

(1953) 05 PAT CK 0014
In the Patna High Court
Case No : Civil Revision No. 679 of 1951

Kodo Minerals Steatite Mine and Mill-Owners and Another	APPELLANT
Vs	
Rohtas Industries Ltd.	RESPONDENT

Date of Decision : 15-05-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : AIR 1954 Patna 147 : (1953) 1 BLJR 444

Hon'ble Judges : Narayan, J;Ahmad, J

Bench : Division Bench

Advocate : Ramanand Sinha, for the Appellant; Mahabir Prasad, R.P. Katriar and S.P. Jamuar, for the Respondent

Final Decision : Dismissed

Judgement

Narayan, J.—This application is directed against an order of Mr. M. A. Rahman, 1st Additional Subordinate Judge of Sasaram, by which he held that the Sasaram Court had the jurisdiction to try Title Suit No. 7 of 1951 which is a suit for the recovery of Rs. 18,000/- on account of an alleged breach of contract. The plaintiffs, Rohtas Industries Limited, are a Company incorporated under the Indian Companies Act, and they have got their head-office at Dalmianagav. The defendants have been described as Kodo Minerals Steatite Mine and Mill-owners, and they carry on their business in the Madhya Pradesh with their head-office at Katni. The plaintiffs placed order with the defendants for supply and delivery at Dalmianagar of 20 tons of soap-stone bricks and certain conditions were laid down with regard to the sale and the purchase.

The case put forward by the plaintiffs was that they had advanced Rs. 5000/- and that the agreement was that the goods would be inspected by an expert of the plaintiffs before being loaded into the wagon. The plaintiffs' engineer went to Katni Rupaund for the inspection of the soap-stone bricks which were ready for despatch at the Rupaund station on 1-3-1949, and the expert found the bricks mostly damaged and declared them unfit for use. When these facts were brought

to the notice of the defendants they promised to replace the defective bricks, but in spite of the assurance given the goods were not changed and were insecurely loaded in the wagon. There was no fresh inspection of the goods that were loaded into the wagon at Rupaund station, and when the goods reached Dalmianagar they were found to be worthless. The plaintiffs have alleged that besides the advance of Rs. 5000/- they have paid another sum of Rs. 3000/- to the defendants. The claim is for the recovery of Rs. 10,000/- as compensation and Rs. 8000/- which represents the amount of advance paid to the defendants in two instalments. (2) The defendants filed a written-statement contesting the claim on various pleas, and they also put forward the plea that the Sasaram Court had no jurisdiction to try the suit as no part of the cause of action had arisen within the jurisdiction of the Sasaram Court. The issue regarding jurisdiction was tried by the learned Subordinate Judge as a preliminary issue, and he came to the conclusion that the Court at Sasaram had the territorial jurisdiction to try the suit.

3. In my opinion, the conclusion arrived at by the learned Subordinate Judge is correct. According to Section 20, Civil P. C., a suit can be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. As was pointed out by a Bench of this Court in -- *Arthur Butler and Co., Ltd. Vs. District Board of Gaya*, though, explanation III to section 20 which existed in the old Code has now been deleted, the tests which had been mentioned in that Explanation are still good tests. Explanation III was as follows : "In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely:

- (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." According to Section 20(c) as it stands now, suits may be instituted where the cause of action arises, wholly or in part, and the term "cause of action" is to be construed with reference rather to the substance than to the form of action. Cause of action is a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

The Judicial Committee in -- *AIR 1949 78 (Privy Council)* explained what "cause of action" means, & the following quotation from their Lordships' judgment would I think, be useful in this present litigation : "The cause of action means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment. *Read v. Brown*" (1889) 22 QBD 128 (C). If the evidence to support the two claims is different, then the causes of action are

also different in -- "Brunsden v. Humphrey" (1885) 14 QBD 141 (D). The causes of action in the two suits may be considered to be the same if in substance they are identical. "(1885) 14 QBD 141 (D)". The cause of action has no relation whatever to the defence that may be set up by the defendant, nor does it depend on the character of the relief prayed for by the plaintiff. It refers "to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour". "Mt. Chand Kour v. Par-tab Singh" 15 I.A. 156 (E). This observation was made by Lord Watson in a case u/s 43 of the Act of 1882 (corresponding to Order 2, Rule 2), where plaintiff made various claims in the same suit."

It cannot be doubted that in a suit for damages for breach of contract the cause of action consists in the making of the contract and of its breach, and consequently such a suit may be filed at the place where the contract was made or at the place where it should have been performed but for the breach which had occurred. In this case one of the agreements was that the goods would be inspected and accepted by the expert deputed by the plaintiffs before being loaded into the wagon, and the case which the plaintiffs are seeking to make out is that when an inspection was made at Rupaund station the expert deputed by the plaintiffs found the soap stone bricks mostly damaged and patched up.

According to the case stated by the plaintiffs the bricks were altogether unfit for being used in the furnace. The defendants were informed about the condition of the bricks, and on being informed they promised to replace all the defective bricks. In spite of such a promise the same worthless goods were loaded in the wagon without giving an opportunity to the plaintiffs' expert to inspect them again. When the goods arrived at Dalmianagar it was detected that the same useless bricks had been loaded and therefore the plaintiffs are justified in contending in this case that the breach of contract occurred at Dalmianagar where it was discovered that the goods required and for which there had been the contract had not really been sent to Dalmianagar. This by itself is sufficient to give the Sasaram Court the jurisdiction to try the suit.

4. Moreover, admittedly, an advance of Rs. 5000/- had been made by the plaintiffs, and one of the essential conditions was that an advance of Rs. 5000/- would be made before the work was taken up. In a letter dated 6-10-1948 which was sent by the defendants to the plaintiffs it was stated as follows :

"While thanking you for the order placed for one wagon load of soapstone bricks sizes 15" length, 8" breadth & 8" thickness at the rate of Rs. 400/-per ton P. O. R. Rupaund we are prepared to accept it provided you be pleased to accept the following conditions:

(a) An advance of Rs. 5,000/- (Five Thousand) would be essential prior to our taking up the work in hand, roughly calculating this represents 60 per cent. of the cost of the wagon.

(b) The goods must be inspected and accepted before loading.

(c) The balance to be paid against R/R.

(d) Goods will be delivered within forty-five days from the date of receipt of advance.

(e) Priority to be arranged by you."

The terms of this letter are important, and they unmistakably go to show that the contract could not be complete unless and until there was an advance of Rs. 5000/-. On 27-10-1948 the plaintiffs sent a cheque for Rs. 5000/- issued on the Bharat Bank Ltd., Calcutta, and this was the advance which had to be paid in accordance with the terms mentioned above. A question was raised as to whether the issue of the cheque at Dalmianagar would amount to a part-payment and whether on account of this part-payment the cause of action would be deemed to have been arisen in part within the jurisdiction of the Sasaram Court. The question as to whether the mere issue of the cheque would amount to a payment at Dalmianagar within the jurisdiction of the Sasaram Court, may be a debatable question, but on a consideration of the two letters referred to above, namely, the letter of the defendants dated 6-10-1948 and the letter of the plaintiffs dated 27-10-1948, accompanying the cheque there cannot be the least doubt that the contract could not be complete until the plaintiffs accepted the conditions laid down by the defendants, one of the conditions being that an advance of Rs. 5000/- would be paid to enable the defendants to take up the work in hand. This acceptance was made on 27-10-1948 and at Dalmianagar, and whether the payment of Rs. 5000/- is regarded as a payment at Dalmianagar or not in view of the letter which was issued from Dalmianagar on 27-10-1948, the conclusion appears to me to be irresistible that the contract was completed when this letter dated 27-10-1948 was sent to the defendants.

The breach, as I have already pointed out, occurred within the jurisdiction of the Sasaram Court when the goods arrived at Dalmianagar, and just now I have pointed out that the contract also was completed at Dalmianagar and that was when the letter dated 27-10-1948 was sent by the plaintiffs. The authorities which lay down that a revocation of contract cannot be complete unless and until that revocation is communicated to the opposite-party can have no application in this particular case.

5. The third reason for holding that the Sasaram Court had jurisdiction is that the payment must, in my opinion, be deemed to have been made at Dalmianagar. According to the view taken by a Bench of this Court in -- "Ramjiban Sarawagi v. The Mahalakshmi Mills Co. Ltd.", A. F. O. D. No. 88 of 1942 (Pat) (F), the money should be deemed to have been sent as soon as the cheque was discharged. I should like to quote the following passage from the judgment of Reuben J. (as he then was) with whom Fazl Ali C. J. concurred : "In fact, unless there is something in the context or the circumstances pointing to the contrary interpretation, I do not see how any interpretation other than that urged on behalf of the plaintiff can be put upon these words. The word "sent" is an ordinary English word of

everyday use. Its dictionary meaning is understood by everyone who has any knowledge of the English language. It imports the causing of something or somebody to go from the person who is called the sender. When, therefore, the plaintiff, having put the cheques for Rs. 1000 in an envelope to the defendant, entrusted that envelope to the Post Office for delivery to the defendant, he sent the money in the ordinary sense of the word." Part of the cause of action certainly arises where money is expressly or impliedly payable under a contract. Here, the contract was that the money would be paid at Dalmianagar where the plaintiffs have got their business, and in view of the decision quoted above the sending of the cheque from Dalmianagar would further establish that money was paid at Dalmianagar. Furthermore, it appears from the judgment of the learned Subordinate Judge that it was conceded before him that Rs. 2600/- was paid by the plaintiffs to the defendants at Dalmianagar. The learned Subordinate Judge has observed as follows :

"In para. 15 of the written statement the defendants admitted receiving Rs. 2600/- and not Rs. 3000/-. It was significant, however, that the learned pleader for the defendants specifically admitted receiving this amount at Dalmianagar. He submitted that in fact the money was to be paid at Rupaund but as a mark of courtesy the defendants received the amount at Dalmianagar. I find, however, that whatever evidence there is on record clearly shows that so far all the payments had been made at Dalmianagar and not at Rupaund."

I think, this is conclusive of the point raised before us and even if no other amount except Rs. 2600/- was paid at Dalmianagar, that would certainly give jurisdiction to the Sasaram Court.

6. In the result, therefore, I would dismiss this application with costs. Hearing fee two gold mohars.

Ahmad, J.

7. I agree.