(2012) 06 CAL CK 0023

In the Calcutta High Court

Case No : C.O. No. 355 of 2012

Smithkline Beecham Consumer Healthcare Ltd. APPELLANT

Vs

Manju Golcha RESPONDENT

Date of Decision : 11-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 11(a)
Companies Act, 1956 — Section 10, 113, 113(1), 113(2), 53
Consumer Protection Act, 1986 — Section 2(1)(c), 2(1)(c)(i), 2(1)(d)(i), 2(1)(i)
Criminal Procedure Code, 1973 (CrPC) — Section 16, 16, 16, 17, 18, 18, 18

Citation : (2013) 1 CHN 606

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : S.P. Roy Chowdhury, Hiranmay Bhattacharya and Protanu Deb Mukherjee, for the Appellant;

Final Decision : Dismissed

Judgement

Soumen Sen, J.—The territorial jurisdiction of the City Civil Court at Calcutta in receiving and trying the suit filed by the plaintiff is the subject-matter of challenge in this revisional application. The plaintiff claims to be the holder of 1000 Equity shares in the defendant company. The plaintiff further claimed that consequent thereupon 600 bonus shares were issued and recorded in their favour but the original 1000 Equity shares sent for transfer in the month of April, 1997 were not received by the plaintiff. The plaintiff also received dividends. On complaints being made by the plaintiff regarding non-receipt of 1000 shares, the defendant No. 1 company forwarded photocopies of alleged transfer deeds purported to have been executed by the plaintiff in favour of one Ashvin M. Shah. The plaintiff soon thereafter denied such claim and demanded return of such shares from Ashvin M. Shah being the opposite party No. 2 in this proceeding. In respect of 300 shares, the defendant No. 1 company agreed to issue duplicate share certificates provided certain obligations being fulfilled by the plaintiff. The plaintiff denied having sold any such shares in favour of any third party and required the defendant company to produce and deliver the said thousand shares which, however, the defendant No. 1 had failed to perform. In this background, the suit for declaration claiming ownership over 1000 Equity shares and other reliefs has been filed.

2. In the proceeding, the company invited the Court to adjudicate the issue No. 3 before deciding the other issues. The said issue No. 3 is as follows:-

Has this Court jurisdiction to try the instant suit.

3. The said issue was heard on the basis of an application filed under Order 14 Rule 2 of the Code of Civil Procedure. The grounds for deciding the said issue in favour of the defendant Company and against the plaintiff are as follows:-

(a). The registered office of the defendant No. 1 is situated at Patiala Road, Nabha, Punjab and as such this learned Court does not have the jurisdiction to try and determine the present suit.

(b). The plaint does not disclose any cause of action having arisen within the territorial jurisdiction of this learned Court.

(c). Suits and other proceedings relating to shares should be filed in the Court within whose jurisdiction the registered office is situated.

4. Mr. S.P. Roychoudhury, the learned Senior Counsel appearing on behalf of the petitioner submits that the Trial Judge should have decided the said issue upon evidence and not merely on the basis of the pleadings. It is argued that the Trial Judge upon considering the evidence on record could have arrived at a finding that no part of the cause of action has arisen within the jurisdiction of the learned Court and, accordingly, could have declined to entertain the said application by holding it to be premature. The learned Trial Judge should have decided the said issue along with other issues after conclusion of trial and adducing of evidence by the parties instead of taking up the issue as to jurisdiction since it involves mixed question of law and fact. The Trial Judge acted illegally and with material irregularity in deciding the said issue conclusively.

5. In appreciating such submission, the application filed by the defendant No. 1 under Order 14 Rule 2 of the Code of Civil Procedure, the said provision is required to be considered.

6. In the application under Order 14 Rule 2, the following prayers have been made by the petitioner:-

(a) before framing other issues, the preliminary issue of jurisdiction of this Ld. Court to try, entertain and determine this suit be taken up.

(b) such further order or orders and/or directions be given as Your Honour may deem fit and proper.

7. The petitioner invited the Court to decide the said issue on the grounds mentioned hereinabove. It was on the basis of such application, the Court was

persuaded to consider the said issue No. 3 and overruled the objection raised in the said petition with regard to the territorial jurisdiction of the learned Court to entertain the said petition.

8. Under the amended provision of Order 14 Rule 2 where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to--

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force.

9. The scope of the amended provision for settlement of issues was considered in M/s. Pratap Ch. Dey and others Vs. Allahabad Bank and others, . The Hon''ble Justice Tarun Chatterjee (as His Lordship then was) in considering the said amended provision held:-

For the purpose of holding that O.14, R. 2 of the CPC as it now stands can be applied in an appropriate case by the Court in its discretion, it is necessary to consider the O.14, R. 2 of the CPC before its amendment. It reads as follows:-

Where issues both of law and fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issue of law only it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issue of fact until after the issues of law have been determined.

13. Before the amendment of O.14, R. 2 of the CPC it was a well-settled rule that in appealable cases all issues arising in the suit ought to be ordinarily tried and decided. The reason for the introduction of this rule is to avoid piecemeal trial, protracted litigation and remand of the cases where the Appellate Court sets aside the decision of the Trial Court on the preliminary issue upon which the Trial Court has disposed of the suit. Rule 2 of O.14 of the CPC before its amendment was an exception to the normal principle of trial. If the Court was of the opinion that the case or any part thereof could be disposed of on issue of law only, it was mandatory on the part of the Court to try such issue as preliminary issue and dispose of the suit or any part thereof as the case might be on such preliminary issue. From the unamended provision of R. 2 of the O.14 of the Code it is, therefore, evident that when the Court was of the opinion that the case or any part thereof could be disposed of on the issue of law only, in that case the Court had no jurisdiction to take up all the issues for trial together with the issue of law. In that case it was mandatory on the part of the Court to take up issues of law only and decide the suit on such question of law by postponing the settlement of issues of facts until after the issues of law had been determined. In that case the issue of law would be made to be a preliminary issue. In the event the Court decides to take up such preliminary issue then it need not say that the preliminary issue would be decided at the time when the suit was tried. The word

''shall'' used in the unamended R. 2 of O.14 of the Code, in my view, has a special significance. In the unamended provision, in my view, when a preliminary issue is framed the Courts have no other option but to decide the preliminary issue first and to postpone settlement of the issues of facts until after the issue of law had been determined. Therefore, in the unamended rule of O.14, R. 2 of the Code of Civil Procedure, in my view, there was no question of taking up all the issues together if the preliminary issue is framed by the Court. However, O.14, R. 2 for the recent amendment has significantly changed the position. Order 14, Rule 2 of the CPC as now amended is as follows:-

2.(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall subject to the provisions of sub-rule (2), pronounce judgement on all issues.

2) Where issues both of law and fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to--

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

14. From a bare look to the amended provision of R. 2 of O.14 of the CPC it is evident that the amended rule is divided into sub-rules (1) and (2). Sub-rule (1) of Rule 2 of Order 14, of the CPC has recognised the unamended rule that all the issues arising in the suit must be ordinarily tried notwithstanding that the case can be disposed of on a preliminary issue. Sub-rule (2) of Rule 2 of Order 14 of the CPC provides a limited exception to the ordinary rule of trial. In sub-rule (2) of Rule 2 of Order 14 of the CPC the incorporation of the word ''may'', in my view, has again some special significance. It is my firm opinion that by the incorporation of the word ''may'' instead of ''shall'' as was previously in the Order 14, Rule 2 of the CPC before its amendment the intention of the legislature was to make this sub-rule as discretionary and not mandatory. Therefore, under sub-rule (2) of Rule 2 of Order 14 of the Code even where both issues of law and fact arise in the same suit and if the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only it may try that issue first. A comparative reading of the aforesaid provision as it existed prior to the amendment and after the amendment would clearly indicate that the consideration of a preliminary issue and its disposal has now been made permissible only in limited cases. In the unamended Order 14, Rule 2 of the Code, the categorisation was only between issues of law and of fact and it was mandatory for the Court to try the issue of law at the first instance and to postpone the settlement of the issues of fact until after the issues of law had been determined. On the other hand, in the amended provision it is mandatory

on the part of the Court to pronounce judgment on all the issues notwithstanding that the case may be disposed of on a preliminary issue. The only exception to this is contained in sub-rule (2). Sub-rule (2) relaxes the mandate to a limited extent by conferring discretion upon the Court if it is of the opinion that the case or any part thereof can be disposed on the issues of law only it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must be related to the jurisdiction of the Court or to a bar to the suit created by a law in force. In the 14th edition of Mulla''s CPC at page 1206 the Author observed that the amended rule made a departure from the rule as it stood before the amendment in three respects:

(i) that though a case may be capable of being disposed of on a preliminary issue, the Court is given a mandate to try all the issues, (ii) That exception is made to this mandate by giving discretion to try an issue as to jurisdiction or a statutory bar to the suit as a preliminary issue and for that purpose postpone the settlement of the rest of the issues and

(iii) That in a given case the Court may decline to try even an issue relating to its jurisdiction or to a statutory bar to the suit as a preliminary issue if it considers expedient to do so.

15. From the discussions made hereinabove and considering the aforesaid observations made by the Author in Mulla''s CPC 14th Edition, it is, therefore, evident that the amended Order 14, Rule 2 of the CPC confers limited discretion to decide a preliminary issue of law first before deciding the other issues.

10. The Hon''ble Supreme Court in Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others, considered the scope and ambit of Order 14 Rule 2 CPC in Paragraph 13 of the said report which is reproduced hereinbelow:-

13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in Major S.S. Khanna Vs. Brig. F.J. Dillon, and it was held as under:

Under Order 14 Rule 2, CPC where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.

11. However, the fact remains that the defendant Company having invited the Court to decide the said issue before other issues cannot turn around and contend that the Court was not justified in deciding the said application after having suffered an adverse finding. The petitioner cannot be permitted to take a chance and once the petitioner invited the Court to decide the matter and insisted that such matter should be decided first before deciding other matters having suffered an unfavourable order in the said proceeding cannot turn around and question the jurisdiction or propriety of such order. The petitioner cannot complaint that the Court should have decided the said issue after conclusion of evidence and with other issues. The petitioner is clearly estopped from raising any such objection at this stage after having suffered an order in the application in which it had invited the Court to decide the question of jurisdiction first before deciding other issues.

12. The cause of action in the plaint is failure to deliver the shares to the plaintiffs which the plaintiffs claimed to have purchased at Calcutta. The non-receipt of the shares at Calcutta is the cause of action in the suit. The plaintiff is residing at Calcutta. The plaintiffs applied for the shares and paid consideration for acquiring such shares at Calcutta. The said shares were purchased from a stock broker having its office at Lalbazar Street, at Calcutta and after purchasing the said shares they were sent to the petitioner for recording transfer. The bonus shares were received at Calcutta. The plaintiff, however, did not receive the 1000 shares which were sent for recording transfer, according to the plaintiff, in the month of April, 1997 and which subsequently as is contended, had been illegally transferred in favour of the opposite party No. 2. The defendant contended that no cause of action had arisen within the territorial jurisdiction of the Civil Court at Calcutta on the grounds mentioned hereinabove.

13. The learned senior Counsel appearing on behalf of the petitioner on the basis of the decisions in Morgan Stanley Mutual Fund Vs. Kartick Das, , submitted that the residence of a company is where the registered office is located and the cases should normally be filed only where the registered office of the company is situated. It is contended that since the issue is relating to non-delivery of shares, the suit is required to be filed at New Delhi where the registered office of the company is situated. It was further contended that the locality of the shares of a company is that of the register of register of shares and since such register is maintained at the said office at New Delhi, the offence, if any committed at the place where the registered office is situated normally which is at New Delhi and

the City Civil Court at Calcutta has no territorial jurisdiction to try, entertain and determine the said suit.

14. The said submission is based on the analogy of section 10 of the Companies Act, 1956. The said section, however, does not apply in the instant case.

15. In Jayaram (supra)'', the Hon''ble Supreme Court was considering the territorial jurisdiction of a Court to try offences punishable u/s 113(2) of the Companies Act. The Hon''ble Supreme Court upon consideration of section 53 and 113 of the Companies Act and section 201 of the Criminal Procedure Code held that the complaint is to be filed in Court having jurisdiction where the registered office of the Company is situated and not where the share-holder was to receive the share certificates. Since the cause of action for the default of not sending the share certificates within the stipulated time would arise at the place where the registered office of the company is situated as from that place the share certificates can be posted and are usually posted and having regard to the fact that what is punishable under sub-section (2) of section 113, is non-delivery, in accordance with the provisions laid down u/s 53, of the share certificates of shares within the prescribed time, it was held that the complaint is required to be filed in Court having jurisdiction where the registered office of the company is situated.

16. It was held that the jurisdiction for receiving such complaint arising out of an offence punishable u/s 113 of the Companies Act would be the place where the registered office of the Company is situate having regard to the fact that once there is a statutory mode of delivering the document by post and deeming provision of such delivery, the place where such posting is done is the place of performance of statutory duty and the same stands discharged as soon as the document is posted. Hence the cause of action for the default of not sending the share certificates within the stipulated time would arise at the place where the registered office of the company is situated as from that place the share certificates can be posted and are usually posted. If the addressee is available at the same locality where the registered office of the company is situated, it is reasonable to think that service of documents may be effected by personally delivering to him. But if the addressee is residing at a distant place it is unreasonable to expect the company to depute somebody to travel up to that distance to personally deliver it to him. The only usual mode which any company would then adopt is to send it to him by post. For such default, as contemplated u/s 113(1), there is no question of any cause of action arising at the place where the complainant was to receive postal delivery. What is punishable under sub-section (2) of section 113 is non-delivery, in accordance with the provision laid down u/s 53, of the certificates of shares within the prescribed time. So, if the documents are posted within the stipulated time, there would be compliance with section 113 and that there would not be any offence.

17. It was held that the place where the share certificates and documents would be posted is the place where the company is having its registered office and the

offence u/s 113(2) would also occur at the place where failure to discharge the obligation arises, namely, the failure to send the share certificates within the stipulated time.

18. In Morgan Stanley (supra) the Hon''ble Supreme Court was considering the jurisdiction of Consumer Disputes Redressal Forum in entertaining a complaint of unfair trade practice in terms of section 2(1)(c)(i) and (1)(r) of the Consumer Protection Act, 1986. The Hon''ble Supreme Court was considering the propriety of passing an ex parte ad interim injunction and the jurisdiction of the District Consumer Forum in entertaining a complaint arising out of sale of shares. It was held that an applicant for allotment of shares is only a prospective investor in future goods and does not come within the definition of "consumer" in terms of section 2(1)(d)(i), 2(1)(i) and 2(1)(c). The Hon''ble Supreme Court also laid down the factors which should weigh with the Court in granting ex parte injunction. While deciding the said issues, the Hon''ble Supreme Court also observed in Paragraph 41 and 42 that as far as India is concerned, the residence of the company is where the registered office is located. Normally, cases should be filed only where the registered office of the company is situate. The Hon''ble Supreme Court also quoted Halsbury''s Laws of England as to the effect of incorporation in which Lord Halsbury observed:-

When incorporated, the company is a legal entity or personal distinct from its members, and its property is not the property of the members. The nationality and domicile of a company is determined by its place of registration. A company incorporated in the United Kingdom will normally have both British nationality and English of Scottish domicile, depending upon its place of registration, and it will be unable to change that domicile.....

The residence of a company is of great importance in revenue law, and the place of incorporation is not conclusive on this question. In general, residence depends upon the place where the central control and management of the company is located. It follows that if such central control is divided, the company may have more than one residence. The locality of the shares of a company is that of the register of shares.

19. It was on the basis of the aforesaid observations, it is contended that the City Civil Court at Calcutta has no territorial jurisdiction.

20. In the instant case, the plaintiff did not initiate any proceeding u/s 113(2) of the Companies Act, 1956. It is a civil suit simplicitor in which the declaration of status and entitlement to such shares have been claimed. In Morgan Stanley (supra) the Hon''ble Supreme Court was considering the jurisdiction of Consumer Forum to entertain a complaint filed by a prospective investor and propriety of an ex parte ad interim order. The territorial jurisdiction of a Civil Court to entertain a suit of like nature was not the issue before the Hon''ble Supreme Court and, accordingly, the said decision cannot assist the petitioner. In fact, in Paragraph 42, the Hon''ble Supreme Court held has follows:-

Courts outside the place where the registered office is located, if approached, must have regard to the following. Invariably, suits are filed seeking to injunct either the allotment of shares or the meetings of the Board of Directors or again the meeting of general body. The Court is approached at the last minute. Could injunction be granted even without notice to the respondent which will cause immense hardship and administrative inconvenience. It may be sometimes difficult even to undo the damage by such an interim order. Therefore, the Court must ensure that the plaintiff comes to Court well in time so that notice may be served on the defendant and he may have his say before any interim order is passed. The reasons set out in the preceding paragraphs of our judgment in relation to the fact which should weigh with the Court in the grant of ex parte injunction and the rulings of this Court must be borne in mind.

21. The expression ''cause of action'' has not been denned in the code but has received judicial interpretations. The Courts over the years have defined the said expression. The classic definition of the expression ''cause of action'' is found in the observations of Lord Brett in Cooke vs. Gill (1873 LR 8 CP 107) in which His Lordship stated: -

Cause of action means 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." Or, in referring to the definition by Fry, L.J., in Read vs. Brown, (1888) 22 QB 128: "Everything which, if not proved, gives the defendant an immediate right to judgment must be part of the cause of action."- a definition which, as Gajendragadkar, J., then presiding over a division of the Bombay High Court in Baroda Oil Cakes Traders Vs. Parshottam Narayandas Bagulia and Another, , puts it, has become a class on the subject. (Ujjal Talukdar Vs. Netai Chand Koley,

22. The cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend on the character of the relief prayed for by the plaintiff. It refers "to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour." (Muss. Chand Kour vs. Partap Singh,) (1887-88) 15 Ind APP 156 (PC).

23. The said definition has been adopted and followed by different High Courts including the Hon''ble Supreme Court.

In Laxman Prasad Vs. Prodigy Electronics Ltd. and Another, it was held that ''cause of action'' simply stated would mean a right to sue. The relevant observations of the Hon''ble Supreme Court are set out hereinbelow:-

30. We find considerable force in the submission of the learned Counsel for the respondent Company. In our view, "cause of action" and "applicability of law" are two distinct, different and independent things an one cannot be confused with the other. The expression "cause of action" has not been defined in the Code. It is, however, settled law that every suit presupposes the existence of a cause of action. If there is no cause of action, the plaint has to be rejected [Rule 11(a) of Order 7]. Stated simply, "cause of action" means a right to sue. It consists of

material facts which are imperative for the plaintiff to allege and prove to succeed in the suit. The classic definition of the expression ("cause of action") is found in the observations of Lord Brett in Cooke vs. Gill (1873 LR 8 CP 107). His Lordship stated:

Cause of action means 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.

31. In A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, this Court said: (SCC p.170 Para 12)

12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it 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.

32. Now, sections 16 to 20 of the Code deal with territorial jurisdiction of a Court (place of suing). Whereas sections 16 to 18 relate to immovable property, suits for compensation for wrongs to persons or movables have been dealt with u/s 19. section 20 of the Code is a residuary provision and covers all cases not falling under sections 16 to 19.

33. The relevant part of section 20 reads thus:

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.

34. Bare reading of Clause (c) leaves no room for doubt that a suit would lie in a Court within the local limits of whose jurisdiction the cause of action has arisen, wholly or partly.

35. Section 20 has been designed to secure that justice might be brought as near as possible to every man''s hearthstone and that the defendant should not be put to the trouble and expense of travelling long distances in order to defend himself.

24. The expression "cause of action" was considered in Om Prakash Srivastava Vs. Union of India (UOI) and Another, and it was held:-

12. The expression ''cause of action'' has acquired a judicially settled meaning. In the restricted sense ''cause of action'' means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction upled with the right itself. Compendiously, as noted above, the expression means 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, Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in ''cause of action''.

25. The said observation of the Hon''ble Supreme Court was subsequently approved and followed in Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee,

26. The term ''cause of action'' is of wide import. It has different meanings in different contexts, that is when used in the context of territorial jurisdiction or limitation or the accrual of right to sue. Generally, it is described as "bundle of facts", which if proved or admitted entitle the plaintiff to the relief prayed for. Pithily stated, "cause of action" means the cause of action for which the suit is brought. "Cause of action" is cause of action which gives occasion for and forms the foundation of the suit. (Kandimalla Raghavaiah and Co. Vs. National Insurance Co. and Another,

27. In Ujjal Talukdar Vs. Netai Chand Koley, the learned single Judge held as follows:-

Everything which, if not proved, gives the defendant an immediate right to judgment must be part of the cause of action. Cause of action does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. Evidence of a fact should not be confused with the fact itself. Even an infinitesimal fraction of a cause of action and confer jurisdiction on the Court within the territorial limits of which that little occurs.

28. The Division Bench of our High Court in M/s. Inter Sales vs. M/s. Reliance Industries Ltd. & Ors. reported in 1998 (1) CLJ 531 held that the question whether a part of the action arose within the jurisdiction of the Court in West Bengal is to be determined with reference to the allegations made in the plaint

and if from the allegations so made, an obligation arises in favour of the plaintiff and against the defendants, there can be no doubt that the part of the cause of action for the reliefs claimed has arisen within the jurisdiction of the Court in West Bengal.

29. In the said decision, the learned Counsel for the respondent raised an objection with regard to the jurisdiction City Civil Court to entertain the said suit filed by the plaintiff for a decree of declaration that the plaintiff is the lawful owner of 2000 shares in M/s. Reliance Industries and the defendant is bound to transfer or issue duplicate share certificates in the name of the plaintiff. The plaintiff also claimed mandatory injunction, directing the defendants to make over such transfer shares in the name of the plaintiff or to issue duplicate shares. One of the grounds for lack of territorial jurisdiction is that all the defendants reside or work at Bombay which is the outside jurisdiction of the Courts of West Bengal and no part of the cause of action arose within West Bengal. The said objection was considered in Paragraph 9 by Their Lordships, the relevant portion whereof is set out hereinbelow:-

The question whether a part of the action arose within the jurisdiction of the Court in West Bengal is to be determined with reference to the allegations made in the plaint and if from the allegations so made, an obligation arises in favour of the plaintiff and against the defendants, there can be no doubt that the part of the cause of action for the reliefs claimed has arisen within the jurisdiction of the Court in West Bengal. Furthermore, the presumption arises only where the registered post has been properly addressed.

30. The right and its infringement constitute the cause of action and it can be concluded on the basis of the averments made in the plaint that the Civil Court at Calcutta is having territorial jurisdiction since a part of the cause of action arose within its jurisdiction.

31. In view thereof the objection as to the territorial jurisdiction of the Civil Court is unsustainable. This Court finds no infirmity in the order.

32. The revisional application fails. However, there shall be no order as to costs. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.