
(1974) 10 PAT CK 0003
In the Patna High Court
Case No : Civil Revision No. 1488 of 1973

Meghraj Sanchialal

APPELLANT

Vs

Malpani Rice and Oil Mills

RESPONDENT

Date of Decision : 16-10-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : AIR 1975 Patna 148 : (1975) 8 PLJR 271 : (1975) PLJR 271

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : J.C. Sinha and Krishna Mohan, for the Appellant; Jugal Kishore Prasad, Rajendra Kishore Prasad and Mohammad Ehteshamul Haque, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, J.—This application in revision is by the defendant and arises out of an order of the court below deciding the question of territorial jurisdiction against it.

2. The opposite party is resident of a place Murliganj in the district of Saharsa and the petitioner is a firm carrying on business inter alia of commission agency in the town of Khagaria in the district of Begusarai. According to the plaintiff-opposite party's case an oral agreement of agency was entered into between the parties at Murliganj whereby the defendant was to sell the plaintiff's rice at Khagaria, According to this agreement the plaintiff despatched certain consignments of rice to be delivered to the defendant with "Self" Railway Receipts. Some payments were made but according to the case of the plaintiff, the defendant did not pay a sum of Rs. 3695.69 in spite of repeated demands. Therefore, the above suit was instituted in the Court of the Subordinate Judge, Madhepura which lies in the district of Saharsa. According to the plaintiffs case the Madhepur court had the necessary territorial jurisdiction on two grounds, namely, (1) the contract of agency itself was made at Murliganj and (2) there

was an agreement between the parties that payments were to be made at the plaintiff's place. The defendant raised a preliminary issue in the written statement regarding absence of territorial jurisdiction of the Court below and challenged both the above grounds.

3. The Additional Subordinate Judge took evidence on this question and on a consideration of the same, came to a definite conclusion that neither the agreement of agency was formed at Murliganj nor there was any agreement between the parties for the payment at the plaintiff's place.

4. However, in spite of recording the above two findings against the plaintiff, he has decided this issue against the defendant on the basis of certain payments that were made by it to the plaintiff, namely, two payments of Rupees 15000/- each by demand drafts on the Katihar branch of Central Bank of India, a place different than the place of residence of the plaintiff, which is not disputed. Although the drafts were received by the plaintiff at his place of business, Murliganj, the payments of the said drafts were actually received by him at Katihar and, therefore, that would not furnish the necessary territorial jurisdiction to the Madhipura court where the suit was instituted. The learned Additional Subordinate Judge, relying upon a single Judge decision of this Court in the case of Gouri Shankar Bajoria Vs. Ram Banka, , took a view that the place where the draft itself was handed over to the plaintiff would also furnish him a cause of action and, accordingly, the Madhipura court had the necessary territorial jurisdiction. The defendant, therefore, has come to this Court.

5. Mr. J. C. Sinha appearing on behalf of the petitioner has seriously challenged the findings of the court below and contended that the learned Additional Subordinate Judge has committed an apparent error of jurisdiction in deciding the question of jurisdiction. According to him, the court below having decided the bundle of facts on which the plaintiff relied to bring his case within the jurisdiction of Madhipura court, it was not right in deciding the question of jurisdiction in his favour on the basis of the payments by the two Bank drafts on a view that part of the cause of action accrued to him at that place. He also contended that the court below has not correctly appreciated the principle decided in the Gouri Shankar Bajoria Vs. Ram Banka, . Mr. J. C. Sinha seems to be right in both his contentions. On my reading of Bajoria's case, it is not an authority for the abstract proposition that a part of the cause of action would arise at any place on mere delivering a cheque to a person by the debtor. In that case certain cheques were issued by the defendant at Giridih, but the money was drawn at a Bombay Bank, the place where the plaintiff also resided. The true ratio of this case that seems to be is that the cause of action also arises at a place where the cheque is either issued or where the same is honoured or dishonoured by the Bank. In the instant case, the drafts were sent by the defendant to the plaintiff by post from Khagaria and were drawn on a Bank at Katiyar outside the territorial limits of Madhipura court.

6. There is an apparent distinction between the place where any money is, in

fact, "paid" and where it becomes "payable". If therefore, from the fact that payment is made at a place, it cannot necessarily follow that the amount was also payable there. The actual payment by itself will not be decisive for determining the place of the accrual of the cause of action. I find full support for this view in the case of Prem Nath Vs. Kaudoomal Rikhiram and Another, . As to whether money is payable expressly or impliedly under a contract at a particular place has also been considered by a Bench of this Court in the case of Baidyanath Mandal and Others Vs. The Coal Purchase and Inspection Agency (P.) Ltd. in Liquidation, . In a case where there is no express agreement between the parties with respect to the place of payment, the mere fact of a payment at a particular place will not determine such a place, as in that event, great uncertainty may prevail and payments made at different places will provide shifting forums for a suit at the option of the payee. The scheme of the CPC postulates (that ordinarily a suit should be instituted at the place where the defendant resides or carries on business. In order to shift the forum of the suit from that place, the plaintiff must bring his case within Clause (c) of Section 20 of the Code and establish that a part of the cause of action did accrue to him within the territorial jurisdiction of the court where he institutes the suit by definite evidence. In the absence of any express or implied contract regarding the place where the money would be payable between the parties, simply for the reason that certain payment is made at any particular place, no part of the cause of action would be deemed to accrue to the plaintiff at that place unless the plaintiff relied upon the said payment to prove the plea of an implied contract to make the payment at the said place, and the court, on the materials placed by him, comes to such a conclusion. In this case, however, the plaintiff did not go to court with such a case nor the Court below has come to any such conclusion and the decision is based merely on the fact of payment. The payments under the two drafts were even not payable to the plaintiff within the local limits of the jurisdiction of the court below as already said earlier but at Katihar.

7. For the reasons discussed above, it must be held that the order of the learned Additional Subordinate Judge suffers from an apparent error of jurisdiction and it must be set aside. I would, accordingly allow this application and hold that the Madhipura court has no territorial jurisdiction to entertain the suit. However, there will be no order as to costs.