
(2000) 09 SIK CK 0005
In the Sikkim High Court
Case No : F.A.O. No. 5 of 2000

State of Sikkim

APPELLANT

Vs

Jammu and Kashmir Bank Ltd. and Others

RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Citation : AIR 2002 Sikk 8

Hon'ble Judges : Anub Dev, J

Bench : Single Bench

Advocate : U.P. Sharma, for the Appellant; N.K.P. Sarraf, N. Rai and S.S. Hamal, for the Respondent

Judgement

Anup Deb, J.—This appeal is directed against the order dated 7th October, 1999 passed by the learned District Judge (East and North) in Civil Suit No. 21 of 1994 by which the plaint was ordered to be returned under Order VII Rule 10 of the CPC on the ground that the District Court (East and North) has no territorial Jurisdiction.

2. The State of Sikkim, appellant-plaintiff, in the Court below filed Civil Suit No. 9 of 1992 against the defendants praying for decree declaring that the plaintiff is entitled to recover sum of Rs. 40 lakhs from the Jammu and Kashmir Bank Ltd., 3462, Khandelwala Market, Gali Bajrangbali, Chauri Bazar, Delhi-110 006, the respondent-defendant No. 1 and also for a decree for the payment of Rs. 40 lakhs only by the first respondent-defendant to the appellant-plaintiff and a decree for permanent injunction restraining the first respondent-defendant from returning the deposits or releasing the securities deposited with it by M/s, Sikkim Subba Associates and Shri Karan Luthra, respondents No. 2 and 3 respectively in connection with the bank guarantee and also prayed for a decree for permanent in-junction restraining respondent-defendants No. 2 and 3 from withdrawing the deposits made by them and getting a release of the securities with the respondent Bank in connection with the bank guarantee No. JKB/ CB-91-32 dated 24th April 1991.

3. The case of the appellant-plaintiff is that the Government of Sikkim appointed M/s. Sikkim Subba Associates, respondent-defendant No. 2 as its organising agent for running Sikkim State Weekly Lotteries by an agreement dated 22nd January 1991 and respondent No. 2 has subsequently entered into an agreement on 5th February 1991 with Karan Luthra of 14-15 F Connaught place, New Delhi, Ujjwal Khatiwada of 5th Mile, Tadong, Gangtok and Siddarath, Munirka, New Delhi. The aforesaid persons through their legal advisor and agent Shri N.B. Khatiwada, Advocate submitted to the Director of Lotteries, Government of Sikkim on 25th April 1991, a Bank Guarantee No: JKB/CB-91-32 dated 24th April 1991 for Rs. 40,00,000/- (Rupees forty lakhs) only issued by the Manager of the respondent No. 1 bank to M/s. Sikkim Subba Associates, Karan and Company, New Delhi. On scrutiny of the said bank guarantee on 26th April 1991 by the Director of Lotteries, Government of Sikkim found that the name of the firm M/s. Sikkim Subba Associates, Karan and Company was mentioned in the said bank guarantee. Director of Lotteries, Shri L.B. Pradhan told Shri N.B. Khatiwada that the agreement dated 22nd January 1991 is between the Government of Sikkim and M/s. Sikkim Subba Associates and the name of M/s. Karan and Company should not appear in the bank guarantee. In course of discussion on 26th April 1991 in the office of the Finance Secretary at Gangtok, Shri N.B. Khatiwada stated that the purpose of insertion of the name of Karan and Company was necessary to indicate that M/s. Sikkim Subba Associates would operate from the office of M/s. Karan and Company for the time being as they had no office accommodation at New Delhi at that time. Shri Khatiwada further assured that he would get the said Bank Guarantee corrected to that extent. The Finance Secretary allowed the draw of lottery on the assurance of Shri N.B. Khatiwada that the Bank Guarantee would be corrected suitably. Shri L.B. Pradhan, the then Director of Lotteries, handed over the bank guarantee to the Secretary, Finance Department on 28th April 1991 at Gangtok. M/s. Sikkim Subba Associates violated various terms and conditions stipulated in the agreement dated 22nd January 1991 and have defaulted in payment of large sum of money towards its agency fees etc. and the Government of Sikkim decided to invoke the bank guarantee and wrote to the defendant No. 1 vide Memo No. 951/Fin/Lott dated 7th January 1992 to make payment of Rs. 40,00,000/- (Rupees forty lakhs) only to the Government of Sikkim, but the Bank expressed its inability to pay the amount under the guarantee on the ground that Karan Luthra does not owe any money to the Government of Sikkim.

4. The respondents-defendants contested the suit by filing written statements. The respondent No. 1 in its written statement contended that the District Court (East and North) has no territorial jurisdiction to try the suit inasmuch as all the respondents are working for gain at New Delhi no part of cause of action has arisen at Gangtok. Even the bank guarantee was issued at New Delhi and could be invoked at New Delhi and the suit could only be filed at New Delhi. Therefore, the plaint is liable to be returned to be presented to the Court having jurisdiction in the matter. Further contention of the respondent No. 1 is that the bank

guarantee issued by the respondent No. 1 has been materially altered without the consent and knowledge of the respondent No. 1, and, therefore, the guarantee has ceased to be enforceable. This respondent further stated that it had agreed to pay the amount under the bank guarantee in case M/s. Sikkim Subba Associates Karan & Company" defaulted in payment of obligations and further the amount was to be due from Shri Karan Luthra. Both these conditions have not been fulfilled when the guarantee was originally invoked. It is further stated that it is clear from the partnership deed of M/s. Sikkim Subba Associates that Karan Luthra was never a partner of M/s. Sikkim Subba Associates. Further, the appellant had written a letter dated 14th October 1991 to the respondent No. 3 stating that respondent No. 3 had no concern with the appellant, and therefore, the appellant had no right to invoke the bank guarantee. Both the respondents No. 2 and 3 in their written statements stated that respondent No. 1 issued bank guarantee at New Delhi and the amount of bank guarantee is payable at New Delhi and no part of cause of action arose at Gangtok especially in reference to the bank guarantee. The bank guarantee was issued at New Delhi, was invoked at New Delhi and the amount due was to be paid at New Delhi. The respondent No. 3 in the written statement contended that the suit is not maintainable either for recovery of money or for injunction inasmuch as the suit is filed on the basis of a bank guarantee wherein the respondent No. 1 Bank has pledged its credit to the appellant and the appellant has accepted the guarantee of the Bank. There is no contract between the appellant and the respondent No. 3 and there being no privity of contract between the two, the suit for recovery of guarantee amount as also for injunction is not maintainable and is liable to be dismissed. The respondent No. 3 further stated that the suit is not maintainable at Gangtok inasmuch as no cause of action has arisen against the respondent No. 3 at Gangtok and there being no privity of contract between the parties, the respondent No. 3 could not be sued at Gangtok and could only be sued at New Delhi only.

5. The learned District Judge (East and North) framed 13 issues and he took up for consideration the issue No. 3 and 8, which are as follows:

(1)....

(3) Has this Court territorial jurisdiction to try the present suit?

(4)....

(8) Has the plaintiff any cause of action against the defendants?

The learned District Judge took up these two issues as preliminary issues. The learned District Judge has not decided the issue No. 8 and he has confined to issue

No. 3 only.

6. The learned District Judge after reproducing a portion of Section 20 of the Code of Civil Procedure, held that principles behind the provision of Clause (a)

and (b) of Section 20 of C.P.C., require the suit to be instituted at a place where the defendant is able to defend the suit without undue trouble and in the present case all the defendants have been shown as the residents of Delhi or New Delhi, in the cause title of the plaint. Learned District Judge further held that it is not the case of the appellant-plain-tiff that any of the respondents-defendants resides or carries on business or works for gain in any place within the jurisdiction of his Court and the bank guarantee was issued by the respondent-defendant No. 1, from Delhi. Learned District Judge discussed on the issue of cause of action. He observed that there are number of letters and correspondence between the appellant-plaintiff and the respondent-defendant No. 1 letters conceived with aspersions and allegations. But such war of words through letters and correspondences would not constitute any part of cause of action thereby warranting the Court of District Judge to safely conclude that it has territorial jurisdiction to try the suit.

7. Heard Mr. U.P. Sharma, learned Senior Government Advocate appearing for the appellant, Mr. N.K.P. Sarraf, Advocate for respondent No. 1, Mr. N. Rai, Advocate for respondent No. 2 and Mr. S.S. Hamal Advocate for respondent No. 3. All the learned Counsel for the respondents in their argument, reiterated their submissions made before the learned District Judge (East and North) at Gangtok.

8. Mr. U.P. Sharma, learned Counsel for the appellant argued that the agreement dated 22nd January 1991 between the appellant and respondent No. 2 was executed at Gangtok and registered at Gangtok Clause 13 of the agreement stipulates that a bank guarantee of Rs. 114 lakhs shall be provided by the organising agent. Clause 14 also refers to bank guarantee to be provided as aforesaid. M/s. Sikkim Subba Associates with whom the agreement was made is a registered firm having its head office at Subba Building, Siyari, Gangtok. According to the registration certificate of M/s. Sikkim Subba Associates, all its partners are residents of Singtam, East Sikkim. The letter-head of M/s. Sikkim Subba Associates shows its registered office at Gangtok. The bank guarantee was forwarded at Gangtok. The respondent No. 1 Jammu and Kashmir Bank Limited confirmed having issued a bank guarantee by letter dated 24th April 1991 addressed to the Finance Secretary, Government of Sikkim at Gangtok and the bank guarantee itself states that the guarantee amount shall be paid to the Finance Secretary to the Government of Sikkim at Gangtok.

9. Mr. N.K.P. Sarraf, learned Counsel appearing for the respondent No. 1, Bank submitted that the District Court (East and porth) has no territorial jurisdiction, to try this suit and all the three defendants are working for gains at Delhi and no part of the cause of action has arisen at Gangtok. The bank guarantee was issued at New Delhi and was invoked at New Delhi. Mr. Sarraf further argued that the bank guarantee was issued by the respondent No. 1 has been materially altered without the consent and knowledge of the respondent No. 1 and, therefore, the guarantee has ceased to be enforceable.

10. Mr. N. Rai, appearing for the respondent No. 2 submitted that all the

respondents are residing and having their business at New Delhi and the bank guarantee was issued from New Delhi and the District Court (E & N) has no territorial jurisdiction to try the suit and no cause of action arose at Gangtok.

11. After hearing the argument of all the learned Counsel for the parties, it cannot be disputed that the bank guarantee in question is a contract and it was executed at Delhi. When the Government asked the bank to pay the sum of Rs. 40 lakhs against the bank guarantee the bank declined, meaning thereby, that the bank committed a breach of contract. However, for the present purposes the bank declined to honour its commitment under the contract. It went back on the contract and communicated its decision to the Government of Sikkim by a letter addressed to its Gangtok address. Therefore, the communication of the revocation was at Gangtok.

12. In the case of AIR 1927 156 (Privy Council) , it was held that Section 49 of the Indian Contract Act 1872 does not get rid of inferences, that should justly be drawn from the terms of the contract itself or from the necessities of the case, involving, in the obligation to pay the creditor, the further obligation of finding the creditor so as to pay him. The rule in Section 49 is one which it was intended should apply both to the delivery of goods and to the payment of money to which different considerations apply from those applying in a case like the present where the question is one of jurisdiction.

13. In the case of M/s Span Consultants Pvt. Ltd., New Delhi v. M/s Rashtriya Chemicals and Fertilizers Ltd. Bombay reported in AIR 1982 Delhi 157, it is held in paragraph 6-

...that revocation or termination of a contract constitutes as part of cause of action, and the place where the same takes place can vest jurisdiction in the Court existing there....

14. According to Section 4 of the Indian Contract Act, the communication of a revocation is complete as against the person to whom it is made, when it comes to his knowledge. In paragraph 15 of the case A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, the Supreme Court held as follows:

...Part of cause of action arise where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie....

15. In the present case, an intention was shown in the bank guarantee itself that the amount shall be paid to the Finance Secretary to the Government of Sikkim at Gangtok Accordingly part of the contract was performable at Gangtok so as to satisfy Section 49 and there was jurisdiction to entertain the suit. When a promise is to be performed without application by the promisee and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise and to perform it at such place.

16. In the instant case no specific place is fixed for making the payment against the Bank Guarantee. In fact, the bank guarantee states "We shall pay the sums of money due by Shri Karan Luthra of M/s Sikkim Subba Associates, C/o Karan and Co. 14-15-F, Connaught Place, New Delhi to the Finance Secretary to the Government of Sikkim, Gangtok." It can easily be inferred that place fixed for payment was "Gangtok" because the Finance Secretary to the Government of Sikkim is housed at Gangtok. Assuming no place was fixed then also the demand made by the Government of Sikkim was that the payment be sent to Gangtok by a Demand Draft. It will be found from the case of AIR 1927 156 (Privy Council) that in 1904, in the case of Motilal Pratabchand v. Surajmal Johrmal ILR 1906 Bom 167, Mr. Justice Tyagi held that "where no specific contract exists as to the place where the payment of the debt is to be made, it is clear, it is the duty of the debtor to make the payment where the creditor is."

17. Having regard to the position of law as discussed above and for reasons as aforesaid, I am of the view that part of cause of action arose at Gangtok. Therefore, the issue No. 3 is decided in favour of the appellant plaintiff and against the respondents-defendants.

18. In the result, the appeal is allowed and the impugned order dated 7th October, 1999 passed by the learned District Judge (East and North) directing the return of plaint giving rise to the appeal is set aside and the suit is sent back to the learned District Judge (East and North) for trial according to law as expeditiously as possible since the suit was initially filed in the year 1992 and the parties are directed to appear before the Court of learned District Judge (East and North) on the 15th September 2000. He shall direct the parties to submit a list of witnesses" and to produce the witnesses on the dates fixed for evidence. All the parties would be at liberty to apply for issue of summons upon their witnesses. When the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined. The plaintiff shall examine their witnesses within 3 weeks from the date fixed for evidence of the witnesses of the plaintiff and the defendants shall examine their witnesses preferably within a period of 3 weeks from the date fixed for evidence of the witnesses of the defendants: It is made clear to the parties that they shall not get adjournment in this matter unless the Court finds the adjournment to be necessary for reasons to be recorded. The District Judge (East and North) is further directed to dispose of the Civil Suit preferably by 15th December 2000. Observations made in (his judgment shall be binding so far as issue No. 3 i.e. "Has this Court territorial jurisdiction to try the present suit?" is concerned. The learned District Judge (East and North) shall not be influenced or prejudiced by any of the observations made herein while" deciding other issues and he will be free to come to his own finding on the basis of the evidence adduced and documents placed before him.

19. No order as to costs.