
(2025) 04 BOM CK 0288
In the Bombay High Court
Case No : Writ Petition No. 9148 Of 2023

Schulman Inc Ltd. And Anr

APPELLANT

Vs

Odyssey Tours And Travels And Ors

RESPONDENT

Date of Decision : 17-04-2025

Acts Referred:

Code of Civil Procedure 1908 — Section 20, 20(c), Order 7 Rule 11, Order 7 Rule 11(a), Order 38 Rule 5

Citation : (2025) 04 BOM CK 0288

Hon'ble Judges : N. J. Jamadar, J

Bench : Single Bench

Advocate : Vijay Parikh, Dharmesh S. Jain, Anil T. Agarwal, Kunal Vaishnav, Rahul Kothari, Surbhi Soni, MG & Associates,

Final Decision : Dismissed

Judgement

N. J. Jamadar, J

1. Rule. Rule made returnable forthwith and with the consent of the learned counsel for the parties, heard finally.

2. The Petitioners-Defendant Nos. 1 and 2 take exception to an Order dated 4th May 2022 passed by the Commercial Court at Pune in Special Commercial Civil Suit No. 211 of 2016, whereby an application preferred by the Petitioners for dismissal of the Suit/rejection of the Complaint (Exhibit "53") preferred by the Petitioners came to be dismissed.

3. The background facts leading to this Petition can be summarized in brief as under:

3.1 The parties are hereinafter referred in the capacity in which they arrayed before the Commercial Court.

3.2 The Plaintiff is engaged in the business of travel and tourism and provides travel management services to corporate customers.

3.3 Defendant No.1 is a company incorporated under the laws of the United Kingdom. Defendant No.1 is a part of United States based multinational company A Schulman Inc. Ltd. Defendant No.2 is a resident of UK. Defendant No.2 worked as a Project Manager with Defendant No.1 company. Defendant No.3 is a company incorporated under the provisions of Indian Companies Act 1956. Defendant No.3 is also a part of A Schulman. Defendant Nos. 1 to 3 are both owned and controlled by A Schulman group and are closely related group companies. Defendant Nos. 4 and 5 are the HR Managers and Front Executive, respectively, of Defendant No.3 company.

3.4 A suit came to be instituted with the assertions that Defendant Nos. 3 to 5 represented to the Plaintiff that the travel desk of their UK office was under maintenance and that Defendant No.2, their colleague from the UK office of Defendant No.1 company, was desirous of using the Plaintiff's services for handling travel bookings for Defendant No.1 company. An email was addressed on 27th August 2015 by Defendant No.1 company spelling out the procedure of bookings and other terms and conditions of the arrangement between the Plaintiff and Defendant No.1.

3.5 On the strength of such representations, the Plaintiff booked the tickets for Defendant No.1 company on the instructions of Defendant No.2. Defendant No.2 had allegedly made a representation on telephone that remittance of GBP 50000 was being made in favour of the Plaintiff.

3.6 Subsequently, Defendant No. 4 had allegedly claimed that the Defendant No.2 had not made any bookings with the Plaintiff. Later on the Defendant flatly refused to make any payment for bookings made for Defendant No.1 and claimed that the bookings were made without instructions and approval and someone had fraudulently represented himself as an employ of the Defendant No.1 company.

3.7 As Defendant Nos. 1 and 2 did not appear, initially, by an order dated 17th August 2016, the Suit was ordered to be proceeded ex-parte against Defendant Nos. 1 and 2.

3.8 On 22nd March 2017, Defendant Nos. 1 and 2 appeared and filed an Application to set aside the ex-parte order.

3.9 By an order dated 30th January 2020, the learned District Judge was persuaded to set aside the ex-parte order and permit the Defendants to enter appearance subject to payment of costs. Defendant Nos. 1 and 2 filed their Written Statements and Reply to the Interim Application under Order 38 Rule 5 of the Code of Civil Procedure 1908 ("the Code") and for the disclosure of the assets, whilst maintaining that they did not submit to the jurisdiction of the Indian Courts.

3.10 Simultaneously, Defendant Nos. 1 and 2 filed instant Application for dismissal of the Suit/rejection of the Plaint qua Defendant Nos. 1 and 2

contending, inter alia, that Defendant No.1 does not, by itself, carry on business in India. Defendant Nos. 1 and 2 had not submitted to the jurisdiction of the Indian Courts. Under the principles of Private International Law, a Court cannot entertain any action against a foreigner resident outside the Country or a foreigner not carrying on business within the Country unless the foreigner specifically submitted to the jurisdiction of the Court. Therefore, the Suit be dismissed and/or the Plaint be rejected qua Defendant Nos. 1 and 2.

3.11 The Application was resisted by the Plaintiff.

3.12 By the impugned order, the learned District Judge was persuaded to reject the Application observing, inter alia, that Defendant Nos. 1 and 2 had, in fact, submitted to the jurisdiction of the Court by not giving reply to the pre-Suit notice, by filing an Application to set aside the ex-parte order, and by filing Written Statement in the Suit. Therefore, the Plaint cannot be rejected.

4. Being aggrieved, Defendant Nos. 1 and 2 have invoked the Writ Jurisdiction.

5. I have heard Mr. Viraj Parikh, the learned Counsel for the Petitioner, and Mr. Kunal Vaishnav, the learned Counsel for Respondent No. 1, at some length. The learned Counsel took the Court through the pleadings and the material placed on record.

6. Mr Parikh, the learned Counsel for the Petitioner, would urge that the learned District Judge committed a gross error in law in returning a finding that Defendant Nos. 1 and 2, who are admittedly foreigners and do not reside or carry on business in India, had submitted to the jurisdiction of the Commercial Court at Pune. None of the factors on the basis of which such inference was drawn by the learned District Judge, sustain such inference. Failure to give a reply to the pre-suit notice can never be construed as submission to the jurisdiction of the domestic Court. As regards the action of the Defendant Nos. 1 and 2 in seeking the setting aside of the order to proceed ex parte and filing of the Written Statement, Defendant Nos. 1 and 2 had categorically contested the jurisdiction of the Commercial Court and contended that they were not submitting to the jurisdiction of the said Court. Such act of appearing before the Court, under protest, could never have been considered as submission to the jurisdiction of the Court, urged Mr. Parikh.

7. Mr. Parikh submitted with a degree of vehemence that though the learned District Judge referred to the decision of the Supreme Court in the case of World Tanker Carrier Corporation Vs SNP Shipping Services Pvt Ltd & Ors, (1998) 5 SCC 310 wherein the principle of Private International Law that a Court cannot entertain an action against a foreigner resident outside the country or a foreigner not carrying on business within the Country, unless he submits to the jurisdiction of the domestic Court, was held to be applicable to an action in personam, yet unjustifiably declined to follow the binding precedent on an incorrect premise that the said decision was rendered in an admiralty action. The enunciation of the law in the case of World Tanker Carrier Corporation (Supra) has been

consistently followed by this Court.

8. To bolster up the aforesaid submission, Mr. Parikh placed reliance on the judgment of a learned Single Judge in the case of Kohinoor Carpet Manufacturers Vs Forbes Gokak Ltd & Anr 2001 SCC OnLine Bom 1076 and a Division Bench judgment in the case of Angsley Investments Limited Vs Jupiter Denizcilik Tasimacilik Mumessillik San Ve Ticaret Limited Sirketi & Ors. 2023 SCC OnLine Bom 559. It was urged that the ratio of the judgment in the case of World Tanker Carrier Corporation (Supra) is not restricted to the admiralty jurisdiction.

9. Mr. Parikh further submitted that the learned District Judge was also in error in observing that a Plaint cannot be rejected in part qua the particular Defendant. Reliance was placed on a Division Bench judgment of this Court in the case of Sheela Ram Vidhani & Anr Vs S.K. Trading Company & Ors, 2021 SCC OnLine Bom 864 wherein a Division Bench of this Court enunciated that in view of the judgment of the Supreme Court, in the case of Church of Christ Charitable Trust And Education Charitable Society Vs Ponnamman Educational Trust (2012) 8 SCC 706 which was delivered prior in point of time to the decision of the Supreme Court in the case of Madhav Prasad Aggrawal Vs Axis Bank Limited, (2019) 7 SCC 158 a Plaint can be rejected as a whole against some of the Defendants. Therefore, there was no embargo on the rejection of the Plaint in the instant Suit qua Defendant Nos. 1 and 2.

10. In opposition to this, Mr. Vaishnav, the learned Counsel for Respondent No.1-Plaintiff would support the impugned order. Mr. Vaishnav submitted that the learned District Judge rightly held that the Defendant Nos. 1 and 2 had submitted to the jurisdiction of the Commercial Court at Pune by acts of omission and commission.

11. In any event, since a part of cause of action had arisen within the local limits of the jurisdiction of the Commercial Court at Pune, in view of the provisions contained in Section 20 (c) of the Code, the Commercial Court at Pune has the jurisdiction to entertain, try and decide the Suit qua Defendant Nos. 1 and 2 also. The principle of Private International Law, pressed into service by Defendant Nos. 1 and 2 is not absolute. It is subject to the local law which confers the jurisdiction on the domestic Courts over the foreigners.

12. It was forcefully canvassed by Mr. Vaishnav that Section 20(c) of the Code confers jurisdiction on a Court in India over the foreigners if the cause of action arose within the jurisdiction of this Court. To this end, Mr Vaishnav placed a strong reliance on a Constitution Bench judgment of the Supreme Court in the case of Lalji Raja & Sons Vs Firm Hansraj Nathuram. 1971(1) SCC 721. Reliance was also placed on a Division Bench judgment of the Patna High Court in the case of Suresh Narain Sinha Vs Akhauri Balbhadra Prasad & Ors 1957 SCC OnLine Pat 7 and a decision in the case of the Gaekwar Baroda State Railway Vs Habib Ullah. 1933 ILR 828

13. Mr. Vaishnav further urged that the position in law that a Plaint cannot be

rejected qua a particular Defendant is also well-recognized. Reliance was placed on a decision of the Supreme Court in the case of Sejal Glass Limited Vs Navilan Merchants Private Limited, (2018) 11 SCC 780 wherein it was postulated that, if the claim survives against certain Defendants and/or property, Order VII Rule 11 will have no application at all, and the Suit as a whole must then proceed to trial.

14. In the light of the aforesaid rival submissions, the core question that comes to the fore is whether the Commercial Court at Pune was justified in exercising the jurisdiction qua Defendant Nos. 1 and 2?

15. The facts are not much in contest. Defendant Nos. 1 and 2 are foreign residents, or for that matter, it is, by and large, not controverted that Defendant Nos. 1 and 2 do not carry on business in India.

16. The crux of the Plaintiff's case is that Defendant No.2 induced it to make the bookings by addressing communications and making representations that the amount would be remitted. Later on, it was falsely claimed that somebody impersonated Defendant No.2 and induced the Plaintiff to make the bookings. It is the claim of the Plaintiff that the bookings were made and the emails were received and the representations were made to the Plaintiff at Pune. Therefore, a part of cause of action has arisen within the local limits of the jurisdiction of the Courts at Pune.

17. At the outset, it is imperative to note that a meaningful reading of the Plaint, especially the averments in paragraphs 75 and 76, lead to a sustainable inference that a part of the cause of action has arisen within the local limits of the jurisdiction of the Courts at Pune. I find it rather difficult to accede to the submission on behalf of the Defendant Nos. 1 and 2 that no part of cause of action has arisen within the local limits of the Courts at Pune. It is trite that, cause of action is a bundle of facts. In the case at hand, the Plaintiff has adverted to various facts which transpired within the local limits of jurisdiction of the Courts at Pune, commencing from the initial representation made by Defendant Nos. 3 to 5, the email purportedly addressed by Defendant No.2, the representation purportedly made by Defendant No.2 professing to remit the amount to the Plaintiff and the eventual disclaimer made by Defendant No.1 that the bookings were made without instructions or approvals of Defendant No.1, and someone fraudulently represented himself as an employee of the Defendant No.1 -Company.

18. This takes me to the thrust of the submission on behalf of the Defendant that the provisions of Section 20(c) of the Code would not override the principle of Private International Law. The edifice of the submission was sought to be built on the enunciation of law in the case of World Tanker Carrier Corporation (Supra). Before proceeding to note the principles enunciated therein, it may be apposite to clearly appreciate the factual backdrop in which the law was postulated in the case of World Tanker Carrier Corporation (Supra).

19. In World Tanker Carrier Corporation (Supra) the question of jurisdiction arose

out of a limitation action in the claims against the owners of the vessel for compensation for the damage. The Supreme Court enunciated that the right of an owner to bring a limitation action was governed by Part X-A of the Merchant Shipping Act 1958. The whole purpose of limitation of liability was to protect an owner against large claims, far exceeding the value of the Ship and cargo, which can be made against him all over the world in case his ship meets with an accident causing damage to cargo, to another vessel or loss of life or personal injury. A limitation action, though it is normally filed in the admiralty jurisdiction of a Court, is somewhat different from an ordinary admiralty action which normally begins with the arrest of the defaulting vessel. The vessel itself, through its master, is a party in the admiralty suit, and the plaintiff must have claims provable in admiralty against the vessel. In the case of an action for limitation of liability, it is the personal right of the owner of the vessel to file a limitation action or to use it as a defence to an action against him for liability. It is a "defensive" action against claims in admiralty filed by various claimants against the owner of the vessel and the vessel. A limitation action need not be filed in the same forum as a liability action. But it must be a forum having jurisdiction to limit the extent of such claims and whose decree in the form of a limitation fund will bind all the claimants.

20. After referring to the Brussels convention 1957, especially Article 7, the Supreme Court enunciated that Article 7 gives to a contracting State the right to exclude certain persons from the benefit of its provisions. Thus persons not ordinarily resident in a contracting State nor having their principal place of business in the contracting State and ships not flying the flag of the contracting State, can be excluded.

21. Thereafter, the Supreme Court observed as under:

"20. Under principles of Private International Law, a court cannot entertain an action against a foreigner resident outside the country or a foreigner not carrying on business within the country, unless he submits to the jurisdiction of the court here. This principle applies to actions in personam."

22. It is also necessary to note the observations in paragraph 43, wherein the Supreme Court expounded that appearance before the Domestic Court, under protest, does not amount to submission to the jurisdiction of the Domestic Court. They read as under.

"43. The presence of a foreign defendant who appears under protest to contest jurisdiction, cannot be considered as conferring jurisdiction on the court to take action. Unless a foreign defendant either resides within jurisdiction or voluntarily appears or has contracted to submit to the jurisdiction of the court, it is not possible to hold that the court will have jurisdiction against a foreign defendant. See in this connection *R. Viswanathan Vs Rukn-ul-Mulk Syed Abdul Wajid* (AIR 1963 SC 1) and *Raj Rajendra Sardar Moloji Nar Singh Rao Shitole Vs Shankar Saran* (AIR 1962 SC 1737). This factor also, therefore, is against the respondents

in the present appeals.”

23. In the case of Kohinoor Carpet Manufactures (Supra) the Plaintiff had instituted a Suit against a Shipping Company (D2) and its Shipping agent (D1) for the loss of cargo at destination. The Plaintiffs had prayed that the claim for loss of cargo may be enforced by action in rem against “HOEGH DRAKE”, the carrier, and against the shipping company and the shipping agent, in personam. It was also asserted that, the office of the shipping agent (D2) was situated at Bombay within the jurisdiction of the High Court in its Admiralty and Vice-Admiralty jurisdiction.

24. This Court ruled that the action in personam cannot be maintained against the shipping company (D2) as D2 did not carry on business and/or had office within the jurisdiction of this Court and that the shipping company had not submitted to the jurisdiction of this Court. On the contrary, D2 had raised a plea contesting the jurisdiction of this Court. Reliance was placed on the afore-extracted observations in Paragraph 43 of the judgment in the case of World Tanker Carrier Corporation (Supra).

25. In the case of Angsley Investments Limited (Supra) a Division Bench of this Court, followed the decision in the cases of World Tanker Carrier Corporation (Supra) and Kohinoor Carpet Manufactures (Supra) to hold that an action in personam against a foreign Defendant not within the jurisdiction of this Court was not maintainable. It was enunciated that it is trite law that the Suit in personam qua a foreign Defendant who is not within the jurisdiction of the Court and who has not voluntarily submitted to jurisdiction, is not maintainable. In the said case, Defendant No.2 had chosen not to enter appearance before the Court. Nor voluntarily submitted to the jurisdiction of the Court.

26. On the aspect of submission to the jurisdiction of the Court at Pune, I find substance in the submission of Mr. Parikh that the learned District Judge was not justified in drawing an inference that the Defendants voluntarily submitted to the jurisdiction of the Court by not replying to the notice, or by filing an Application to set aside the order to proceed ex-parte or by filing Written Statement. The failure to give reply to pre-suit notice can, by no stretch of imagination, be construed as a submission to the jurisdiction of the Court.

27. This Court also finds that in the Application to set aside the order to proceed to ex-parte, as well as in the Written Statement filed on behalf of Defendant Nos. 1 and 2 there are clear and categorical contentions that Defendant Nos.1 and 2 were not submitting to the jurisdiction of the Court and those applications and Written Statements were filed without prejudice to the contentions of Defendant Nos. 1 and 2 that the Court had no jurisdiction over them. Such appearance before the Court with such express disclaimer and, in a sense, under protest, could not have been legitimately construed as submission to the jurisdiction of the Court. This leads to me to the core controversy.

28. Mr. Vaishnav, the learned Counsel for the Plaintiffs made an endeavour to

persuade the Court to hold that the aforesaid pronouncements do not govern the facts of the case at hand. The jurisdiction of the Commercial Court at Pune would be governed by the provisions contained in Section 20(c) of the Code. If it could be shown that a part of the cause of action arose within the local limits of jurisdiction of the Domestic Court and the municipal legislation conferred the jurisdiction on the Domestic Court, then the fact that the foreign resident had not submitted to the jurisdiction of the Domestic Court is of no significance.

29. To buttress this submission, Mr. Vaishnav placed a very strong reliance on the Constitution Bench judgment in the case of *Lalji Raja & Son (Supra)*. The facts in the case of *Lalji Raja & Son (Supra)* deserve to be noted, first. In the said case, the decree holders had obtained a decree against the Respondent in the Court of Bankura (West Bengal). The decree came to be transferred to the Court at Morena in the State of Madhya Bharat for execution with a certificate of non-satisfaction. The executing Court at Morena dismissed the Execution Petition on the ground that the Morena Court had no jurisdiction to execute the same as the decree was that of a foreign Court and the same had been passed ex-parte. On 1st April 1951, the Code of Civil Procedure 1908 was extended to the former State of Madhya Bharat as well. Thereafter, the decree holders filed another execution case before the Bankura Court. The decree was again transferred by Bankura Court to the Morena Court for execution. The judgment debtors raised objection, inter alia, that the decree was not executable as it was a decree of a foreign Court. A question thus arose before the Supreme Court, whether the decree in execution was not executable by Courts situated in the area comprised in the former State of Madhya Bharat.

30. The Supreme Court repelled the contention that judgment in question was a foreign judgment. The observations in paragraphs 7 and 8 of the judgment are material and hence extracted below.

"7. Reliance was placed on Private International Law in support of the contention that in a personal action, a decree pro-nounced in absentem by a foreign court, to the jurisdiction of which the defendant had not in any way submitted himself is an absolute nullity. It was urged that the Bankura court had no jurisdiction over the judgment-debtors and therefore the decree passed being one pronounced in absentem is a nullity. In support of this contention reliance was placed on the decision of the Judicial Committee in *Sirdar Gurdial Singh v. The Rajah of Faridkote* (21 IA 171). Therein the Judicial Committee observed:

"In a personal action, to which none of these causes of jurisdiction apply, a decree pronounced in absentem by a foreign Court, to the jurisdiction of which the Defendant has not in any way submitted himself, is by international law an absolute nullity."

But the Board qualified those observations by the following words :

"He is under no obligation of any kind to obey it; and it must be regarded as a mere nullity by the Courts of every nation except (when authorised by special

local legislation) in the country of the forum by which it was pronounced."

8. The above remarks of the Board indicate that even a decree which is pronounced in absentem by a foreign court is valid and executable in the country of the forum by which it was pronounced when authorised by special local legislation. A decree passed by a foreign court to whose jurisdiction a judgment-debtor had not submitted is an absolute nullity only if the local legislature had not conferred jurisdiction on the domestic courts over the foreigners either generally or under specified circumstances Section 20(c) of 'the Code' confers jurisdiction on a court in India over the foreigners if the cause of action arises within the jurisdiction of that court. Hence the observation of the Board quoted in some of the decisions of the courts in India including the decision of this Court in *Rajendra Sardar Maloji Narasingh Rao Shitole Vs Sri Shankar Sareen and Others* (1963) 2 SCR 577 , that such a decree is an 'absolute nullity' may not be apposite. It may be more appropriate to say that the decree in question is not executable in courts outside this country. The board itself had noticed that this rule of Private International law is subject to special local legislation. Clause (c) of Section 20 of 'the Code' provided at the relevant time and still provides that subject to the limitations mentioned in the earlier sections of 'the Code', a suit can be instituted in a court within the local limits of whose jurisdiction the cause of action wholly or in part, arises. There is no dispute in this case that the cause of action for the suit which led up to the decree under execution arose within the jurisdiction of Bankura court. Hence it must be held that the suit in question was a properly instituted suit. From that it follows that the decree in question is a valid decree though it might not have been executable at one stage in courts in the former Indian States."

31. The Supreme Court has in terms enunciated that a decree passed by a foreign Court to whose jurisdiction a judgment debtor had not submitted is an absolute nullity only if the local legislation had not conferred jurisdiction on the domestic Court over the foreigners either generally or under specified circumstances. Section 20 (c) of the Code confers jurisdiction on a Court in India over the foreigners if the cause of action arises within the jurisdiction of that Court. Therefore, the observations of the Judicial Committee in the case of *Sirdar Gurdyal Singh Vs the Rajah of Faridkote* 21 IA 171 and quoted in some of the decisions of the Court in India that such a decree is an "absolute nullity" may not apposite.

32. Mr. Parikh, the learned Counsel for the Petitioners made a strenuous effort to distinguish the aforesaid pronouncement in the case of *Lalji Raja and Sons* (Supra) on the ground that the said decision was not squarely on the aspect of jurisdiction. On the contrary, the issue of executability of a decree passed by a competent Court having jurisdiction, arose in the case of *Lalji Raja and Sons* (Supra), urged Mr. Parikh.

33. I find it rather difficult to accede to this submission. The principle of Private International Law, which was adverted to in the case of *World Tanker Carrier*

Corporation (Supra) was qualified by the Judicial Committee of the Privy Council by observing "it must be regarded as nullity by every nation (when authorised by special local legislation) in the country of the forum by which it was pronounced." The Supreme Court has expressly enunciated that Section 20(c) of the Code amounts to such special local legislation and confers jurisdiction on the Courts within local limits of whose jurisdiction the cause of action, wholly or in part arises. It is also imperative to note that the Supreme Court specifically enunciated that the contrary observations of the Board quoted in some of the decisions, including the decision of the Supreme Court in the case of Raj Rajendra Sardar Maloji Marsingh Rao Shitole Vs Shankar Saran & Ors, AIR 1962 SC 1737 — from which support was drawn by the Supreme Court in World Tanker Carrier Corporation (Supra) — may not be apposite.

34. The situation which, thus, emerges that the pronouncement of the Constitution Bench in the case of Lalji Raja and Sons (Supra) governs the case of a more general nature whereas World Tanker Carrier Corporation (Supra) was rendered in the specialized admiralty jurisdiction. In the case of World Tanker Carrier Corporation (Supra), the Supreme Court explicitly referred to the fact that the admiralty jurisdiction of the Chartered High Court was governed by Letters Patent. Thus, Section 20 of the Code will not govern the admiralty jurisdiction of a chartered High Court regulated by its Letters Patent. Consequently, a limitation action in admiralty jurisdiction cannot be filed in the Court where a part of the cause of action arises where all the claimants who are the Defendants to the action are foreigners who reside outside India, who do not carry on business in India and who have not submitted to the jurisdiction of any Court in India.

35. The observations in paragraphs 33 and 34 of the judgment in the case of World Tanker Carrier Corporation (Supra) deserve to be extracted. They read as under.

"33. Is there any other court which will have jurisdiction? learned counsel for SNP drew our attention to Clause 12 of the Letters Patent, Section 20(2) of the Civil Procedure Code and Section 3(15) of the Merchant Shipping Act and submitted that the Court within whose jurisdiction a part of the cause of action arises is a court having jurisdiction in a limitation action.

34. As earlier stated, Section 3(15) has no application to a limitation action. Clause 12 of the Letters Patent also has no application because a limitation action is governed by Clause 32 of the Letters Patent and not Clause 12. For the same reason, Section 20 of the Civil Procedure Code will not govern the admiralty jurisdiction of a chartered High Court regulated by its Letters patent. A limitation action in admiralty jurisdiction cannot be filed in a court where a part of the cause or action arises when all claimants who are defendants to the action are foreigners who reside outside India, who do not carry on business in India and who have not submitted to the jurisdiction of any court in India, and have not filed a liability action here and are not likely to do so."

36. In view of the aforesaid enunciation of law, the decision in World Tanker Carrier Corporation (Supra) can be said to have been rendered in the context of a limitation action in admiralty jurisdiction. Nay, the applicability of the provisions contained in Section 20 of the Code was explicitly ruled out as admiralty jurisdiction of the High Court was governed by the Letters Patent.

37. The necessary corollary of the aforesaid enunciation is that in the case of World Tanker Carrier Corporation (Supra) the principle of Public International Law, forcefully canvassed on behalf of Defendant Nos. 1 and 2, was not tested on the anvil of the limitation thereto, in view of a special provision under the local legislation, i.e., Section 20(c) of the Code. Thus, the decision of the Constitution Bench in the case of Lalji Raja and Sons (Supra), which specifically refers to the conferment of jurisdiction by a special law, i.e., Section 20(c) of the Code, cannot be said to be inapplicable to the facts of the case at hand.

38. The matter can be looked at from another perspective. Ordinarily, the Civil Court has jurisdiction to try all disputes of civil nature except where its jurisdiction is either expressly or impliedly barred. It is equally well settled that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred. The presumption is in favour of existence of the jurisdiction rather than its exclusion. The rigid rule of Private International Law that a foreign resident cannot be proceeded against unless he voluntarily submits to the jurisdiction of the domestic Court, despite the cause of action having been arisen within the local limits of the jurisdiction of the domestic Court, is also required to be appreciated in the light of the paradigm change in the mode of businesses, especially on a virtual platform. The geographical boundaries and logistical barriers to trade and commerce have long perished. With the globalization and exponential increase in the business transactions on virtual mode, it may not be appropriate to take a very constricted view, where a cause of action arises within the local limits of the jurisdiction of the domestic Court. Lest, the aggrieved party may be rendered virtually remediless.

39. For the forgoing reasons, in my view, the decision of the Constitution Bench in the case of Lalji Raja and Sons (Supra) deserves to be applied to the facts of the case. The provisions contained in Section 20(c) provide the necessary jurisdictional competence to the Commercial Court at Pune.

40. Having taken the aforesaid view, it may not be necessary to delve into the question as to whether the Plaint could have been rejected in part against Defendant Nos. 1 and 2. Yet, I am afraid to accede to the submissions on behalf of Defendant Nos. 1 and 2 that the Division Bench judgment in the case of Sheela Ram Vidhani (Supra) sets the controversy at rest. It is true, in the decision in the case of Sheela Ram Vidhani (Supra), the Division Bench has enunciated that in view of the judgment of the Supreme Court in the case of Church of Christ Charitable Trust And Education Charitable Society (Supra) which was rendered by a two Judge Bench prior in point of time to the decision in the case of Madhav Prasad Aggrawal (Supra), rendered by a Bench of co-equal

strength, adhering to the principle of law of precedent enunciated in the case of Sundeep Kumar Bafna Vs State of Maharashtra, 2014 (16) SCC 623 the decision in the case of Church of Christ Charitable Trust And Education Charitable Society (Supra) was required to be followed and thus there was no legal embargo in rejecting the Plaint as a whole against some of the Defendants.

41. However, with respect, it needs to be noted that the attention of the Division Bench, which rendered Sheela Ram Vidhani (Supra), does not seem to have been drawn to a three Judge Bench judgment of the Supreme Court in the case of D Ramchandran Vs R.V. Jankiraman & Ors (1999) 3 SCC 267; which was prior in point of time also to the decision in the case of Church of Christ Charitable Trust And Education Charitable Society (Supra). In the case of D Ramchandran (Supra), the three Judge Bench has explicitly enunciated that under Order VII Rule 11(a) of the Code, there cannot be a partial rejection of the Plaint or the Petition. In the said decision, a reference was made by the Supreme Court to an earlier judgment in the case of Roop Lal Sathi Vs Nachhattar Singh Gill (1982) 3 SCC 487 wherein the Supreme Court enunciated that where the Plaintiff discloses no cause of action, it is obligatory upon the Court to reject the Plaint as a whole under Order VII Rule 11(a) of the Code. But the Rule does not justify the rejection of any particular portion of a Plaint.

42. The upshot of the aforesaid consideration is that, the impugned order deserves to be affirmed though the view of the learned District Judge that Defendant Nos. 1 and 2 had submitted to the jurisdiction of the Commercial Court cannot be sustained. Resultantly, the Petition deserves to be dismissed.

43. Hence the following order.

: ORDER:

- (i) The Petition stands dismissed.
- (ii) No costs.
- (iii) Rule discharged.