

(1997) 12 DEL CK 0035

In the Delhi High Court

Case No : I.A.No.11926 of 1996 in S.No.1979 of 1984

Parkash Kaur

APPELLANT

Vs

K.G. Ringshia

RESPONDENT

Date of Decision : 16-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20(C)

Citation : (1998) 2 CivCC 59 : (1998) 118 PLR 1

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mr. P.C.Khanna, with Ms. Ruchi Khanna, for the Appellant; Mr. Kailash Vasudeva and Ms. Vanita Sahni, for the Respondent

Judgement

J.B.Goel, J.—plaintiff has filed the present suit for declaration that letter dated 20.11.1984(Annexure-E) is null and void and the agreement dated 10.11.1979 between the parties is still operative and binding on the parties.

2. Briefly, the facts are that the plaintiff was formerly residing at Bombay and had entered into an agreement on 10.11.1979 with the defendant whereby a flat in the multi-storeyed building proposed to be constructed at Chakla Village, Andheri (East), Bombay by the defendant was agreed to be delivered to her on construction for which she had paid a sum of Rs.3,942/- to the latter. The plaintiff shifted to Delhi, intimation of it is alleged to have been given to the defendant on 13.1.1982. In August, 1984 by means of registered letter sent to the defendant she complained about the delay caused in the construction and inquired when the flat was likely to be completed and handed over to her and she offered to make further payments, if payable by her, immediately on demand. This was followed by reminder letter dated 12.10.1984 sent by registered A.D. but no reply was received and then a telegram was sent on 26.11.1984. Then a reply dated 20.11.1984, was received by her on or about 30.11.1984 wherein she was informed that the amount of Rs.3,942/- paid by her at the time signing of the agreement had been refunded to her through her son

Shri Harnam Singh who had collected the amount under her instructions in the presence of her broker Mr. Anjani Mishra; and now there was no agreement subsisting between the parties and the agreement dated 10.11.1979 had been mutually cancelled.

3. She has denied that her son had received the refund of Rs.3,942/- from the defendant or he was authorised by her to do so. These allegations are false and baseless. In fact the defendant had commenced the construction belatedly and now when the value of the flat had increased he has become dishonest and wants to avoid the agreement on one pretext or the other. This conduct of the defendant is dishonest and he wanted to cheat and defraud the plaintiff. Accordingly the plaintiff has filed the present suit seeking the following relief:

"To grant a declaration that the letter dated 20.11.1984 (Annexure E) to the plaint is null and void and of no effect and the agreement dated 10.11.1979 continues to remain and always remained operative and binding on the parties."

Regarding the cause of action for the purpose of jurisdiction of this Court in para 24 it was pleaded as under:

"24. That the cause of action substantially and materially arose at Delhi where the letter cancelling the Agreement dated 10th November, 1979 was received".

Defendant has filed a written statement contesting the suit of the plaintiff on various ground legal and on merit. Entering into agreement dated 10.11.1979 is not disputed. However, it is pleaded that the agreement was validly cancelled and her son took refund of the amount of Rs.3,942/- on her behalf and under her instructions and there was no subsisting agreement between the parties and the agreement has been validly and mutually cancelled. He also took the plea that this Court has no territorial jurisdiction as no part of cause of action arose at Delhi.

10 issues, both on pleas on merit and on legal pleas were framed on November 30, 1989. The Issue No. 1 is regarding jurisdiction of this Court is as under:

"1. Whether this Court has no territorial jurisdiction to entertain and try the present suit?"

This issue has been ordered to be tried as a preliminary issue.

4. Learned Counsel for the plaintiff has contended that the plaintiff is residing at Delhi, the letter dated 20.11.1984 though posted from Bombay was received by her at Delhi, she is seeking declaration and cancellation of this letter only, as such part of the cause of action arose at Delhi. It has also been contended that the suit is not for any relief in respect of immovable property and Section 16(d) of the CPC does not apply. He has relied on judgment of this Court in *Prakash Kaur v. Everest Construction Co.*, 1990 Rajdhani Law Reporter 506. Whereas learned Counsel for the defendant has contended that the question of jurisdiction of this Court was also gone into by this Court in detailed order dated November

24,1987 while deciding plaintiff's application under Order 39, Rules 1 & 2, CPC where it was observed that this Court has no territorial jurisdiction; even otherwise the agreement in question was entered into at Bombay for purchase of a flat to be constructed at Bombay, the agreement was cancelled at Bombay and the suit for specific performance would lie only at Bombay, defendant neither resides nor carries on business at Delhi and mere communication of the letter dated 20.11.1984 to the plaintiff at Delhi, which does not form part of cause of action, would not give rise to any cause of action wholly or in part and this Court thus has no territorial jurisdiction. He has relied on Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, .

5. Section 16 of the CPC provides that the suit shall be instituted where the subject matter is situated. However, the present suit is not for specific performance of the agreement to sell. It is well established that at this stage for the purpose of determining the objection of lack of territorial jurisdiction the Court has only to see the facts pleaded or the averments made without embarking upon the inquiry as to the correctness or otherwise of the said facts. (See: Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others,).

6. As such Section 16(d) is not attracted in this case.

7. However, in the present case Section 20 of the Code will be applicable. The defendant neither resides nor carries on any business at Delhi hence its Clauses (a) and (b) are not applicable. However, Clause (c) will be applicable according to which that Court will have jurisdiction where the cause of action wholly or in part arises. In State of Rajasthan and Others Vs. Swaika Properties and Another, , the expression cause of action has been explained as a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant and in ONGC's case (supra) this expression "cause of action" has been explained as bundle of facts which the petitioner must prove, if traversed to entitle him to a judgment in his favor by the Court. The facts must constitute integral part of the cause of action.

8. It is well settled that the place where the plaintiff resides or carries on business in itself will not give jurisdiction to the Court at the place.

9. The question is whether the communication of letter dated 20.11.84 by defendant from Bombay to the plaintiff at Delhi constitutes a cause of action or part of the cause of action to confer jurisdiction on this Court.

10. In the case of ONGC (supra) the respondent who had registered office at Calcutta having read in Calcutta's newspapers ONGC's advertisement inviting at Delhi by Engineers India Ltd. for works to be executed at Hazira (Gujarat) in response sent its tenders to the Delhi address of the appellant and had also communicated with the Delhi office, on rejection of its tender documents on grounds of its non-eligibility. They filed a writ petition in the Calcutta High Court against this. That Court entertained the application and granted interim relief. The matter was taken to the Supreme Court where additional ground was taken

by the respondent that reply to their fax was received at Calcutta and thus a part of cause of action arose at Calcutta. While deprecating the action of Calcutta High Court in entertaining the petition it was held that none of the circumstance and not even the fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would constitute an integral part of cause of action and as no part of cause of action arose at Calcutta that High Court was not right in assuming jurisdiction.

11. In *State of Rajasthan v. M/s. Sawika Properties* (supra) the respondent Company had its registered office at Calcutta. Its land situated at outskirts of Jaipur was proposed to be acquired for a public purpose u/s 52 of the Rajasthan Improvement Act, 1959 for which a notice u/s 52(2) was sent to it on its Calcutta office; after hearing respondent, final notification for acquisition of land was issued. Respondent's efforts to get it released having failed, it filed a writ petition under Article 226 in the High Court of Calcutta challenging the acquisition, where an ex parte prohibitory order was granted restraining taking of possession of the acquired land. The Supreme Court held that the cause of action neither wholly nor in part arose within the jurisdiction of Calcutta High Court and that the mere service of the notice u/s 52(2) of the Act on the respondent at their registered office at Calcutta could not give rise to a cause of action within that territory and the service of such notice was not an integral part of the cause of action.

12. Coming to the facts in the present case, the plaintiff had booked a flat to be constructed at Bombay where she was living at that time, part payment was made by her at Bombay. She was informed by the defendant vide letter dated 20.11.84 that she was well aware that the amount of Rs.3,942/- paid by her at the time of signing of the agreement on 10.11.79 had already been refunded and it had been collected by her son under her instructions and after the said refund there was no agreement subsisting between the parties and the agreement had been mutually cancelled. This letter merely informed the plaintiff that the agreement had already been mutually cancelled the amount paid by her had been refunded to her through her son on her behalf and under her instructions. This letter merely communicated what had already happened, that is, the agreement had already been cancelled at Bombay.

13. In the plaint the relief claimed is that this letter be declared as null and void and it be declared that the agreement dated 10.11.1979 continues to remain and always remained operative and binding. The relief in substance is a declaration that the agreement has not been validly terminated and it still subsists. This relief against cancellation of the agreement, if wrongly cancelled, could be claimed at Bombay only as the cause of action wholly arose at Bombay. Letter dated 20.11.84 communicating the factum of an accomplished cause of action does not form an integral part of cause of action. The mere receipt of the letter in question by the plaintiff at Delhi in the circumstances is not part of the cause of action and it does not confer jurisdiction on this Court to entertain and try this

suit. This Court, thus, has no territorial jurisdiction to entertain and try the suit. This suit was not properly filed at Delhi.

14. Issue No. 1 is, thus, decided accordingly against the plaintiff.

15. In view of this finding, the plaint be returned to the plaintiff 7.1.1998 for being presented to the Court of competent jurisdiction, if so desired.

plaintiff shall pay costs of the defendant. Interim order is vacated and the application for injunction stands disposed of as infructuous.