
(2011) 07 CAL CK 0082

In the Calcutta High Court

Case No : GA No. 543 of 2007 and CS No. 227 of 2006

Mighty Metals Private Limited and Another

APPELLANT

Vs

Rajasthan Financial Corporation

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

Citation : (2011) 07 CAL CK 0082

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Aniruddha Mitra and S.N. Dutta, for the Appellant; Debamalya Ghoshal and G.S. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Sanjib Banerjee, J.—The action appears to be Swaika Properties revisited. The present application is by Defendant Rajasthan Financial Corporation for revocation of the leave granted under Clause 12 of the Letters Patent on the twin grounds that no part of the Plaintiffs' cause of action could have arisen within the jurisdiction of this Court and that it would be overwhelmingly inconvenient for the Defendant to carry its records and witnesses to a trial in this Court.

2. The first Plaintiff company, which has its registered office in Jaipur, availed of credit facilities from the Defendant, which has been established under the State Financial Corporations Act, 1951. The plaint says that pursuant to negotiations between the second Plaintiff promoter of the first Plaintiff and the Defendant, the corporation agreed to finance the setting up of a plant for the manufacture of alloy steel in Churu in Rajasthan. Paragraph 4 of the plaint claims that the letter of intent was issued to the Plaintiffs' Lalbazar Street office within jurisdiction and it was accepted by the Plaintiffs by a letter issued from the Lalbazar office. Paragraph 6 of the plaint admits that a loan agreement was executed in Jaipur on

April 4, 1988. The Plaintiffs complain of the Defendant having failed to make timely disbursement of the loan amount which resulted in the Plaintiffs' business venture coming to naught. Paragraph 18 of the plaint refers to a letter dated September 20, 2004, received by the Plaintiff No. 1 at Rawdon Street within jurisdiction, by which the Defendant informed the Plaintiff of the best offer received by the Defendant for sale of the Plaintiff's manufacturing facility in Churu which the Defendant had taken possession of u/s 29 of the Act of 1951. The Plaintiffs have pleaded at paragraph 19 of the plaint that they had questioned the Defendant's attempt to sell the manufacturing facility at an inordinately low price by a letter issued from Rawdon Street within jurisdiction. The immediate succeeding paragraphs of the plaint refer to the sale of the land and plant at Rs. 23.60 lakh and paragraph 22 of the plaint furnishes particulars in support of Plaintiffs' contention that the sale was fraudulent. Paragraph 25 of the plaint speaks of a notice of May 25, 2005 received by the first Plaintiff at Rawdon Street within jurisdiction by which the Defendant demanded payment of a sum in excess of Rs. 84 lakh after adjusting the amount received against the sale. The Plaintiffs instituted proceedings under Article 226 of the Constitution of India before the Rajasthan High Court at Jaipur against such demand and, by an order dated August 1, 2005, the writ petition was disposed of with the observation that the Plaintiffs herein were free to take recourse to civil courts for adjudication of their claims. The plaint says that it is in furtherance of such liberty that the present suit has been filed.

3. Paragraph 27 of the plaint refers to two further notices of December 26, 2005 and May 17, 2006 issued by the Churu and Bikaner offices of the Defendant demanding payment of a sum in excess of Rs. 84 lakh. The Plaintiffs cite the receipt of such notices at their Rawdon Street address within jurisdiction. The Plaintiffs say that they issued replies to such notices from the Rawdon Street office. Paragraph 28 of the plaint claims the notices to be wrongful and illegal and details particulars in support of such plea. Paragraph 33 of the plaint again refers to the three post-sale notices of demand for payment having been received at the Rawdon Street address within jurisdiction. The cause of action as pleaded in paragraph 4, 18, 19, 25, 27 and 33 of the plaint has been cited at paragraph 40 of the plaint to justify the present action being carried to this Court.

4. The Plaintiffs obtained leave under Clause 12 of the Letters Patent and under Order II Rule 2 of the CPC at the time of the institution of this action. The reliefs claimed include one for accounts and others challenging the notices of demand raised by the Defendant financial corporation for payment. The basis for challenging the Defendant's demand is that the sale of the Churu plant was at an undervalued price.

5. The Defendant first refers to the judgment reported at State of Rajasthan and Others Vs. Swaika Properties and Another, and suggests that the present suit bears such a striking resemblance to the action which formed the subject-matter of the reported judgment that the dictum would be binding here. The Defendant

says that the relevant notices were all issued to the first Plaintiff's registered office in Jaipur and the fact that copies thereof were dispatched by abundant caution to the alternative addresses in Calcutta would not permit the present Plaintiffs to invoke the territorial jurisdiction of this Court on the basis of copy notices being received within jurisdiction.

6. In *Swaika Properties*, a writ petition was filed in this Court challenging a notice issued under a Rajasthan Act relating to acquisition of land for public purposes. The appropriate authority issued an initial notice for acquisition of the writ Petitioner's land near Jaipur. The writ Petitioner contested the notice on merits before the appropriate authority and the objection was repelled. The writ Petitioner applied to the state government seeking exemption of the land under the Urban Land (Ceiling and Regulation) Act, 1976 which also failed. A final notice was thereafter issued by the appropriate authority to the writ Petitioner at its registered office in Calcutta which was assailed in proceedings under Article 226 of the Constitution. From the *ex parte* order passed by a single Judge of this Court staying further steps being taken in respect of the land, a petition for special leave to appeal was carried to the Supreme Court. In the resultant appeal the Supreme Court held that no part of the writ Petitioner's cause of action could be said to have arisen within the jurisdiction of this Court exercising authority under Article 226 of the Constitution.

7. The Defendant has also relied on a judgment reported at *Hindusthan Zinc Ltd. Vs. Gujarat NRE Coke Ltd.*, where a Division Bench held that since a global tender had been issued which envisaged the performance of the work in Rajasthan and the tenders were scrutinised in Rajasthan, the Petitioner in that case could not have challenged the decision to reject the Petitioner's offer in the writ jurisdiction of this Court since the rejection took place in Rajasthan. The Defendant has next referred to a judgment reported at (2010) 3 CHN 26 (*Assam Company Ltd. v. The State of Andhra Pradesh*) where the leave granted under Clause 12 of the Letters Patent was revoked on the grounds that the Plaintiff's cause of action had no nexus with this Court and it would have been overwhelmingly inconvenient for the Defendants in that action to contest at the trial. Paragraph 33 of the report has been relied on:

33. In any event, it is obvious that this Court has no nexus with the subject matter of the suit. Since the averments in a plaint have to be taken to be true and correct for the purpose of assessing a point of demurer as the present one, the incredible case run in the plaint of the first Plaintiff's association with the transactions, improbable as it is, has to be accepted at this stage. But to accept that the situs of the first Plaintiff (even that is unclear; since the plaint does not aver that the first Plaintiff has its registered office within jurisdiction) and it having allegedly made funds available to the other Plaintiffs to enable the other Plaintiffs to discharge their obligations under the memorandum of understanding as the basis for instituting the suit in this Court, would amount to doing violence with the accepted principles for founding a suit in a particular forum. Further, the

facts here are such that the usual principle that the Defendant has to show overwhelming inconvenience to dislodge a Plaintiff from his chosen forum, would not apply. The facts here are such that the inconvenience is obvious and the onus would be on the Plaintiff to demonstrate otherwise. The memorandum of understanding was executed in Hyderabad, the projects were to be implemented in the State of Andhra Pradesh and the memorandum of settlement was entered into in Hyderabad. The Plaintiffs' reliance on the judgment reported at Sanjay Trading Company Vs. Dal Chemical N.V. and Others, that the Plaintiff as dominus litus must enjoy the choice of forum is inappropriate on the facts obtaining in the present case.

8. The judgment was affirmed in appeal by an order dated July 23, 2010 in APOT No. 117 of 2010, APO No. 69 of 2010 (Assam Company Ltd. v. The State of Andhra Pradesh). Only the costs awarded were reduced in appeal.

9. In support of the argument that it would be inconvenient for it to contest the trial in this Court, the Defendant has referred to a judgment reported at Ultra Engineering Industries P. Ltd. Vs. Spintex Industries Pvt. Ltd., where the leave under Clause 12 of the Letters Patent was revoked on the consideration that it would cause genuine hardship to the Defendant to defend the suit in this Court.

10. The Plaintiffs cite a judgment reported at State of Punjab Vs. A.K. Raha (Engineers) Ltd., for the principle that the onus is on the Defendant who has applied for revocation of the leave to demonstrate that it would cause serious prejudice to the Defendant to contest the suit in this forum. The essence of the dictum in A.K. Raha (Engineers) Ltd has been noticed in Assam Company Ltd. The Defendant in A.K. Raha (Engineers) Ltd had not applied for revocation of the leave granted under Clause 12 of the Letters Patent on the ground of inconvenience. The Defendant contended in the appeal from the decree that it had urged a point of jurisdiction that no part of the Plaintiff's cause of action had arisen within jurisdiction and it had not founded its challenge on inconvenience in contesting the suit at the trial. What weighed with the Division Bench was that an admitted amount remained unpaid by the Defendant and the Defendant as debtor was obliged to seek the Plaintiff-creditor and make payment of the amount due at the Plaintiff's place.

11. The Plaintiffs assert that upon the first Plaintiff's manufacturing facility in Churu having been taken over and sold by the Defendant corporation, the Plaintiffs have no place of business in Rajasthan. The Plaintiffs suggest that the receipt of a notice is integral to the cause of action for challenging the notice and, in the instant case, the three impugned notices were received either at Lalbazar or at Rawdon Street within jurisdiction.

12. The Plaintiffs' last argument has to be dealt with first. Despite the Plaintiffs' manufacturing facility being taken over and sold by the Defendant, the cause title reflects that the first Plaintiff's registered office continued to be in Jaipur. The agreement of April 4, 1988 is admitted by the Plaintiffs to have been

executed in Jaipur and copies of the impugned notices have not been appended to the plaint. There is no need to read any mischief into why the copies of the notices have not been annexed to the plaint, though it is more likely than not that it was deliberately avoided since they may have revealed that they were addressed to the first Plaintiff's registered office in Jaipur.

13. On a reading of the plaint, and without detracting from the contents thereof, it appears that the avowed basis for lodging the claim in this Court is the receipt of the impugned notices within jurisdiction. But on a meaningful reading of the plaint it would be evident that the basis is illusory. What the Plaintiffs really assail is the perceived undervalued sale of the first Plaintiff's manufacturing facility in Churu. It is undeniable, even on the basis of the plaint, that the sale related to an immovable property in Rajasthan; the notices in respect thereof must have been issued in Rajasthan; and, the sale was certainly conducted in Churu or elsewhere in Rajasthan. The three impugned notices, the incidental receipt whereof in Calcutta has been made the foundation for launching the action in this Court, are hardly integral to the Plaintiffs' real grievance or the cause of action in the suit. The cause of action is the sale of the immovable property at an alleged undervalue. The grounds for assailing the three impugned notices also corroborate the fact and the real relief claimed is the declaration that the sale was at an undervalue. The challenge to the notices are not central to the Plaintiffs' cause of action in the suit but the notices have been craftily projected to found the suit in this Court. The notices are not challenged on the ground that they were issued without authority. It is the substance of the notices which have been challenged and the basis of the claim embodied in the notices is the Defendant's demand for repayment after adjusting the proceeds from the sale of the Churu unit. Clearly, the cause of action of the Plaintiffs have no nexus with this Court and it is evident that the suit has been filed here to drag the Defendant across the country and harass it.

14. The Defendant is also liable to succeed on the second count urged by it. Since the entire transaction took place in Rajasthan and the Defendant is a state financial corporation of Rajasthan, its papers, records and officials associated with the transaction would be available only in Rajasthan. It is true that a Plaintiff has the choice of forum and if every whiff of a challenge on the ground of inconvenience were to be accepted, the natural right of the Plaintiff to approach a forum of its choice, subject to jurisdictional propriety, would be violated. But in certain cases, the inconvenience of the Defendant is so apparent that the Defendant may not be required to do any more than to take the ground. In *Assam Company*, it was held that if the facts were such that the inconvenience to the Defendant was obvious, the onus would be on the Plaintiff to demonstrate otherwise. The appellate order in *Assam Company* left the trial court order untouched, save reducing the costs that were awarded.

15. The leave granted under Clause 12 of the Letters Patent is revoked. For the jurisdiction of this Court having been scandalously invoked, the Plaintiffs will pay

costs assessed that 20,000 GM to the Defendant.

16. GA No. 543 of 2007 stands allowed and CS No. 227 of 2006, as a consequence, can no longer be continued in this Court.

17. Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.