2 (b) is read along with Exhibit 2, the irresistible conclusion is that the balance parts of the Furnace shall be delivered to a carrier at Bombay and as such the cause of action shall arise at Bombay and not at Dhanbad. In view of the interpretation of Section 39(1) of the Sale of Goods Act, I am unable to accept the contention of learned counsel for the appellant. Section 39(1) clearly provides that if goods are delivered to a carrier for the purpose of transmission to the buyer, then, prima facie, the delivery of the goods shall be deemed to be made to the buyer.

In this view of the matter, I hold that the plaintiff-company stepped into the shoes of M/s. A. L. Chopra. The original contract entered into by M/s. A. L.

Chopra was, admittedly, at Bombay. M/s. A. L. Chopra was required to take delivery of the goods at Bombay and to make payment by cheque at Bombay. Over and above, the plaintiff-company also agreed, as is clear from Exhibit A, to place themselves in the same position as if they were in the position of M/s. A. L. Chopra. If it is so, in my opinion the contract was made at Bombay. In view of the fact that goods were delivered to a carrier at Bombay for sending the same to Dhanbad, it will be concluded that the goods were delivered to the plaintiff-company at Bombay. The plaintiff made the payment of goods at Bombay. In these circumstances, I hold that no part of the cause of action arose at Dhanbad and as such the Dhanbad Civil Court had no jurisdiction to try the suit.

10. Learned counsel for the appellant, relying on Exhibit 1 (a), contended that a fresh agreement took place between the plaintiff-company and the defendant-company. Exhibit 1 (a) is an invoice dated 25-8-71 issued by the defendant-company. In this invoice, it was mentioned about the order placed by the plaintiff-company upon defendant-company for purchase of the Induction Melting Furnace. In this connection, Exhibit 1 was also referred to. Exhibit 1 is an invoice dated 31-7-71 issued by the defendant-company. In this invoice the description of the order is dated 19th February 1971, i.e., Chopra's order. On a perusal of Exhibit 1, it is clear that the defendant-company treated the plaintiff in place of M/s. A. L. Chopra. If Exhibit 1 is read along with Exhibit 1 (a), it is clear that the plaintiff-company was put in place of M/s. A. L. Chopra and no fresh agreement took place between the defendant-company and the plaintiff. There is no document on the record to suggest that a fresh contract was entered into between the plaintiff and the defendant-company. In view of the letter written by M/s. A. L. Chopra to the defendant-company, dated 3-8-71 (Exhibit A/1), it is clear that the plaintiff had agreed to place itself in the same position in which M/s. A. L. Chopra was. On a perusal of Exhibit 1, dated 3-8-71, it is clear that the plaintiff-company shall be bound by the same terms and conditions of the order placed by M/s. A. L. Chopra. On the basis of these documents, I hold that the plaintiff-company stepped into the shoes of M/s. A. L. Chopra and no fresh agreement took place between the plaintiff and the defendant-company. If it is so, the earlier contract entered into between M/s. A. L. Chopra and the defendant-company was made at Bombay. M/s. A. L. Chopra had agreed to take delivery of the goods at Bombay and to make payment at Bombay. The plaintiff also made payment at Bombay and took delivery of goods at Bombay by virtue of Section 39(1) of the Sale of Goods Act. Hence, I hold that the whole cause of action arose at Bombay and no part of the cause of action arose at Dhanbad. The Court below was justified in returning the plaint to the plaintiff.

11. The point of law raised in this appeal be summarised thus:

Cause of action means an action for which the defendant is answerable to the Court. In the present case the defendant is answerable in respect of cause of action which arose at Bombay and not at Dhanbad. It is settled law that a suit can be filed at a place where a part of the cause of action arises. In the present

case the whole cause of action arose at Bombay and no part of the cause of action arose at Dhanbad.

In view of Section 39(1) of the Sale of Goods Act, 1930 (Act 3 of 1930), it is clear that where in pursuance of a contract of sale, if goods are delivered to a carrier, it will be deemed in law to be a delivery of the goods to the buyer. In the present case, goods were delivered to a carrier at Bombay and as such by virtue of Section 39(1) of the Sale of Goods Act, the delivery will be deemed to be made to the buyer (plaintiff) at Bombay. In the present case, the plaintiff made payment at Bombay and the goods were taken delivery at Bombay and as such the whole cause of action arose at Bombay and not at Dhanbad.

12. In the result, the appeal is dismissed. Parties will bear their own costs.

S.K. Jha, J.

13. With respect, I agree that the appeal be dismissed but without costs. I, however, feel obliged to give reasons of my own.

14. I proceed upon the assumption, for which there may be some justification, that there was a fresh contract between the plaintiff-appellant and the defendant-respondent through a series of correspondence after the contractual obligations between M/s. A. L. Chopra and the defendant-company inter se came to an end. It is well settled that in suits arising out of contract the cause of action arises at any of the following places: (1) the place where the contract was made; (2) the place where the contract was to be performed or performance thereof completed; (3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable. A suit on a contract for sale of goods may be filed at the place where goods are - deliverable or the price payable. The crux of the matter in the present appeal, therefore, is as to whether the goods in question were to be deliverable or the price thereof was payable at Dhanbad. So far as the price payable is concerned, there is no controversy that there was an express stipulation between the parties that the price was to be payable and was actually paid by the plaintiff-vendee to the defendant-vendor at Bombay. The only question that remains to be considered is as to whether the goods were deliverable at Bombay or at Dhanbad. I am in respectful agreement with my learned brother that the goods which are the subject-matter of the breach of contract were to be delivered at Bombay. This, I say for the following reasons.

15. Section 19(1) of the Sale of Goods Act, 1930, lays down when the property passes or should be deemed to be intended to pass. In the present case, one thing which is quite clear to me is that there is no express stipulation between the parties which can compel me to hold that the goods were to be delivered at Dhanbad. In such cases, as enjoined in Section 19(2) of the Act, the intention of the parties shall have to be ascertained with reference to the conduct of the parties and the circumstances of the case. Section 23(1) of the Act lays down that where there is a contract for the sale of goods in a deliverable state and

such goods are appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer; and Section 23(2) lays down that where the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. Learned counsel for the appellant pointed out to us the provision of Section 19(3) which lays down that unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. He, therefore, argued that if on the basis of the correspondence referred to by him it could be called that there was an express or implied stipulation between the parties that the goods were to be delivered at Dhanbad, then the provisions of Section 23(1) would be ruled out, on account of the statutory injunction incorporated in Section 19(3).

I have already observed earlier that there is no such document which can lead to a reasonable inference that the goods in question were to be delivered at Dhanbad and not to a public carrier at Bombay. In the instant case, as a matter of fact, the major components of the furnace to be supplied were actually delivered to the common carrier at Bombay as desired by the plaintiff-appellant. Therefore, the exception laid down in Section 19(3) cannot be pressed into service.

16. There is yet another aspect of the matter to which my learned brother has also made reference; but in order to complete the sequence, I think it worthwhile, even at the cost of repetition, to refer to the provision of Section 39(1). Section 39(1) clearly says that where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer. It will be seen that Sub-section (2) of Section 23 gives statutory recognition to the rule that where goods are delivered to a carrier for transmission to the buyer, the carrier is presumed to be the buyer's agent. If goods are ordered by a person to be delivered through a common carrier to the person by whom they have been ordered, then the moment the goods are delivered to the carrier, the carrier becomes the agent of the vendee and such delivery means delivery to the vendee. If there is a binding contract between the vendor and the vendee, then there is no doubt that the property passes by such delivery to the carrier. Although Section 39(1) creates a fiction for the purpose of Sub-section (2) of Section 39 to fix on whom the loss is to fall, it merely reinforces the legal principle incorporated in Section 23(2). Learned counsel argued, and rightly so, that the rule incorporated in Section 39(1) is merely a prima facie rule and may be modified by an express contract, but as has been noticed in the instant case, there is no express contract between the plaintiff and the defendant requiring the

defendant to deliver the goods in question to the plaintiff at Dhanbad. What the parties had agreed upon was, and that at the instance of the plaintiff appellant, that the goods were to be sent to the plaintiff through a public carrier at the cost of the plaintiff and at the risk of the vendee-plaintiff. In order to obviate that risk, the agent of the plaintiff, viz., Shri S. K. Jain, was sent to Bombay who, after inspection of the component parts which were being despatched to the plaintiff, did actually get the goods insured and paid the premium on behalf of the plaintiff to the insurance company.

17. These being the salient principles of law, the conduct of the parties in the instant case can be summed up like this. The price was to be paid and was actually paid by the plaintiff at Bombay. Goods were to be sent to the plaintiff through a common carrier. The transport cost was paid by the plaintiff at Bombay, Packing charges were paid by the plaintiff at Bombay. Goods were insured by the insurance company at the instance of the plaintiff and premium was paid by the plaintiff to the insurance company at Bombay. The Furnace was delivered (but some components thereof, which are the subject-matter of the suit, were said to have been not despatched at all) to the public carrier for delivery to the plaintiff. The carrier in such a case must be presumed to be a bailee for the plaintiff. This being the conduct of the parties, there can be no doubt that the intention of the parties was that the goods in question were to be delivered to the plaintiff through a common carrier acting as a bailee on behalf of the plaintiff at Bombay. No part of the cause of action, therefore, can be said to arise within the territorial jurisdiction of the Courts at Dhanbad. The Dhanbad Court has thus rightly held that it had no territorial jurisdiction.