
(1964) 02 MP CK 0008
In the Madhya Pradesh High Court
Case No : Civil Revision No. 388 of 1963

Maniklal Mittal

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 20-02-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : AIR 1966 MP 243 : (1967) ILR (MP) 136 : (1966) 11 MPLJ 1100

Hon'ble Judges : V.R. Newaskar, J

Bench : Single Bench

Advocate : S.L. Garg, for the Appellant; R.K. Vijayavergi, for the Respondent

Final Decision : Allowed

Judgement

V.R. Newaskar, J.

This is a revision petition filed by plaintiff Maniklal Mitlal against the Union of India for recovery of Rs. 6140.17 nP.

The only question which arises for consideration in this revision petition is whether the Court of Civil Judge First Class, Indore, in which the present suit was filed has jurisdiction to try the same. Both the trial Court as well as the first appellate Court came to the conclusion that the said Court had no jurisdiction to try the suit. The present revision petition is directed against that order

The claim for recovery of the aforesaid amount arose under the following circumstances:--

The defendant, represented by the Western Railway Administration, entered into a contract with the firm now represented by the plaintiff for conveyance of parcels and goods of all kinds initially from Dhamnod to Mhow and back and later on from Dhamnod to Indore and back since the said Railway Administration has established an out-agency for the conveyance of parcels and floods of all kinds between these places. The contract provided for payment to the plaintiff for

conveying the parcels and goods and for payment in accordance with the bills which the plaintiff was required to submit through the Station Master of Mhow Railway Station while Mhow was the Railway Station to and from which the goods had to be carried to and from Dhamnod and later on through Station Master Indore when the place was changed from Mhow to Indore. It was implicit in the contract that after the bills were submitted through the Station Master, Indore they were to be forwarded to the Deputy Chief Accounts Officer Ajmer and the Senior Accounts Officer Delhi and thereafter the payments would be made by means of cheques drawn in the name of the Bankers of the Railway viz. the State Bank of India, Mhow or Indore, as the case may be. The plaintiff in Paragraph 19 of the plaint alleged as follows:

"That, as in the Dhamnod Out-Agency work, the goods were to be transferred from and to Indore. within the jurisdiction of this Court, therefore, this Court has jurisdiction to try into the matter."

The plaintiff further alleged in paragraph 12 of the plaint that the Deputy Chief Accounts Officer of Ajmer, Western Railway, had made payment of Rs. 44,564-44 nP. by cheques on the said Bank of India. Indore. It was further alleged that the plaintiff had submitted his bills regularly for Western Railway Administration but the same had not been paid.

The defendant disputed the competency of the suit in the Indore Court on the ground that in as much as the contract between the parties had taken place in Bombay and the defendant, as the agent of Railway, was required to pick up goods at Dhamnod and was also required to deliver the goods at Dhamnod the mere fact that the plaintiff carried the goods from Indore -Station to Dhamnod and from Dhamnod to Indore the latter place could not be called the place of business of the Western Railway In the special pleadings it was accepted that as per terms of the contract the plaintiff used to submit bills through the Station Master at Indore to the Deputy Chief Accounts Officer, Ajmer, who after checking used to provisionally accept the bills for payment.

In face of these contentions of the parties the trial Court held that inasmuch as the contract had taken place at Bombay and the contract was performable between Mhow and Dhamnod and not at Indore and in the absence of any express or implied agreement pleaded by the plaintiff for payment of money at Indore, Indore could not be the place of suing in view of the provisions of Section 20 of the CPC since the Head Office of the Western Railway is at Bombay.

The plaint was accordingly directed to be returned for presentation to proper Court.

Plaintiff preferred appeal against the said order. The appellate Court agreed with the view taken by the trial Court. According to it there was nothing in the contract Ex. IV] to support the allegations in Paragraph 19 of the plaint that the goods had to be carried from and to Indore. An application was submitted on behalf of the plaintiff for admitting in evidence subsequent Goods-tariff of

Western Railway to support the contention that Dhamnod Out-Agency was to operate between Indore and Dhamnod instead of as initially agreed between Mhow and Dhamnod. The appellate Court refused to take into account the Supplementary Goods-Tariff produced before it to evidence the change from Mhow to Indore. It further proceeded to reason in the alternative on the assumption that the said Tariff was taken into that (sic) that the said tariff could not affect the contract which had been entered into before it had come into force. It consequently held that Indore Court would have no jurisdiction to try the suit since in the first place there was nothing to show that the acceptance of the contract was communicated to the plaintiff at Indore and in the second place because no part of the cause of action had arisen at Indore. The appeal was accordingly dismissed. The present revision petition is directed against that order.

After the filing of the revision petition an application was submitted on behalf of the plaintiff for amendment of the plaint seeking to add certain averments in Paragraph 19 of the plaint. These averments related to the Western Railway Administration carrying on business at Indore and 16 the fact of payment being made in the past to the plaintiff with reference to the work done by him under the contract at Indore and its liability to do so at that place

As the averment with reference to payments made by the defendant to the plaintiff at Indore had already appeared in paragraph 12 of the plaint and as the case is at its initial stage I consider it proper to permit the amendment.

I will next consider as to whether on the averments as they are in the initial plaint as well as in the amendment application justify the view that the Indore Court has jurisdiction to try the suit having regard to the requirements of Section 20 C.P.C.

Section 20 C. P. C provides for two different grounds each of which can be availed of by the plaintiff to file his suit. A Court gets jurisdiction u/s 20 C.P.C. to try the suit if:--

the defendant resides or carries on business or personally works for gain within the local limits of its jurisdiction, or

The cause of action arises wholly or in part within such local limits.

Since the suit is against the Union of India as represented by the Western Railway Administration first question to be considered is whether Indore can be considered to be a place where the Union of India represented by Western Railway Administration can be said to carry on business at Indore.

Explanation(II) u/s 20 C.P.C. provides that 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 II therefore follows from this Explanation that in case the Western Railway Administration can be called a Corporation within the meaning of the term as used in Explanation (II) then Indore cannot be the place where it can be said to

carry on its business as the principal office of the Western Railway is situated at Bombay and not at Indore. In *P.C. Biswas v. Union of India*. (S) AIR 1956 Assam 85 at 94 it was bold that just as in the case of a private corporation carrying on business of transport the head office from which it categories on administration would be its principal place of business and not any place in the entire area to which its operations extend. The Union of India through a Railway Administration should be taken or deemed as carrying on business only where its head office is situated and not at all places where any activity connected with transport by rail is carried on

This case was approved by the Supreme Court in a case reported in *Union of India (UOI) and Another Vs. Ladu Lal Jain*, Their Lordships pointed out that the principle behind the provisions of Clauses (a) and (b) of Section 20 C.P.C. is that the suit be Instituted at a place where the defendant be able to defend it without undue trouble. It considered the expression "carries on business as used in Section 20 C.I.C. and held that the Union of India carries on business of running railways and can be sued in a Court within whose territorial jurisdiction the head quarter of a Railway Administration is situated. It is implicit in this judgment that the Union of India represented by a Railway Administration is in the position of a Corporation and Explanation (II) at the fool of Section 20 C.P.C. applies to it. The decision clearly indicates that in as much as Indore is not a Head Quarter of Western Railway. Indore Court could not be made a place of suing on the ground that the Railway Administration carries on business at Indore

But this does not mean that the plaintiff cannot sue at Indore in case he is able to show that his case properly falls under the second ground in Section 20 C.P.C. viz. the cause of action wholly or in part arises. In order to appreciate what a cause of action means we may refer to the observations of the Privy Council in *Mohammed Khalil Khan v. Mahbub Ali Mian* 75 IA 121: (AIR 1949 PC 781 The expression, according to them, has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support bis right to the judgment of the Court. In other words it means the whole bundle of material facts which it is necessary for the plaintiff to prove to entitle him to succeed in the suit In *Chand Koer v. Partab Singh* ILR (1889) Cal 95 at p. 102 (PC) Lord Watson observed:

"Now the cause of action has no rebition whatever to the defence which may he set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirety 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."

With this meaning of the term "cause of action" in view we must consider whether any part of the cause of action can be said to have arisen to give jurisdiction to Indore Court

The plaintiff lays his claim to the amount in question because of his having

conveyed parcels and goods from Indore to Dhamnod and from Dhamnod to Indore. It therefore follows that at least part of the cause of action has arisen at Indore in as much as the work for which he seeks payment has been partly performed within the jurisdiction of Indore Court. But even assuming that this by itself is not sufficient there is the further averment made by the plaintiff that as per terms of the contract the plaintiff, in order to enable him to claim the amount of his bills, had to submit the bills through the Station Master at Indore. Term No. XVII in the contract, no doubt refers to the Station Master of Mhow Railway Station but it appears clear from the pleadings of the parties that at a later stage Mhow was substituted by Indore. Although the trial Court as well as the first appellate Court have held that the Indore Court had no jurisdiction because of mention of the place in the agreement as Mhow Railway Station and not Indore still it is clear by reference to Paragraph 19 of the Written Statement that the plaintiff was to operate during the material period for which the present suit has been filed as per terms of the contract between Dhamnod and Indore in place of Dhamnod and Mhow. Under Clause 17 of the contract therefore we will have to read Indore Railway Station in place of Mhow Railway Station Paragraph 22 of the written statement clearly admits this position by accepting the fact that the bills had to be submitted to the Station Master at Indore Clause XVII of the contract provides that in order to enable the plaintiff to claim his dues he sought to submit his bills by the 10th of the following month in respect of the dues of a particular month in duplicate to the Railway Administration through the Station Master of the Indore Railway Station II is only on submission of these bills through the Station Master at Indore that the bills could be sent to the Deputy Chief-Accounts Officer at Ajmer for checking. As for the payment in respect of these bills the plaintiff in his amendment-application filed in this Court avers that the Railway-Administration was liable to make the payment to the plaintiff at Indore and that the payment used to be made by the Railway Administration at Indore. Even in the initial plaint averments as payment having been made in the past by cheques at State Bank of India, Indore, do appear. In face of these averments it is clear that both because the bills for securing payments had to be submitted to the Station-Master at Indore and also because the plaintiff was to be paid through the defendant's bankers at Indore by means of cheques drawn on the said Bankers the cause of action can be said at least partly to arise within the jurisdiction of the Indore Court.

For the aforesaid reasons I am of the view that the Indore Court has jurisdiction to try the suit and the order passed by the trial Court directing the plaint to be returned for presentation to proper Court is not proper There is erroneous refusal to exercise jurisdiction by the trial Court The decision affirming that order passed by the lower appellate Court is also not correct.

The petition is therefore, allowed The order passed by the Courts below is set aside and the case is sent back to the trial Court for trial and disposal according to law.

Since I have allowed the amendment sought for by the plaintiff before me the amended portion will be directed to be included in the plaint by the trial Court with the time to be mentioned by it.

Since the plaintiff in the Court below had not clearly mentioned appropriate grounds for the jurisdiction of the trial Court and has sought I amendment here I would leave the parties to hear their costs of this petition