

(2014) 02 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Santa Banta Com. Limited

APPELLANT

Vs

Porsche Cars

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 335 : 2014 1 CPJ 516

Hon'ble Judges : D.K.JAIN J.

Final Decision : Appeal allowed

Judgement

1. THIS Appeal, under Section 19 of the Consumer Protection Act, 1986 (for short "the Act") has been filed by the Complainant Company and one of its Directors, questioning the correctness of order dated 10.5.2012 passed by the State Consumer Disputes Redressal Commission (for short "the State Commission"). By the impugned order, the State Commission, without entering into merits of the complaint filed by the Appellants, has dismissed it only on the ground that it did not have territorial jurisdiction to entertain the complaint as no cause of action had arisen in the Union Territory of Chandigarh. Briefly stated, the case of the Appellants, as pleaded in the complaint, is that on being approached by the General Manager (Respondent No. 4) of one M/s. Stanley Motors Pvt. Ltd. (Respondent No. 3), dealers of M/s. Porsche Cars (Respondent No. 1) they decided to purchase a Porsche Cayenne V -6 vehicle. The price of the vehicle was settled at Rs. 68.93 lacs. The Appellants were required to pay 60% of the price of the car, in advance. The remaining 40% of the price was to be paid on delivery of the car. The Appellants were also told that they will have to pay Rs. 5.35 lacs and the balance amount of Rs. 34,81,880, towards advance, would be arranged through a finance company. Accordingly, the Appellants handed over a cheque in the sum of Rs. 5.35 lac dated 30.7.2008 to Respondent No. 3 at Chandigarh. The sales contract dated 31.7.2008 was executed at Chandigarh. A sum of Rs. 34,81,880, after deducting one instalment against a total loan of Rs. 36 lac, was directly paid by the finance company, Tata Capital Ltd., Chandigarh, to Respondent No. 3 on 31.7.2008 at Chandigarh. However, for some reason the car was not delivered to the Appellants. Nevertheless, they

continued to pay 13 monthly instalments of Rs. 1,15,020 to the finance company at Chandigarh. Having failed to receive the car, the Appellants served a legal notice dated 25.12.2009, requiring the said Respondents as also the importer (Respondent No. 6) to pay to them a sum of Rs. 40,16,800 paid as advance, interest and damages, etc. There being no response to the legal notice, alleging deficiency in service, resulting in humiliation, harassment and the mental agony, the Appellants filed a complaint under Section 17 of the Act against the Respondents praying for a direction to pay to them a sum of Rs. 67,80,293 along with interest and compensation for harassment.

2. THE complaint was resisted by Respondent Nos. 3, 4 and 6. One of the preliminary objections raised in their common written version was that the State Commission, Chandigarh had no jurisdiction to entertain the complaint because no cause of action had arisen at Chandigarh as the car was booked by Respondent No. 4 at Delhi, for which, a cheque in the sum of Rs. 5.35 lacs was handed over to him. Accepting the preliminary objection, the State Commission has concluded that since none of the payments were received at Chandigarh, no part of the cause of action could be said to have arisen within the territorial jurisdiction of the Chandigarh State Commission. Relying on the decision of the Supreme Court in *M/s. Sonic Surgical v. National Insurance Company Ltd.*, IV (2009) CPJ 40 (SC) : IX (2009) SLT 111, as noted above, the Complaint has been dismissed in limine. Hence, the present Appeal. We have heard learned Counsel for the parties.

3. MR . S.S. Gulati, learned Counsel appearing for the Appellants, strenuously urged that since the sales contract for purchase of the car was entered into at Chandigarh, a cheque in the sum of Rs. 5.35 lacs was handed over to Respondent No. 4 at Chandigarh and monthly instalments (Rs. 1,15,020) were paid in the office of the finance company at Chandigarh, the State Commission committed an error of law in holding that no part of cause of action in respect of the subject transaction had arisen at Chandigarh. To buttress his argument that for determining the objection regarding lack of territorial jurisdiction only the facts pleaded in the Complaint in support of the cause of action are to be taken into consideration and the correctness or otherwise of the said facts or the defence which may be set up by the opposite party is irrelevant, learned Counsel placed reliance on a decision of the Supreme Court in *A.B.C. Laminart Pvt. Ltd. and Another v. A.P. Agencies, Salem*, (1989) 2 SCC 163.

4. MR . Rajat Bhalla, learned Counsel appearing on behalf of the Respondents, on the other hand, supported the decision of the State Commission. It was submitted that neither Respondent No. 3 (dealer) nor Respondent No. 6 (importer) had any Branch Office at Chandigarh and all the documents having been executed at New Delhi, the State Commission at Chandigarh was justified in dismissing the complaint for want of territorial jurisdiction. Additionally, it was also urged that apart from the fact that there was no privity of contract between the Appellants and Respondent No. 6 (importer) the sales contract also contains

an undertaking that there would be no privity of contract between Respondent No. 6 and any other party at Chandigarh or elsewhere. Having examined the issue in light of the material on record, we are of the opinion that the order of the State Commission, dismissing the complaint in limine, on the ground of territorial jurisdiction, is unsustainable.

5. SECTION 17 of the Act defines the jurisdiction of a State Commission. Sub-section 2 of Section 17 of the Act, inserted by Act 62 of 2002, with effect from March 15, 2003, relevant for our purpose, reads as follows: [(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction -
- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.]

6. THE sole question for consideration therefore, is as to whether on the basis of assertions made in the complaint, the "cause of action", wholly or in part, arose at Chandigarh? The expression "cause of action" is neither defined in the Act nor in the Code of Civil Procedure, 1908. However, in a catena of decisions of the Supreme Court, the said expression is described as a bundle of essential facts necessary for the plaintiff to prove and obtain a decree but does not comprise evidence necessary to prove such facts. Failure to prove such facts would give the defendant a right to judgment in his favour. "Cause of action" thus gives occasion for and forms the foundation of the suit. See *Kandimalla Raghavaiah and Co. v. National Insurance Co. Ltd.*, III (2009) CPJ 75 (SC) : (2009) 7 SCC 768.

7. IN *Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors.*, 1994 (4) SCC 711, a bench of three Learned Judges of the Supreme Court, while interpreting the expression "cause of action, wholly or in part, arises" as appearing in Article 226(2) of the Constitution of India (similar expression is used in Section 17(2)(c) of the Act) observed, thus: It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kour v. Partab Singh*, ILR (1889) 16 Cal. 98, 102, Lord Watson said: ...the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. Therefore, in determining

the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition.

8. AGAIN , in *Navinchandra N. Majithia v. State of Maharashtra and Ors.*, VI (2000) SLT 528 : III (2000) CCR 164 (SC) : (2000) 7 SCC 640, explaining the import of the said expression, in his concurring judgment, K.T. Thomas, J. observed as under: The collocation of the words "cause of action, wholly or in part, arises" seems to have been lifted from Section 20 of the Code of Civil Procedure, which Section also deals with the jurisdictional aspects of the Courts. As per that Section the suit could be instituted in a Court within the legal limits of whose jurisdiction the "cause of action wholly or in part arises". Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to Fifteenth Amendment of the Constitution as to mean "the bundle of facts which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court". In *Read v. Brown Lord Esher*, 60 LT 250 (CA), adopted the definition for the phrase "cause of action" that it meant. "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved".

In *Alchemist Ltd. and Anr. v. State Bank of Sikkim and Ors.*, II (2007) CLT 340 (SC) : V (2007) SLT 778 : (2007) 11 SCC 335, explaining the meaning of the expression "cause of action", the Supreme Court opined thus: 37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant -petitioner would or would not constitute a part of cause, of action, one has to consider whether such facts constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless, it must be a "part of cause of action" nothing less than that.

9. HAVING considered the matter in the light of the aforesaid principle, we are unable to hold that in the present case not even a part of cause of action had arisen at Chandigarh. Although the sales contract does not mention the place where the same was executed but other contemporaneous circumstances like confirmation of payment by the branch of the finance company at Chandigarh, issue of cheques towards monthly instalments in favour of the finance company at Chandigarh do tend to support the averments that a part of the cause of

action had arisen at Chandigarh. At this stage, there is no reason to disbelieve the version of the Appellants that cheque dated 30.7.2008 of Rs. 5.35 lacs, towards initial payment, drawn on Citi Bank N.A. Sector 9, Chandigarh in favour of Respondent No. 3 (the dealer) at the time of signing of the sales contract was not issued at Chandigarh. In our view, in the light of the facts pleaded in the Complaint, a part of cause of action did arise at Chandigarh conferring jurisdiction on the State Commission at Chandigarh.

10. AS regards the decision of the Supreme Court in *Sonic Surgical* (supra), on which reliance has been placed in the impugned order, it is clearly distinguishable on facts. In that case, insurance policy had been taken at Ambala; the fire broke out in godown at Ambala and claim for compensation was also made at Ambala, which, as noted above, is not the case here. In the light of those facts it was held that no "cause of action" arose at Chandigarh, where the complaint under the Act was filed. For the foregoing reasons, the appeal succeeds and is hereby allowed with no order as to costs. The impugned order is set aside and the complaint is restored before the State Commission, U.T., Chandigarh for being decided on merits. The State Commission is requested to dispose of the complaint as early as possible.

11. BEFORE parting with the case, we deem it necessary to clarify that we have come to the afore -noted conclusion on the basis of the averments in the complaint. It would, however, be still open to the respondents to rebut the evidence, which may be led by the Complainant in support of the averments in the Complaint and if they succeed in showing that the averments are not true and correct, the complaint, though entertained in terms of this order, may be rejected for want of jurisdiction. The parties/their Counsel are directed to appear before the State Commission on 24th March, 2014 for further proceedings.