

(2015) 08 BOM CK 0180

In the Bombay High Court

Case No : Appeal (L) No. 541 of 2015 in Leave Petition No. 109 of 2015 in
Proposed Summary Suit (L) No. 313 of 2015

KPL International Limited

APPELLANT

Vs

API Industries Private Limited

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Arbitration Act, 1940 — Section 2(1)(e), 9
Civil Procedure Code, 1908 (CPC) — Section 120, 16, 17, 20

Citation : (2016) 1 ALLMR 342 : (2016) 1 BomCR 378 : (2016) 1 MhLj 549

Hon'ble Judges : M.S. Shah, C.J.;A.K. Menon, J

Bench : Division Bench

Advocate : Simil Purohit, Raj Panchmatia, Peshwan Jehangir and Himanshu Vidhani i/b. Khaitan and Co., for the Appellant

Final Decision : Allowed

Judgement

M.S. Shah, C.J—This appeal is directed against the judgment and order dated 18 June 2015 of the learned Single Judge declining leave under clause 12 of the Letters Patent for institution of the Summary Suit proposed to be filed by the appellant-plaintiff against the respondent-defendant.

2. The respondent-defendant is a limited company with its registered office at Bhavnagar in Gujarat. The defendant, however, has its regional office in Mumbai within the territorial jurisdiction of this Court. The learned trial Judge took the view that since the registered office of the defendant, which is its principal place of business is in Bhavnagar, Gujarat, the defendant cannot be taken to be carrying on its business in Mumbai, even if its regional office was situated at Mumbai. Of course, its subordinate regional office in Mumbai may give this Court territorial jurisdiction, but only in respect of any cause of action or a part thereof which has arisen in Mumbai. For taking this view, the learned trial Judge relied upon the explanation to section 20 of the CPC. The learned Judge then held that since no cause of action or any part thereof had arisen within the territorial limits

of this Court, leave could not be granted under clause 12 of the Letters Patent.

3. The learned counsel for the appellant submits that the view taken by the learned Single Judge in the impugned order is erroneous and contrary to the law settled by this Court in Pratap Singh Vs. The Bank of America, (1976) 78 BOMLR 549 and also by the Supreme Court in Jindal Vijayanagar Steel (JSW Steel Ltd.) Vs. Jindal Praxair Oxygen Company Ltd., (2006) 3 ARBLR 340 : (2006) 134 CompCas 119 : (2006) 8 JT 230 : (2006) 8 SCALE 668 : (2006) 11 SCC 521 : (2006) 5 SCR 579 Supp .

4. We have perused the plaint and the averments made by the plaintiff that the defendant is a company registered the Companies Act, 1956 with registered office at Bhavnagar in Gujarat and with its regional office at the given address on S.V. Road, Mumbai. In para 28A the plaintiff has also averred that most of the directors of the defendant are ordinarily resident in Mumbai and that it is only the registered office of the defendant which is outside the territorial jurisdiction of this Court. The plaintiff has also averred in para 30 that the defendant conducts its operation through its office located at S.V. Road, Mumbai. The plaintiff has, accordingly, sought relief under clause 12 of the Letters Patent for filing the present suit for recovery of monies for the goods sold and delivered to the defendants.

5. Clause 12 of the Letters Patent reads as under:-

"12. Original jurisdiction as to suits:-- And we do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Causes Court at Bombay, or the Bombay City Civil Court."

(emphasis supplied)

6. Section 20 of the CPC with explanation reads as under:-

"20. Other suits to be instituted where defendants reside or cause of action arises. - Subject to the limitations aforesaid, every suit shall be instituted in 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.

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."

(emphasis supplied)

Section 120 of Code of Civil Procedure, 1908 reads as under :

"S.120. Provisions not applicable to High Court in original civil jurisdiction :-

(1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20."

7. An analysis of clause 12 would indicate that in exercise of ordinary original civil jurisdiction of Letters Patent by itself, the High Court of Judicature at Bombay is empowered to receive, try and determine suits of every description:

(1) if, in the case of suits for land or other immovable property such land or property is situated within Mumbai, or

(2) if the cause of action has arisen wholly in Mumbai, or

(3) if the cause of action has arisen in part in Mumbai, the leave of the Court shall have been first obtained, or

(4) if the defendant at the time of the commencement of the suit dwells or carries on business, or personally works for gain in Mumbai.

It is thus clear that the fourth category of cases do not require consideration of the question whether the cause of action has arisen in Mumbai, whether in whole or in part or not at all.

8. The questions that arise for consideration are :-

(i) Whether the defendant can be said to be carrying on business in Mumbai, where it does not have its principal place of business, a regional office?

(ii) Whether the learned Trial Judge was right in reading the explanation to Section 20 into Clause-12 of the Letters Patent, for taking the view that in case of such a defendant having only a regional office in Mumbai, a part of the cause of action must also arise in Mumbai.

9. In Pratap Singh Vs. The Bank of America, (1976) 78 BOMLR 549 , a Division

Bench of this Court has in terms held that for the purposes of Clause-12, the defendant may carry on business through an agent or agents and, therefore, a defendant having a branch office or a regional office in Mumbai has to be treated as carrying on business in Mumbai. The Division Bench also held that where a company carries on business in Mumbai, the question whether the cause of action accrued wholly or in part within or without Mumbai is wholly irrelevant.

10. In the above case, the Division Bench observed as under:-

"3. The word "defendant" occurring in cl. 12 of the Letters Patent or in s. 20 of the Code of Civil Procedure must be given its proper meaning and would include within its compass both natural and artificial persons i.e. living beings as well as corporations and no distinction is made in law between corporations as are incorporate in India and corporations as are incorporated outside India (i.e. foreign corporations).

4. Under the last part of cl. 12 of the Letters Patent a suit can be brought on the Original Side of this Court if the defendant at the time of institution of the suit dwells or carries on business or personally works for gain within the limits of such original jurisdiction of this High Court. For consideration of jurisdiction under this head, the consideration whether the cause of action has accrued wholly or in part within or without the limits of the said jurisdiction is wholly irrelevant.

5. In this part of cl. 12 of the Letters Patent a clear distinction has been made between carrying on of business and working for gain. In the latter case the legislative requirement is that the defendant should personally work for gain, whereas no such requirement is postulated for the carrying on of business. It means therefore that the defendant may carry on business himself or through an agent or agents.

6. We are concerned here with a defendant having a branch office within the limits of the jurisdiction of this High Court. It was submitted that the defendant could carry on business only at its" principal office i.e. the Head Office at San Francisco, U.S.A., where there exists their Board of Directors which can take final decisions. It was submitted that it was only at this place that the defendant could be said to be carrying on business. It is impossible to accept this restrictive meaning which has not found favour with either the High Court of Allahabad or the High Court of Calcutta.

7. Whether the defendant carries on business within the limits of the jurisdiction of a Court is a question of fact. Where an allegation to this effect is made in the plaint and properly traversed by the defendant in the written statement, the onus of proving such allegation would be on the plaintiff, though the defendant would be required to prove the facts as may be deemed to be within his special knowledge. If there is a proper denial of such allegation, then the answer to the issue of jurisdiction may be required to be given after necessary evidence is taken. However, for the purpose of considering this question it is not required

that at the place which is within the jurisdiction of the Court there must be some person or agency not subject to supervision or regulation from outside. All that is required is whether within the limits of jurisdiction of this Court is the defendant by itself or through its agent carrying on all or some of the business which it does?

10. Explanation II to S.20 of the Code of Civil Procedure must in these circumstances be construed as plain words of limitation designating one place out of many where a corporation which may be carrying on business at several places may be sued irrespective of the accrual of the cause of action. Under s.20 read together with Explanation II, a corporation can be sued only at its principal place of business in India or at all other places of business i.e. where it carries on business provided the cause of action has arisen at such place."

(emphasis supplied)

11. Though principle no.10 in the Division Bench judgment made a reference to explanation under section 20 of the Code of Civil Procedure, in our view, it is not necessary to dwell further on the Division Bench judgment, because subsequently in Jindal Vijaynagar Steel case (supra), the Supreme Court has rejected the argument of reading the explanation to Section 20 into Clause-12 of Letters Patent, because section 120 of the CPC expressly provides that Section 20 shall not apply to the High Court in the exercise of its original civil jurisdiction.

12. In the above case before the Supreme Court, the respondent had the registered office in Bangalore and a corporate office Mumbai. Several disputes had arisen between the parties and an agreement was arrived at between the parties to settle the disputes. The settlement agreement was approved by the Board of Directors of both the parties in Bangalore. The interpretation of the obligations of the parties under various provisions of the settlement agreement was in dispute in arbitration invoked by the respondent against the appellant. The respondent filed a petition under section 9 of the Arbitration Act in this Court. This Court held that the jurisdiction of the Court under the provisions of the Arbitration Act may be assumed by the Court exercising jurisdiction in a place where no part of the cause of action has arisen, if the respondent being a company has a corporate office at the place where the Court is moved.

13. The appellant contended before the Supreme Court that the Bombay High Court had no jurisdiction to entertain the petition under section 9 of the Arbitration Act; that the High Court erred in holding that by virtue of Clause 12 of the Letters Patent, the Bombay High Court had jurisdiction to entertain the petition filed by the respondent in the Bombay High Court; and that the settled law was that it is the situs of the cause of action and not the place of business which is the deciding factor in determining jurisdiction under section 2(1)(e) of the Arbitration Act.

It was also contended that the principle in the explanation to section 20 of the Code of Civil Procedure must be applied to clause 12 of the Bombay Letters

Patent, although section 20 of the Code of Civil Procedure does not, in terms, apply to the High Court in exercise of its original civil jurisdiction because as per the settled position, the principles of the CPC should nevertheless be applied, as far as possible, to proceedings of a civil nature, even where the application of the CPC has been barred.

It was further contended before the Supreme Court that there is no conflict whatsoever between clause 12 of the Letter Patent and section 20 of CPC. It was submitted that clause 12 of Letters Patent and section 20 of the CPC are in pari materia and set out similar test for determination of where a suit may be filed and that the appellant is merely seeking to apply the additional clarificatory principle relating to corporate defendants stated in section 20 of CPC to clause 12 of the Letters Patent. That was the argument before the Supreme Court which commended to the learned Single Judge in the instant case, but which has not been accepted by the Supreme Court.

14. The respondent submitted that the Bombay High Court would have jurisdiction under Clause-12 of the Letters Patent, if the defendant carries on business within the limits of Mumbai. It was specifically contended that when the jurisdiction is invoked on the above ground, whether the cause of action has arisen wholly or in part within or without Mumbai, is wholly irrelevant.

15. The Supreme Court rejected the appellant's contentions and held that applying the explanation in section 20 to clause 12 of the Letters Patent would render section 120 of the CPC nugatory and otiose since section 120 expressly refers to sections 16, 17 and 20 and makes them inapplicable to the Letters Patent. The Letters Patent, is a special charter conferring jurisdiction on Chartered High Courts. When there is a special enactment such as the Letters Patent, which expressly lays down the criteria on the jurisdiction of the Chartered High Court, it is totally unnecessary and in fact futile to refer to another legislation such as the CPC (which is not applicable) to determine the jurisdiction of Chartered High Court.

16. The Supreme Court specifically held as under:

"27. In our opinion, the argument of Mr. Nariman that the principles of Section 20 of the Code can be applied to Letters Patent has no substance and merit. The principles of Section 20 cannot be made applicable to Clause 12 of the Letters Patent since the CPC itself by Section 120 specifically excludes the applicability of Section 20 of the CPC to Chartered High Courts.....

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29. The appellant has urged that P.S. Sathappan's case will apply only in case there is a conflict between the Letters Patent and the CPC and that there is no conflict. Such a submission, in our view, is clearly fallacious for the following reasons:

(i) the Letters Patent and CPC operate in separate fields, i.e. The Letters Patent

specifically conferring jurisdiction on Chartered High Courts and the CPC conferring jurisdiction on all other Courts.

(ii) There is clearly a difference between the scope of the Letters Patent and the CPC. The difference being evident upon a plain reading of Section 120 of the CPC."

17. In view of the aforesaid principles laid down by the Supreme Court in Jindal Vijaynagar Steel Ltd. case (supra) on the issue regarding non applicability of explanation to Section 20 to Clause-12 of Letters Patent, we are of the view that since the defendant is carrying on business within the limits of jurisdiction of this Court through its regional office as averred in the plaint, it is not necessary to consider whether the cause of action or any part thereof arose within the territorial limits of this Court. The requirements of clause 12 of the Letters Patent are clearly satisfied once the defendant is stated to be carrying on its business through a regional office within the territorial limits of this Court. As held by a Division Bench of this Court in Pratap Singh case (supra), for consideration of jurisdiction under this head, the consideration whether the cause of action has accrued wholly or in part within or without the territorial limits of jurisdiction of this Court is wholly irrelevant.

18. In the result, the appeal is allowed.

The impugned order of the learned Single Judge is set aside and it is held that Summary Suit (L) No. 313 of 2014 is maintainable in this Court under Clause-12 of the Letters Patent.

Accordingly, the registry shall register the plaint subject to compliance with all the formalities.