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(1998) 02 DEL CK 0054

In the Delhi High Court

Case No : I.A. 9217/94, 10032-A/95 and 4501 and 6476/96 and Suit No. 2299 of 1994

Jaspal Singh Sahni APPELLANT

Vs

Kuwait International Finance Co. S.A.K. RESPONDENT

Date of Decision : 01-02-1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (1998) 71 DLT 740 : (1998) 44 DRJ 650

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Parag Chawla, for the Appellant; A.M. Singhvi Sanjeev Saraswat, H.S. Parihar and K.S. Parihar, for the Respondent

Final Decision : Disposed Off

Judgement

J.B. Goel, J.—The plaintiff, a Non-Resident Indian is carrying on business at Kuwait. He availed loan from defendant No. 1 in Kuwait against his personal guarantee for financing his business. He had a fixed deposit as "Foreign Currency Non-resident Account" with defendant No. 2 at Bombay and had created a lien on that deposit as security for the loans granted by defendant No. 1 to him. Defendant No. 1 enforcing the lien made demand on defendant No. 2 for the payment of amount for which lien was created. In the present case the plaintiff has sought a declaration that the lien created by the plaintiff in favor of defendant No. 1 is illegal being in violation of Rule 29. IA.14 of the Exchange Control Manual issued by the Reserve Bank of India under the Foreign Exchange Regulation Act and the Banking Regulation Act and thus is null and void u/s 23 of the Contract Act and consequent relief of permanent injunction restraining the defendant Nos. 1 and 2 from enforcing that lien is claimed. Though in the plaint, initially Reserve Bank of India is not imp leaded as a party however, after the institution of the suit amended memo of parties has been filed impleading that Bank having New Delhi Branch as defendant No. 3. Though, it is admitted in the plaint that defendant No. 1 has gone into liquidation, but the defendant No. 1 has not been sued through the Liquidator, if any, appointed. However, the Official Liquidator of defendant No. 1 acting for and on its behalf has filed the application being LA. No. 10032-A/95) taking the preliminary objection that this Court has no territorial jurisdiction as neither defendant No. 1 is carrying on any business nor any cause of action has arisen at Delhi. Defendant No. 2 also has its office at Bombay where the lien was created. Defendant No. 3 has filed application (LA. 4501/96 for being deleted as a defendant).

2. I have heard learned Counsel for the parties.

Learned Counsel for the defendant No. 1 has contended that this Court will have jurisdiction if the conditions u/s 20 of the CPC (hereinafter called ''the Code'') are fulfilled and as none of those conditions mentioned therein is fulfilled the present suit filed at Delhi is total in misuse of the process of law and this Court has no territorial jurisdiction. He has relied on Bakhtawar Singh Bal Kishan Vs. Union of India (UOI) and Ors, Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, and Board of Trustees for the Port of Calcutta and another Vs. Bombay Flour Mills Pvt. Ltd. and another, . Whereas learned Counsel for the plaintiff has contended that defendant No. 1 has no activity or business in India, though lien was created at Bombay and Bombay Court will also have jurisdiction but part of the cause of action arose here as the lien in question is in violation of Foreign Exchange Regulation Act and the directives issued by Reserve Bank of India and as Reserve Bank of India has its office at Delhi, who has been imp leaded as defendant No. 3, this Court also has jurisdiction.

3. In a separate Application No. 4501/196, learned Counsel for the Reserve Bank of India (defendant No. 3) has contended that defendant No. 3 is neither necessary nor a proper party and has been improperly imp leaded as a party.

4. It is not disputed that this Court will have jurisdiction if any, of the conditions mentioned in Section 20 of the Code is fulfilled .That section reads as under:

20. Others suits to be instituted where defendants reside or cause of action arises Subject to the Limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

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Explanation-A Corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

A Court gets jurisdiction u/s 20 if: (i) the defendant or all the defendants, if more than one, resides of carries on business or personally works for gain within the local limits of its jurisdiction; or (ii) the cause of action arises wholly or in part, within such local limits.

5. It follows that where the defendants neither reside nor carry on business nor any part of the cause of action arises within the limits of the jurisdiction of the Court such Court has no territorial jurisdiction to try the suit. The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another, and where Clauses (a) and (b) of Section 20 are not applicable only that Court will be competent where cause of action wholly or in part arises Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, Bakhtawar Singh Bal Kishan Vs. Union of India (UOI) and Ors, and Board of Trustees for the Port of Calcutta and another Vs. Bombay Flour Mills Pvt. Ltd. and another,

6. Under the Explanation to Section 20, a Corporation is deemed to carry on business at its sole or principal office in India, or in respect of a cause of action arising at any place where it has also a subordinate office at such place. A Corporation cannot be sued at a place where it has a subordinate office except in respect of a cause of action arising at such subordinate office. Conversely if no part of cause of action accrues at the place of the branch office, the mere fact of the Corporation having a branch office will not give the Court of that place jurisdiction to entertain a suit.

7. So far as Reserve Bank of India, (defendant No. 3) is concerned, admittedly its Central Office is situated at Bombay and only a Branch Office exists at New Delhi. No cause of action arises nor is alleged against it. No relief is claimed against it nor its presence is required for determining the controversy involved. plaintiff wants to have recourse to the directives/orders issued by it under the Foreign Exchange Regulation Act and the Banking Regulations Act which are also not claimed to have been issued from Delhi Office, and must have been issued by its Central Office at Bombay, to challenge the lien created on his Foreign Exchange Non-Resident Account/FDR in defendant No. 2-bank. On the basis it cannot be said that any cause of action to sue has arisen against the Reserve Bank of India. It is neither a necessary nor a proper party for determining the controversy involved. It has been improperly imp leaded apparently to create/ claim territorial jurisdiction in this Court. This action on the part of the plaintiff is nothing but a misuse of the process of law.

LA. No. 4501/96:

This application of defendant No. 3, Reserve Bank of India under Order 1, Rule 20 of the Code is accordingly allowed with costs. Name of defendant No. 3 be deleted from the array of defendants. Costs Rs. 3,000/-.

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LA. 10032-A/95:

By this application apparently under Order 7, Rule 11 of the Code the defendant has challenged the territorial jurisdiction of this Court. The account of the plaintiff on which lien was created is with defendant No 2-bank at Bombay. Lien was created at Bombay. In the suit validity/legality of that lien is challenged. The cause of action wholly or in part for that purpose against defendant Nos. 1 and/ or 2 has not arisen at Delhi. Defendant No. 1 is not carrying an any business in Delhi or even in India. The cause of action, if any, would have arisen at Bombay where the lien was created and defendant No. 2 also carry on its business there. This Court thus, has no territorial jurisdiction to entertain and try this suit against defendant Nos. 1 and 2 as well. This application is accordingly allowed with costs. Costs Rs. 3,000/-.

Suit No. 2299/94:

In view of the above discussion, this Court has no territorial jurisdiction to entertain the suit. The plaint be accordingly returned to the plaintiff for being presented to the Court of competent jurisdiction on 27th February, 1998 subject to the condition that the plaintiff shall pay the aforesaid costs either to the defendants 1. and 3 or deposit the same in this Court before the plaint is returned.

IA. No. 9217/94:

As this Court has no jurisdiction, this application is dismissed. Interim injunction granted on 21.10.94 is vacated.

I A. No. 6476/96:

Dismissed as infructuous. I.A. Nos. 4501/96 and 10032-A/95 allowed. LA. Nos. 9217/94 and 6476/96 dismissed.

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