

(2004) 11 KL CK 0078
In the High Court Of Kerala
Case No : FAO. No. 32 of 2004

M/s. Baby Marine Sarass

APPELLANT

Vs

M/s. Triton Marinex and Others

RESPONDENT

Date of Decision : 04-11-2004

Acts Referred:

Citation : AIR 2005 Ker 132 : (2005) 2 ALD(Cri) 9 : (2006) 4 BC 104 : (2006) 129 CompCas 625 : (2005) 1 ILR (Ker) 673 : (2005) 1 KLJ 540 : (2005) 1 KLT 782 : (2005) 2 RCR(Civil) 416 : (2005) 2 RCR(Criminal) 578

Hon'ble Judges : S. Sankarasubban, J;C. Kuriakose, J

Bench : Division Bench

Advocate : Bechu Kurian Thomas, Prakash Puthiadam, Roshin Ipe Joseph and Paul Jacob P, for the Appellant; Anil S. Raj, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—This F.A.O. is filed against the judgment passed by the court below on 13-1-2004 in O.S. No. 16 of 2001 of the 3rd Additional Sub Court, Ernakulam. By the impugned judgment, the court below has held that it has no territorial jurisdiction to entertain the suit. Hence, the suit was returned for presentation before proper court. The plaintiff has come in appeal. The facts of the case are as follows: Plaintiff in this case is M/s. Baby Marine Sarass, a Partnership Firm registered under the Indian Partnership Act and having its registered office at Majaly, Karwar, Karnataka represented by its Managing Partner George K. Ninan. The first defendant is M/s. Triton Marinex, Revathala, Malvin District, Sindhu Durg, Maharashtra. Second defendant is Arvind Varma, Maharashtra and the third defendant is Sumedha Varma. The suit was filed for money due under a cheque. According to the plaintiff, it is engaged in the business of processing and export of marine products and the first defendant is engaged in the business of purchasing, procuring and collecting marine products. The first defendant is a partnership concern and defendants 2 and 3 are its partners. By virtue of an agreement dated 24-6-1997, the first defendant was

appointed as an agent of the plaintiff for the purpose of supplying raw materials to the plaintiff. At the time of executing the agreement, the plaintiff had paid an amount of Rs. 51,00,000/- to the defendant, which was liable to be repaid by the defendant, by supplying raw materials. The amount of Rs. 51,00,000/- was agreed to be treated by the defendants as advance from the plaintiff. The agreement further stipulated that the amount of Rs. 51,00,000/- paid as advance was secured by a Cheque dated 1-1-1998 bearing No. 800303 drawn on the Syndicate Bank, Betim Branch Goa which was liable to be encashed by the plaintiff in case of default by defendants in supplying the raw materials. According to the plaintiff, there was default on the part of the defendants.

2. Even after the lawyer's notice dated 6-1-1998, the defendants failed to pay any amount and instead issued a reply notice talking untenable contentions. In the meantime, the plaintiff finding that there was no response from the defendants, presented the cheque dated 1-1-1998 drawn on the Syndicate Bank, Betim Branch, Goa for encashment through the Union Bank of India, Overseas Branch, Ernakulam. The said cheque, on presentation, was returned dishonoured with the memo "payment stopped by the drawer" and the same was intimated to the plaintiff by memo dated 10-2-1998. On enquiry with the Bank, it was realised by the plaintiff that at the time payment was stopped by the defendant, there was no sufficient funds in the account. After notice, the suit was filed.

3. The suit was filed in the Sub Court, Ernakulam. This is on the ground that part of the cause of action has arisen in Ernakulam. According to the plaintiff, the cheque was presented for encashment in the Union Bank of India at Ernakulam and hence, Ernakulam Court had got jurisdiction. The defendants filed written statement and denied the transaction. Among other contentions raised, the question of territorial jurisdiction of the court was raised. According to the defendants, no cause of action has arisen within the jurisdiction of Ernakulam Sub Court. The cheque was drawn on the Bank in Goa. Ernakulam Bank was only acting as a collecting agent. The amount was payable at Goa and hence, it cannot be said that part of the cause of action arose at Ernakulam.

4. The court below after hearing both sides, held that it did not have the territorial jurisdiction. It took the view that the Union Bank of India at Ernakulam was only acting as a collecting agent and by no stretch of imagination can it be said that the cause of action arises at Ernakulam. On that basis, the court below returned the suit to be filed in proper court. It is against the above judgment that the appeal is filed.

5. Learned counsel for the appellant, Bech Kurian Thomas submitted that the view taken by the court below is not correct. According to him, the appellant came to know about the dishonour of the cheque only at Ernakulam when the cheque was presented for collection. It was the Bank at Ernakulam which informed the plaintiff about the dishonour of the cheque. Learned counsel for the respondents supported the order of the court below.

6. Heard both sides. According to us, the question whether the place where the collecting Bank is situated can form part of jurisdiction of the suit need not be decided. This is because, we find that the cheque issued to the plaintiff was an account payee cheque. An account payee cheque is different from an ordinary cheque. In Bhashyam & Adiga "The Negotiable Instruments Act" at page 708, it is stated as follows:

Account payee":-In recent years a practice has sprung up of drawing cheques with the words "account payee" or account payee only. Such a case is not provided for in the Bills of Exchange Act. This, however, does not restrain negotiability of the cheque, but is only intended to further protect the drawer against theft or loss. It is not an addition to the crossing, but is merely a direction to the receiving bank that the drawer desires to pay the particular cheque into the bank which keeps the account of the payee. The marking has no application to those who are merely clearing bankers, as it is not in their power to comply with this direction.

According to us, in view of the issue of an account paying cheque, it is clear that the drawer desires to pay the amount through the Bank which keeps the account of the payee. Hence, it can be said that part of the cause of action arose in Ernakulam. Hence, the order of the lower court is set aside and the appeal is allowed and it is held that the Sub Court, Ernakulam has got territorial jurisdiction.