
(2008) 12 CAL CK 0074
In the Calcutta High Court
Case No : C.S. No. 435 of 2000

M/s. Chainrup Sampatram

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 120, 15, 15, 151, 16, 16, 16

Citation : (2009) 2 CTC 673

Hon'ble Judges : Surinder Singh Nijjar, C.J.; Sanjib Banerjee, J.; Nadira Patherya, J

Bench : Full Bench

Advocate : Sabyasachi Chowdhury, Mr. Rupak Ghosh and Mr. Tapan Seal, for the Appellant; Hirak Mitra Mr. A.R. Nandy and Mr. Biswarup Dey, for the Respondent

Judgement

Sanjib Banerjee, J.—The reference to the Full Bench is for the purpose of resolving the perceived conflict between two Division Bench judgments of this Court.

2. The suit has been instituted on the Original Side of this Court by citing the situs of the defendant bank's zonal office within the ordinary original jurisdiction of this Court - the old town of Calcutta that is now but a small part of this overgrown metropolis. Since the plaintiff did not invoke the territorial jurisdiction of this Court on the basis of the situs of its cause of action, in whole or in part, it had not cared to obtain leave under clause 12 of the Letter Patent. The plaintiff has claimed a declaration that the discounting or discharge of a fixed deposit receipt of Rs.25 lakh by the defendant bank was fraudulent and a decree is sought for the maturity value of the fixed deposit and the interest thereon. The suit progressed to trial and final arguments when an objection as to the jurisdiction of this Court to receive the action was taken.

3. The order of the learned single Judge of August 7, 2008 records that the belated challenge to the maintainability of the suit in this Court was entertained as a preliminary issue. The order proceeds to trace that the defendant bank contended that as it was the plaintiff's case that the fixed deposit had been

fraudulently encashed at the bank's branch elsewhere in Calcutta outside the ordinary original jurisdiction, the suit could not have been brought on the original side of this Court. Before the suit Court, the bank urged that the bank's zonal office had no nexus with the plaintiff's cause of action and this Court was incompetent to receive the suit. The order recounts that counsel for the plaintiff had relied on a Division Bench judgment reported at 2002 (1) Cal LJ 366 (Steel Authority of India Ltd. v. Dinesh Kumar Jaiswal) for the principle that when a defendant carried on business within jurisdiction, the plaintiff would be entitled to institute the suit in this Court though no part of the cause of action may have arisen within jurisdiction. The order appreciates the attention of Court being drawn to a more recent Division Bench judgment reported at Oriental Bank of Commerce Vs. Santosh Kumar Agarwal, which was apparently in conflict with the Steel Authority ruling. The learned single Judge records:

"When in view of the decisions in Food Corporation of India and Steel Authority, both of which are binding on me, the defendant's contention that this Court does not have territorial jurisdiction to entertain and try the suit must be rejected, and it should be held that this Court has the territorial jurisdiction to entertain and try the suit, I find that in view of a recent Division Bench decision of this Court in Oriental Bank of Commerce Vs. Santosh Kumar Agarwal, , also a decision binding on me, it must be held that since no part of the cause of action, if any, had arisen within the ordinary original civil jurisdiction of this Court, this Court does not have the territorial jurisdiction to entertain and try the suit."

On such appreciation of the legal position the following order ensued, culminating in a reference to this Full Bench:

"For these reasons, I make the following order. The Registrar, Original Side is directed to place the whole matter before my Lord the Chief Justice at once, so that for resolving the conflict between the two Division Bench decisions - Steel Authority of India Ltd. v. Dinesh Kumar Jaiswal, 2002 (1) CLJ 366 and Oriental Bank of Commerce Vs. Santosh Kumar Agarwal, , a reference may be made to a larger bench. Hearing of the suit is adjourned sine die."

4. The plaintiff says that clause 12 of the Letters Patent permits a suitor to invoke the jurisdiction of this Court merely on the defendant dwelling or carrying on business or personally working for gain, at the time of commencement of the suit, within the local limits of the ordinary original jurisdiction of this Court. The plaintiff asserts that the Steel Authority judgment correctly reads clause 12 of the Letters Patent to imply that upon the defendant having an office within the local limits of the ordinary original jurisdiction of this Court, the location of such office is sufficient to clothe this Court with the authority to receive a suit against such defendant.

5. At the outset it is necessary to notice the limited scope of the matter at hand. The endeavour in the reference is not to answer the preliminary issue in the suit but only to resolve the conflict, if any, between the judgments of co-ordinate

jurisdiction rendered in the Steel Authority and the Oriental Bank matters. The effect of the answer in this reference may have a bearing on the preliminary issue in the suit but the facts pertaining to the suit are of little consequence at this stage.

6. The plaintiff has laboured to demonstrate that the Steel Authority case answers to the proper interpretation of clause 12 of the Letters Patent and that the Oriental Bank verdict does not. The plaintiff says that clause 12 makes no distinction between a corporation simpliciter and a body corporate which may be a bank; that the constitution or nature of business of the defendant, if it were an incorporeal entity, is hardly to be factored into the consideration.

7. Both parties rely on the judgments reported at The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others, , Hansraj Bajaj Vs. The Indian Overseas Bank Ltd., and Agencia Commercial International Limited and Others Vs. Custodian of the Branches of Banco Nacional Ultramarino, for differing purposes. The plaintiff says that there is no absolute proposition that if the situs of the bank is the criterion, then a bank may only be sued in a Court having jurisdiction over, the relevant branch. The defendant argues that the recognition at law that different branches of a bank are different entities is no longer open to question.

8. In the Delhi Cloth and General Mills case the plaintiffs sought to recover advance payments made in course of transactions for purchase of cloth. The claim was decreed and upheld on appeal. The defendant admitted the debt before the Supreme Court but contended that the transactions took place in Lyallpur that had been assigned to Pakistan on Partition upon the plaintiffs fleeing Pakistan, the Pakistan Government froze all evacuee assets and compelled the defendant to hand them over to the Custodian of Evacuee Property in Pakistan. The defendant was agreeable to pay the plaintiffs if the Pakistan Government released the money and till such time that the Pakistan Government did, the defendant contended that it was not liable. The defendant argued that on the termination of the contract, which required performance exclusively in Lyallpur, the balance was to be paid at Lyallpur and not elsewhere; that the contract localised the place of primary obligation. The Supreme Court construed the transaction as in the case of banking and insurance and observed.

"In the circumstances, it is reasonable to assume, as in the case of banking and insurance (matters we shall deal with presently), that on the termination of the contract the balance was to be paid at Lyallpur and not elsewhere." (Paragraph 24)

The principles relating to territorial jurisdiction in case of a banking transaction were discussed later in the judgment at paragraphs 43a and 45 of the report:

"(43a) In banking transactions the following rules are now settled: (1) the obligation of a bank to pay the cheques of a customer rests "primarily" on the branch at which he keeps his account and the bank can rightly refuse to cash a

cheque at any other branch: 1912 AC 212 at p. 219; AIR 1942 PC 6 at pp. 7-8 and 1924 2 Ch 101 at p. 117; (2) a customer must make a demand for payment at the branch where his current account is kept before he has a cause of action against the bank: - "Joachimson v. Swiss Bank Corporation", 1921 3 KB 110, quoted with approval by Lord Reid in - "Arab Bank Ltd. v. Barclays Bank", 1954 AC 495 at p. 531.

The rule is the same whether the account is a current account or whether it is a case of deposit. The last two cases refer to a current account; the Privy Council case AIR 1942 PC 6 was a case of deposit. Either way, there must be a demand by the customer at the branch where the current account is kept, or where the deposit is made and kept, before the bank need pay, and for these reasons the English Courts hold that the "situs" of the debt is at the place where the current account is kept and where the demand must be made."

"(45) We have stressed the word "primarily" because the rules we have set out relate to the "primary" obligation. If the bank wrongly refuses to pay when a demand is made at the proper place and time, then it could be sued at its head office as well as at its branch office and, possibly, wherever it could be found, though we do not decide that. But the reason is that the action is then, not on the debt, but on the breach of the contract to pay at the place specified in the agreement: see Warrington, L.J. at p. 116 and Atkin, L.J. at p. 121 of 1924 2 Ch 101."

9. The defendant says that it has long been understood by Courts that, for the purpose as is relevant in this reference, different branches of a bank would be altogether different entities. The defendant says that such position at law has been settled by the Supreme Court in the *Agencia* case and may also be gleaned from the *Hansraj Bajaj* judgment. In the *Agencia* matter the Supreme Court accepted that it was "generally agreed" that in case of a bank which operates through its branches, the branches are regarded for many purposes as separate and distinct entities from the head office and from each other. The passage at paragraph 14 of the report where the relevant principle from the *Delhi Cloth and General Mills* verdict has been quoted as the authority for the proposition, appears to be definitive:

"14. Now it is indisputable as a general proposition that a body corporate and its branches are not distinct and separate entities from each other, that the branches constitute mere components through which the corporate entity expresses itself and that all transactions entered into ostensibly with the branches are in legal reality transactions with the corporate body, and it is with the corporate body that a person must deal directly. But it is also now generally agreed that in the case of a Bank which operates through its Branches, the Branches are regarded for many purposes as separate and distinct entities from the Head Office and from each other. This Court observed in *The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others*, :

(The passage from Delhi Cloth and General Mills extracted above is quoted)

It was explained further that if the bank wrongly refused to pay when at demand was made at the proper place and time, then it could be sued at its head office as well as at its branch office, but the reason was that "the action is then, not on the debt, but on the breach of the contract to pay at the place specified in the agreement", and reference was made to Warrington, L.J. at p. 116 and Atkin, L.J. at page 121 of *New York Life Insurance Co. v. Public Trustee*, (1924) 2 Ch 101. That is the position in regard to banking law and practice, and it is apparently in that light that the Regulation has been framed."

10. In a different context in the *Agencia* case, while construing the Goa, Daman and Diu (Banks Reconstruction) Regulations 1962, the Supreme Court opined that the Regulations proceeded on the basis that branches of a bank must be regarded as entering into and carrying on transactions identifiable as theirs and such transactions were distinct from those carried on by the head office. But such opinion is restricted to the provisions of the Regulations that were under consideration. The enunciation of the law at paragraph 14 of the report, however, is without reference to the Regulations and is the general pronouncement of the law touching upon the rudiments in the matter of the authority of a civil court to receive and try any action relating to a banking transaction.

11. The *Hansraj Bajaj* case that the defendant puts up as its sheet-anchor merits a detailed consideration.

12. The plaintiff in that suit had sought recovery of money equivalent to the value of an alleged undischarged and outstanding demand draft that was issued by the defendant bank's offshore branch at Penang in Malaysia. The territorial jurisdiction of this Court had been invoked on the basis of the bank having its head office within the ordinary original jurisdiction of this Court. The defendant bank applied to have the plaint thrown out on the ground of jurisdiction. That was refused. It then applied, contending that the choice of forum by the plaintiff was mala fide, vexatious, embarrassing and intended to defeat justice by preventing the defendant from bringing material and proper evidence to this Court for a just determination of the lis. The learned single Judge assessed that no part of the transaction or the cause of action for the suit arose within the jurisdiction of this Court or anywhere near it; that the entirety of the alleged cause of action ex facie appeared to have arisen either at Penang or at Singapore. It was on such second bite of the cherry, as it were, that the defendant bank prevailed and the suit in this Court was stayed and the plaintiff given liberty to institute an action or proceedings on the same cause at Penang or Singapore.

The relevant discussion in the judgment is found at paragraphs 12 and 15 of the report:

"12. The only point, therefore, that requires decision is the point of law. That point of law is important. It has been rightly urged with great vigour. That point

arises in this way. Undoubtedly this Court has the jurisdiction to receive, entertain and try this suit. Technically the plaintiff's choice of this forum is legal and competent. The only ground, however, for the jurisdiction of this Court is that the defendant-bank has its head office in Calcutta within the jurisdiction.

As the action is a personal action and the suit is for money, the jurisdiction of this Court is unquestioned. Then the question is whether even where there is jurisdiction, this Court can stay a suit filed in it on other considerations. To stay a suit of this kind is no doubt "prima facie" to stifle a legal right. Courts are loath to do so. They naturally incline in favour of executing and discharging the jurisdiction that the law has vested in them.

There is, however, one exception and that exception is made only in the interest of justice and to prevent abuse of the process of the Court. A right of action exercised by a party and entertained by a Court is primarily based on the one pre-eminent principle that where a conflict has arisen between the parties, the conflict should be resolved according to a fair judicial trial and so justice rendered to the parties.

That is both the primary and the ultimate purpose. If therefore conditions exist which defeat that primary purpose, the Courts have declined to proceed with a suit even where they have a jurisdiction to determine it. As will be plain from this analysis of objectives, this jurisdiction is an inherent jurisdiction of the Court. In this country, the jurisdiction to stay a competent suit is exercised u/s 151, Civil PC, which recognises such inherent judicial power by providing:

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

In other words, the jurisdiction to stay an otherwise competent suit is to be exercised only for the ends of justice or to prevent abuse of the process of the Court. This view is well settled and supported by such authorities in India as - Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney, Jethabhai Versey and Co. Vs. Amarchand Madhavji and Co.,

This jurisdiction is to be sparingly exercised and within the strict limits of rigorous conditions, whose principles may now be clearly stated."

"15. Before I conclude, I wish to add one observation on the nature of the jurisdiction claimed in this case on the ground of jurisdiction. It is a jurisdiction which is undoubtedly rightly claimed and that was why a prior application by the defendant to throw this plaint out on the ground of jurisdiction was refused. But this is a very tenuous jurisdiction.

It is necessary to emphasise here that although a branch bank is in fact an agency of the principal banking corporation a branch bank has often been regarded as very distinct for many special purposes. For instance, it has been regarded in law as distinct from the parent body or the head office in the matter

of estimating the time by which notice of dishonour should be given.

It is also regarded as distinct entitling the banker to refuse payment of a customer's cheque except on that particular branch where he keeps his account. That principle of law was ably discussed by Sir Montague Smith in the Privy Council decision in - "Henry Prince v. The Oriental Bank Corporation", (1878) 3 AC 325.

Here in this case the entire transaction out of which the dispute arose concerns the Penang branch of the defendant bank. The relevant accounts were kept in the Penang branch. In this case a draft was issued by the Penang branch. It was also issued in dollars and not in rupees. In fact, the Head Office here in Calcutta has nothing to do with this transaction at all.

Nor do the books of the Head Office deal with these transactions in any manner whatever. That is why I am of the opinion that in this case the jurisdiction claimed on the ground that the Head Office is here in Calcutta within the jurisdiction is an overstretched jurisdiction although within the technical limits of the law."

13. There is substance in the defendant's suggestion that even while accepting that this Court had jurisdiction to receive the Hansraj Bajaj suit, seeds of doubt were sown on the ground that the only basis - that of the head office of the defendant being within jurisdiction - was fragile. It is apparent that the learned Judge could say no more in the circumstances as an earlier attempt by the defendant in that suit to have the plaint taken off the file on its contention that the Court lacked authority to entertain the suit, had stood rejected. But the learned Judge had serious reservations as to whether a suit arising out of a banking transaction concerning a branch and unconnected to the head office of the bank, could be instituted in a Court exercising jurisdiction over the head office of the bank.

14. In the Hansraj Bajaj case it is only a doubt. In the Agencia judgment rendered several decades later the law seems to have been settled, but again such nuance is irrelevant in the context of the present reference and in assessing the rationale in the Oriental Bank judgment in a suit where the territorial jurisdiction of this Court was invoked on the situs of the zonal office of the bank and not its head office.

15. Hence to the two judgments which are in apparent conflict. In the Steel Authority case, paragraph 8 of the report captures the essence of the Division Bench view and reliance is placed on the Supreme Court opinion in the Food Corporation of India judgment which has also been cited in this case:

"8. If the plaintiff can show that the defendant carries on business within the jurisdiction of this Court, then where did the cause of action arise is wholly besides the point. In this respect a recent judgment of the Supreme Court in the case of Food Corporation of India Vs. M/s. Evdomen Corporation, may be

referred to where Their Lordships were concerned with Clause 12 of the Letters Patent of the Bombay High Court which is the same as that of this Court. An identical question was raised in that case which Their Lordships negatived on the ground that the defendant was carrying on business within the jurisdiction of the Bombay High Court. ..."

16. The Oriental Bank decision was rendered on an appeal from a decree passed against the bank in a claim relating to several fixed deposits made jointly by the plaintiff and the proforma defendant in that suit at the Khidderpore branch of the bank in Calcutta, but outside the ordinary original jurisdiction of this Court. The appellant bank contended that the suit could not have been brought in this Court and it appears from paragraphs 3 and 5 of the report that the appellant had also contended that no part of the plaintiff's cause of action in that suit had arisen within the jurisdiction of this Court. The bank in that case had been sued in this Court on the strength of it carrying on business at its regional office at Park Street within the jurisdiction of this Court. There is copious reference in the judgment to the nature and situs of cause of action and the admitted location of the regional office of the defendant bank within jurisdiction. The ratio of the decision is found at paragraph 24 of the report:

"24. It has been consistently held both by the Hon^{ble} Supreme Court and this Hon^{ble} Court that each branch of a bank is a separate entity. The mere fact that the Regional office is situated within does not give jurisdiction to this Hon^{ble} Court. The suit could have been instituted either in the Court within whose jurisdiction the Khidderpore branch is situated, i.e. the District Court at Alipore or at Delhi. Furthermore, no part of the cause of action, far less the whole of the cause of action, arose within the jurisdiction of this Hon^{ble} Court. The argument that the Regional office had some nexus is also irrelevant; more so because it was never the plaintiff's case that a part of the cause of action arose within and no leave under clause 12 of the Letters Patent was, even sought for. The decisions relied upon by the appellant in the case of *The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others*, and in the case of *Agencia Commercial International Limited and Others Vs. Custodian of the Branches of Banco Nacional Ultramarino*, clearly support the above proposition. In the case of *Delhi Cloth & General Mills Co. Ltd. (supra)*, it was, inter alia, held that the situs of the debt is at the branch/place where the account is kept and where the demand must be made."

17. In another Supreme Court judgment reported at *Vimal Chandra Grover Vs. Bank of India*, the appeal arose from an order passed by the National Consumer Redressal Commission holding that there was no negligence on the part of the respondent bank in dealing with its security of pledged shares of the appellant. On a consideration as to the nexus between the constituent of a branch of a bank and the head office of the bank, the Supreme Court noticed the *Agencia dictum* at paragraph 20 of the report:

"20. In *Agencia Commercial International Limited and Others Vs. Custodian of*

the Branches of Banco Nacional Ultramarino, this Court held that branch of the Bank in which account is maintained by the customer is a separate and distinct entity from the head office. ..."

18. There is another sentence at paragraph 23 of the report that echoes the same sentiment, "Each branch of the bank is independent."

19. Subject to pecuniary limits, the authority of this Court to receive a suit in its original jurisdiction is governed by clause 12 of the Letters Patent. Elsewhere in the country civil courts of original jurisdiction not covered by a similar charter need to look at sections 15 to 20 of the Code of Civil Procedure, 1908 to assess their authority to entertain a suit. By virtue of section 120 of the Code, the provisions of sections 16, 17 and 20 do not apply to a High Court in the exercise of its original civil jurisdiction. The question relevant for the purpose of this reference, to decide as to whether there is any conflict between the Steel Authority and the Oriental Bank judgments, concerns a small part of clause 12 of the Letters Patent which may be placed alongside the corresponding portion of section 20 of the Code. It would do well to notice both clause 12 of the Letters Patent and section 20 of the Code in their entirety before culling out the portions thereof relevant in the context.

Clause 12 of the Letters Patent:

"12. Original jurisdiction as to suits.-And we do further ordain, that the said High Court of Judicature at Fort William in Bengal, 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 immoveable 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 in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of the property sued for, does not exceed One hundred rupees."

Section 20 of the Code of Civil Procedure:

"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 a 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."

20. There are three limbs to clause 12 of the Letters Patent: the first limb covers suits for land or other immovable property, which is not germane for the present purpose; the second limb speaks of the place of accrual of the cause of action in the suit, requiring no previous leave if the cause of action arises wholly within jurisdiction but requiring previous leave if only a part however infinitesimal or significant - of the cause of action arises within jurisdiction; and, the third is the situs of the defendant at the time of commencement of the suit. A suit for land (or other immovable property) stands on a different pedestal and it is unnecessary to go into that aspect of clause 12 here. But in a suit which is not a suit for land (or other immovable property) the plaintiff has a choice of invoking the jurisdiction of this Court on either of the two remaining limbs of clause 12. If there is a solitary defendant in a suit which is not a suit for land (or other immovable property), the plaintiff may unquestionably institute it on the original side of this Court if the entirety of the cause of action arises within the original jurisdiction of the Court and irrespective of where the defendant may dwell or carry on business or personally work for gain. If there is a solitary defendant in a suit which is not a suit for land (or other immovable property), the plaintiff may institute it on the original side of this Court if a part of the cause of action arises within the original jurisdiction of this Court irrespective of where the defendant may dwell or carry on business or personally work for gain, subject, however, to obtaining prior leave under clause 12 to institute the suit. If there is a solitary defendant in a suit which is not a suit for land (or other immovable property), the plaintiff may institute it on the original side of this Court if the defendant, at the time of the commencement of the suit, dwells or carries on business or personally works for gain within the original jurisdiction of this Court, irrespective of where the cause of action may have arisen. The second and third limbs of clause 12 that cover suits other than suits for land (or other immovable property) are, in a sense, mutually exclusive; in that the plaintiff has the choice of either founding territorial jurisdiction on situs of cause of action or on location of the defendant at the time of commencement of the suit. In a suit other than a suit for land (or other immovable property) where the plaintiff sues more than one defendant, either of the last two limbs of clause 12 of the Letters Patent has to be satisfied in respect of each defendant in the suit for the action to be launched on the original side of this Court.

For the purpose of the matter under consideration the portion of clause 12 that is

relevant may be read as follows:

"... the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits ... 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 ..."

21. This limb of clause 12 will cover a suit which is not a suit for land (or other immovable property) and where the jurisdiction of this Court on its original side is not invoked on the basis of the cause of action having arisen in part or in whole within the area falling within the ordinary original jurisdiction, but the jurisdiction is founded solely on the defendant being located within the ordinary original jurisdiction at the time of commencement of the suit.

22. Subject to the limitations in sections 15 to 19 of the Code, section 20 thereof permits a suit to be instituted in a Court within the local limits of whose jurisdiction the defendant, or each of the defendants, at the time of commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain. u/s 20 of the Code, if the place of accrual of cause of action is not made the basis for invoking the territorial jurisdiction, the place where the defendant, or each of the defendants, resides or carries on business or personally works for gain would be the governing factor. It is not necessary to go into the facet of obtaining leave of Court for, or the acquiescence of, one or more of the defendants who may reside or carry on business or personally work for gain outside the jurisdiction of the Court in which the suit is instituted. Section 20 of the Code has an explanation which clause 12 of the Letters Patent does not carry.

23. The Agencia pronouncement of the law and the reliance therein on the rule as laid down in the Delhi Cloth and General Mills case were, so to say, absolute and without reference to either clause 12 of the Letters Patent or the provisions of the Code. The Agencia case understood the settled law to be that branches of a bank were independent of each other and the more recent judgment in the Bank of India case accepted the principle. In the Hansraj Bajaj case the plaintiff had lodged the suit on the original side of this Court on the basis of the head office of the bank being within jurisdiction and the learned Judge, even when considering an application for stay of the suit after an application in the nature of return of plaint had been rejected, found that the reliance on the situs of the head office of the bank was overstretched.

24. It is in such context that the opening sentence of paragraph 24 of the Oriental Bank, judgment has to be viewed. It was the reading of the Division Bench in the Oriental Bank case that the principle had long been settled that each branch of a bank was a separate entity.

25. The understanding over a long period of time of the purport of a provision may be an admissible aid to its construction. Classically, the meaning ascribed to the words of a provision by contemporary opinion in case of an ancient statute is

accepted under the principle of *contemporanea expositio*. A uniform notorious practice followed under an old Act would show that the practice was on correct understanding of the law. No usage or practice developed under clause 12 of the Letters Patent of 1865 is shown, ascribing any meaning by contemporary opinion to the words relevant in the present context. In its applicable limb, clause 12 permits a suit to be instituted against a corporation in this Court if such corporation carries on business within its jurisdiction. There is no express distinction in clause 12 of the Letters Patent between a banking corporation and other corporations or bodies corporate.

26. Of the decisions relied upon at the Bar there is only the Hansraj Bajaj decision of 1956, which is of considerable vintage but rendered closer to modern times than when clause 12 first appeared. Again, the Hansraj Bajaj judgment accepts that a suit against a bank in relation to a transaction at an outside branch could be received by this Court if the head office of the bank were within jurisdiction, with the caveat that it "is an overstretched jurisdiction although within the technical limits of the law."

27. *Communis opinio* is evidence of what the law is. If in at least three judgments of the Supreme Court, although not rendered in the context of clause 12 of the Letters Patent, it had been held absolutely - or as close to absolutely as possible - that branches of banks were separate entities, the Division Bench in the Oriental Bank case was justified in inferring that the legal position was settled. The law laid down by the Supreme Court is the law of the land and there is hardly any room to contend that different branches of a bank would, in the circumstances as are relevant in the present context, make up a solitary entity. The Oriental Bank decision is confined to a claim made by a constituent in respect of the transaction at a particular branch of the defendant bank outside jurisdiction and it has appropriately been held that the jurisdiction of this Court could not have been attracted by citing the regional office of the bank within jurisdiction. That is the true ratio of the judgment, since it was not necessary to go into the place of accrual of cause of action in that case as the suit had not been instituted in this Court on the contention that the whole or a part of the plaintiff's cause of action therein had arisen within jurisdiction.

28. The Steel Authority judgment covers the case of a defendant corporation other than a bank. Since it was not germane in that matter, the relevant factors in the applicability of the same limb of clause 12 of the Letters Patent to a suit instituted against a bank where the pertinent transaction covered the branch of the same bank situated outside jurisdiction, were not required to be considered. In that case a suit for damages was instituted in this Court on the averment that the defendant corporation carried on business within jurisdiction. The defendant applied for dismissal of the suit for want of jurisdiction and carried the order of dismissal of its application in appeal. The appeal was dismissed on the reasoning that the jurisdiction of the Court had been invoked, not on the basis of the place where the cause of action arose wholly or in part, but on the assertion that the

defendant was carrying on business within jurisdiction.

29. The settled law is somewhat otherwise if the defendant is a bank; for the different branches of a bank are to be regarded as separate entities, distinct from each other and certainly from the regional or zonal office. A constituent of a bank may not institute a suit in Kozhikode, for instance, if his transactions pertain to the Kohima branch of the bank which may have another branch or an office in Kozhikode. The situation would be no different under clause 12 of the Letters Patent.

30. The Steel Authority case did not consider a banking transaction and the Oriental Bank case did not consider the case of any defendant other than a bank where the matters complained of concerned a branch of the bank other than the regional office that had been cited to attract jurisdiction. There is, therefore, no scope for conflict between the two Division Bench judgments.

31. As the reference was made only for the purpose of resolving the perceived conflict between the said two judgments, it is not necessary to venture into the uncharted territory of what the law may be, and how the relevant limb of clause 12 of the Letters Patent would come to be construed, with the proliferation of at par cheques encashable at every branch of the bank or upon appreciation of the increasing banking transactions on the internet which makes indistinct the traditional banking practice of yore.

32. The reference is disposed of by holding that there is no conflict between the judgments rendered in the Steel Authority and the Oriental Bank cases and with the observation that the applicability as precedent of the law recognized in the one or the other would depend on the facts obtaining in a particular context.

Urgent certified Photostat copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

Surinder Singh Nijjar, C.J.

33. I agree.

Nadira Patherya, J.

34. I agree.