
(2010) 11 DEL CK 0296

In the Delhi High Court

Case No : Criminal Rev. P. 595 of 2009

Indian Renewable Energy Development Agency Ltd.

APPELLANT

Vs

Sri Sai Bio Fuels Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2010) 11 DEL CK 0296

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Dharmender Arya and Daya Nand Arya, for the Appellant; G. Tushar Rao, Atanu Mukherjee for Respondents No. 1 to 3 and M.N. Dudeja, APP for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—the present petition is filed by the Petitioner praying inter alia for setting aside the order dated 20.07.2009 passed by the learned Metropolitan Magistrate, directing the Petitioner to file the complaint before the appropriate forum on the ground that the same was not maintainable before the Court for want of territorial jurisdiction.

2. Briefly stated, the facts of the case as culled out from the complaint and the documents annexed there with are that the Petitioner/complainant is a Government company having its registered head office at Delhi and is engaged in the business of lending financial assistance for development of renewable energy and energy resources. the respondents/accused entered into a Loan Agreement dated 12.10.2001 with the Petitioner/complainant at Delhi, copy of which was filed alongwith the complaint. In Article VII of the Loan Agreement, which dealt with the effective date of agreement/place of disbursement of loan given by the Petitioner and repayment by the respondents, the following clause was stipulated:

(ii) the loan will be advanced by IREDA to the Borrower and repaid by the

Borrower to IREDA at New Delhi and Civil Courts/Tribunals in Delhi/New Delhi alone shall have jurisdiction to entertain any suit or other legal proceedings arising out of this Agreement

3. the Petitioner/complainant averred in the complaint that pursuant to the aforesaid Loan Agreement being executed between the parties at Delhi, a loan was advanced to the respondents/accused for setting up of a project at Vijayanagaram District, Andhra Pradesh. the Petitioner/complainant sanctioned and disbursed a loan of `27.73 lacs to the respondents/accused company. It is averred in the complaint that in order to discharge its liability, the respondents/accused issued several cheques in favour of the Petitioner/complainant, one of which being the cheque, subject matter of the complaint bearing No. 714018 dated 30.09.2008, amounting to `87,000/- drawn on State Bank of India, Poosapatirega Branch, Andhra Pradesh. the Petitioner/complainant presented the said cheque with its banker, i.e., Union Bank of India having its branch at Khan Market, Lodhi Colony, New Delhi. However, the said cheque was returned unpaid by the banker of the Petitioner/complainant, with a memo dated 29.10.2008 bearing an endorsement of "insufficient funds". thereafter, the Petitioner/complainant sent a legal notice dated 03.12.2008 to Respondent No. 1 and other accused persons from Delhi by Regd. Post. As the notices sent through Regd. Post were not returned, it was presumed that the respondents/accused were duly served. It is averred in the complaint that despite service, the respondent/accused did not make good the payment within the stipulated period of 15 days, as a result of which, the Petitioner/complainant filed the aforesaid complaint before the learned Metropolitan Magistrate, Dwarka Courts in December, 2008.

4. Counsel for the Petitioner/complainant submits that the complaint was erroneously returned by the learned Metropolitan Magistrate, vide order dated 20.7.2009, for want of territorial jurisdiction, which is contrary to the judgment of the Supreme Court in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, . He submits that in the present case, a perusal of the complaint and the documents annexed with the complaint itself, indicate that the following acts were done in Delhi, on account of which, it could certainly be stated that a part of the cause of action arose in Delhi:

- (i) That the registered head office of the Petitioner/complainant is at New Delhi;
- (ii) That the Loan Agreement dated 12.10.2001 was executed between the parties at Delhi;
- (iii) That it was agreed by the respondents/accused that the loan would be repaid to the Petitioner/complainant at New Delhi and that the Courts at Delhi would have the jurisdiction to entertain any suit or other legal proceedings arising from the Agreement;
- (iv) That the Petitioner/complainant presented the cheque for encashment to its banker situated in Delhi;

(v) That the cheque upon being dishonoured, when presented to bankers of Respondents/accused was returned to the Petitioner/complainant through its banker at Delhi and;

(vi) That the legal notice was dispatched by the Petitioner/complainant to the respondent/accused from Delhi.

5. Counsel for the Petitioner/complainant submits that while passing the impugned order, the learned Metropolitan Magistrate wrongly relied upon the judgment of the Supreme Court in the case of Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., . He states that the aforesaid judgment was not applicable to the facts of the present case. It is further stated that the learned Metropolitan Magistrate erroneously relied on the judgment of the Supreme Court in the case of Shri Ishar Alloy Steels Ltd. v. Jayaswals NECO Ltd. reported as AIR 2001 SC 1161, to oust the Petitioner on grounds of lack of territorial jurisdiction.

6. On the other hand, counsel for the respondents/accused submits that the issue of presentation of the cheque with the bank, which was considered as one of the five essential ingredients for completing an offence u/s 138 of the Negotiable Instruments Act, was duly considered and dealt with by the Supreme Court in the case of Shri Ishar Alloy Steels Ltd. (Supra) and the conclusion arrived at was that the relevant consideration was the locality where the bank of the accused was situated which had dishonoured the cheque on presentation. He states that the aforesaid judgment has been followed by two Co-ordinate Benches of this Court in the case of Surjeet Singh Vs. G.E. Capital Transport Financial Services and Another, and Mahika Enterprises and Another Vs. State (NCT of Delhi) and Another, .

7. It may be stated at the outset that the aforesaid issue came up for consideration before this Court in the case of Religare Finvest Limited Vs. State and Another, . In the aforesaid judgment, this Court dealt with identical submissions made by the counsel for the respondent therein and held as below:

15. As regards the submission of the counsel for the respondent that territorial jurisdiction vests in a Court in whose jurisdiction, the major portion of the cause of action arises, i.e., the locality where the bank of the accused which has dishonoured the cheque is situated, the Supreme Court has clarified in the case of K. Bhaskaran (supra), that the locality where the bank of the accused, which has dishonoured the cheque, is situated cannot be regarded as the sole criteria to determine the place of offence and that a place, for the purpose of invoking the provisions of Section 138 of the Act, would depend on a variety of facts. Pertinently, the term used by the Supreme Court in the aforesaid case for completing the offence u/s 138 of the Act is "acts" and not "cause of action". the said position emerges clearly from a bare reading of paras 11, 14 and 16 of the aforesaid judgment reproduced hereinabove. therefore, this Court is not inclined to agree with the submission of the counsel for the respondent that the major

portion of the cause of action in the present case arose only after the cheque issued by the respondent/accused was forwarded by the banker of the Petitioner/complainant to the banker of the accused, and where, on presentation, the cheque was dishonoured, which in the present case, is situated not in Delhi, but in Pune.

16. It is clear from the provision itself that an offence u/s 138 would not be completed with the dishonour of the cheque . Rather, it attains completion only with the failure of the drawer to pay the cheque amount within the expiry of the fifteen days after the legal notice is served upon the drawer of the cheque/s whose cheque/s have been dishonoured. As noted above, the offence u/s 138 of the Act can be completed only with the concatenation of a number of acts, the acts being, drawing of the cheque, presentation of the cheque with the bank, returning of the cheque unpaid by the drawee bank, giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, and failure of the drawer to make payment within 15 days of the receipt of the notice. It is not essential that all the acts should be committed at the same locality. It is quite possible that all the five acts are perpetrated in five different localities. In such a situation, any one of the courts exercising jurisdiction in one of the five localities can become the place of trial for the offence u/s 138 of the Act. At the stage of entertaining a complaint u/s 138 of the Act, the Court is only required to arrive at a prima facie opinion as to the territorial jurisdiction, on the basis of the averments made therein, without launching into a fact finding mission as to their correctness or otherwise.

17. Hence, the contention of the counsel for the respondent that non-payment of cheque amount u/s 142(b) of the Act alone can give rise to a cause of action for an offence u/s 138 of the Act and it is the "cause of action", which has to be seen and not " the act", is found to be untenable and turned down. the five acts mentioned in the aforesaid judicial dicta were clearly spelt out and the Supreme Court further clarified that each of those five acts could be done in five different localities. This would naturally mean that the act of presenting of the cheque by the complainant where he is situated, could be in a different city from where the accused and his banker is situated.

18. the argument of the counsel for the respondent that in the case of Shri Ishar Alloy Steels Ltd. (supra), the Supreme Court had clarified that the words, "a bank" and " the bank" in Section 138 of the Act are an indication of the intention of the legislature and that since both "a bank" and " the bank" deal with the banker of the accused, the aspect of territorial jurisdiction has to be examined in the said context, must be considered in the light of the issue before the said Court. In the aforesaid case, the issue, which engaged the Supreme Court was set out in para 2 of the judgment, which reads as below:

2.(a) What is meant by, " the bank" as mentioned in Clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881?

(b) Does such bank mean the bank of the drawer of the cheque or covers within its ambit any bank including the collecting bank of the payee of the cheque?

(c) To which bank the cheque is to be presented for the purposes of attracting the penal provisions of Section 138 of the Act?

19. It is therefore quite apparent that the aforesaid judgment did not deal with the issue of territorial jurisdiction at all. Rather, the focus was on the meaning of term, " the bank", as mentioned in Clause (a) of the proviso to Section 138 of the Act and whether such a bank would take within its fold any bank, including the collecting bank of the payee of the cheque, for the purposes of examining the validity of the cheque under the Act. It is settled law that a decision is not an authority for a proposition which did not fall for its consideration. Hence, the aforesaid judgment cannot be said to have a bearing on the issue of territorial jurisdiction to entertain a complaint by a particular court.

20. In the case of Harman Electronics (supra), the Supreme Court particularly noted in paras 12 and 13 of the judgment that the complaint/petition did not show that the cheques were presented at Delhi and Rather, the petition was completely silent on that aspect. Having regard to the facts and circumstances of the aforesaid case, where it was observed that the parties had been carrying on business at Chandigarh, the transactions took place at Chandigarh, the cheques were issued and presented at Chandigarh, the Supreme Court had observed that it had no option but to presume that the cheques were also presented at Chandigarh and dishonour of the cheques took place at Chandigarh and hence, mere sending of notice from Delhi it self would not give rise to a cause of action for taking cognizance under the Act. In the present case, mere issuance of a legal notice by the Petitioner/complainant from Delhi alone is not the sole basis for filing the complaint in the territorial jurisdiction of Delhi. As noted in para (3) above, there were certain other acts, which were done within the territorial jurisdiction of Delhi, for invoking Delhi jurisdiction.

21. Apart from the aforesaid judgments, counsel for the respondent relies on the decisions of two Single Benches of this Court in the cases of ICICI Bank Ltd. (supra) and Achintya Mandal (supra) to urge that the learned Metropolitan Magistrate had rightly returned the complaint to the Petitioner for want of territorial jurisdiction. A perusal of the aforesaid judgments shows that reliance was placed on the judgment in the case of Harman Electronics (supra) to hold that the Magistrate was right in returning the complaint petitions. But the fact position of both the cases are entirely different and distinguishable from the instant case. In the case of Achintya Mandal (supra), the learned Single Judge observed that the only single fact of the statutory notice being dispatched from Delhi formed the basis of filing the complaint in Delhi and that alone could not vest territorial jurisdiction on Courts in Delhi. In the case of ICICI Bank Ltd. (supra), it was observed that the respondents were residing outside the territorial jurisdiction of the trial court and the bank of the respondent was beyond the territorial jurisdiction of the trial court. However, there is no mention

in the said judgment as to the location, where the other acts mentioned in the case of K. Bhaskaran (supra) were done. In this view of the matter, neither of the two judgments can be stated to be applicable to the facts of the instant case.

8. After making the aforesaid observations, the Court upheld the right of the Petitioner therein to file a complaint in a Court having jurisdiction in the context of five acts mentioned in the case of K. Bhaskaran (supra), which are as below:

- (i) Drawing of the cheque,
- (ii) Presentation of the cheque with the bank,
- (iii) Returning of the cheque unpaid by the drawee bank,
- (iv) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, and
- (v) Failure of the drawer to make payment within 15 days of the receipt of the notice.

9. It was observed by the Supreme Court in the case of K. Bhaskaran (supra), that the locality where the bank of the accused, which has dishonoured the cheque, is situated cannot be regarded as the sole criterion to determine the place of offence and that a place, for the purpose of invoking the provisions of Section 138 of the Act, would depend on several other acts.

10. the judgments cited by the counsel for the respondent in Surjeet Singh(supra) and Mahika(supra) would also not be applicable to the facts of the present case. In Surjeet Singh (supra), only the act of issuance of notice was in Delhi, all other acts as contemplated in K. Bhaskaran(supra) took place in Raipur, including the act of presentation of cheque at the drawer's bank which was in Raipur. the other case cited in Mahika(supra) had similar facts where only the acts of presentation of cheque by payee for collection and issuance of notice took place in Delhi. It was therefore held that merely the aforesaid two acts would not be sufficient to confer jurisdiction on courts in Delhi. In both the se cases, only the issuance of notice took place in Delhi. But in the present case, issuance of the notice in writing to the respondents demanding payment of the cheque amount is just one of the acts that have occurred within the territorial jurisdiction of Delhi, and there are other acts as well that have occurred within territorial jurisdiction of Delhi, as mentioned hereinabove.

11. the argument advanced by the counsel for the respondent holds no weight in light of the law laid down in K. Bhaskaran(supra) by the Supreme Court and followed by this Court in the case of Religare(supra). Merely the act of dishonourment of cheque by the drawer's bank would not be sufficient to confer jurisdiction to the courts in Vijayanagaram, Andhra Pradesh. Rather, all the other acts which took place in Delhi, as mentioned hereinabove, would be relevant for deciding as to whether it can prima facie be held that the courts in Delhi are vested with territorial jurisdiction.

12. In the facts and circumstances of the present case, this Court is prima facie of the opinion that a substantial part of the cause of action for filing a complaint by the Petitioner/complainant against the respondents/accused u/s 138 of the Negotiable Instruments Act appears to have arisen within the jurisdiction of the Courts in Delhi. It is however clarified that if after taking cognizance, the respondent/accused is able to place such material facts on the record which demonstrate that the Courts in Delhi do not have the territorial jurisdiction to entertain the complaint, the learned Metropolitan Magistrate shall be at liberty to ascertain the truth of the allegations made by the Petitioner/complainant and proceed to dismiss the complaint, if not satisfied.

13. the present petition is, therefore, allowed. the impugned order dated 20.07.2009 is set aside. the matter is remanded back to the trial court with directions to proceed further and deal with the complaint of the Petitioner in accordance with law. the Petitioner shall appear before the learned Metropolitan Magistrate on 06.12.2010 at 2 PM, whereafter a date shall be fixed for further proceedings in the matter.

14. A copy of this order shall be forwarded forthwith by the registry to the trial court for information.