

(2004) 09 BOM CK 0128
In the Bombay High Court
Case No : First Appeal No. 2 of 2003

Sugandh Sagun Sirsat

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10

Citation : (2005) 2 ALLMR 375 : (2005) 127 CompCas 697 : (2005) 3 MhLj 270

Hon'ble Judges : N.A. Britto, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : U.R. Timble and M.S. Joshi, for the Appellant; M.S. Usgaonkar and S.V. Kamat, for the Respondent

Judgement

N.A. Britto, J.—This appeal is directed against the Judgment and Decree dated 30-8-2002 of the learned Civil Judge, Senior Division, at Panaji. Some facts are required to be stated to dispose of the same.

2. The plaintiff is the daughter of one Sagun and granddaughter of Sitaram Vishnu Sirsat. The said Sitaram Vishnu Sirsat, as stated in the plaint, had business of import and export and therefore on or about 20-8-1923 he obtained a Bill of Exchange bearing No. 12/1260 from the defendant.

3. The said Bill of Exchange was drawn on Deutsche Bank, Berlin for payment of a sum of DM 8,775,000 and was in two sets. The said Bill of Exchange was not used by the said Sitaram V. Sirsat as the transaction for import of goods did not materialize.

4. The said Sitaram thereafter expired on or about 4-2-1944. After his death, his son Sagun is said to have made efforts to trace the said Bill of First Appeal No. 2 of 2003 decided on 21-9-2004. (Panaji-Goa) Exchange, but could not find the same until his death on 2-8-1989. The plaintiff in the course of search of old files, found the said Bill of Exchange in or about April, 1990, but thereafter found" that the said Deutsche Bank had ceased to exist in the year 1923 at the

end of the First World War and that the Deutsche Bank as it exists today is totally a different entity. On or about 5-2-1991 the plaintiff presented the said Bill to Deutsche Bank at Bombay which refused to accept the same.

5. The plaintiff presented the said Bill to the Central Bank of India through the Union Bank of India and the Central Bank of India (defendant) showed its inability to honour the same. Thereafter the plaintiff presented the said Bill to the Deutsche Bank at Bombay who also refused to accept the same.

6. The plaintiff therefore filed the suit for recovery of a sum of Rs. 12,28,50,0007 - with interest at the rate of 18% from the date of the suit.

7. The suit was contested by the defendant and three issues were framed by the learned Civil Judge, Senior Division. The second issue related to jurisdiction and the third issue related to limitation. Both the said issues have been answered against the plaintiff.

8. As far as the issue of jurisdiction is concerned, Shri. Timble, the learned counsel of the appellant-plaintiff has submitted that the demand for payment was made from Panaji and that on the principle that the debtor must find the creditor, the suit could have been filed in the Court of Civil Judge, Senior Division, at Panaji.

9. The learned Civil Judge S.D. rightly observed that the said Bill of Exchange was issued at Bombay/Mumbai and the demand for payment was also made from the defendant at Bombay through Union Bank of India. The learned Civil Judge, Senior Division rightly came to the conclusion that if at all any cause of action survived against the defendant, the same arose within the jurisdiction of the Courts at Bombay/Mumbai and not within the jurisdiction of Civil Judge S.D., at Panaji. The learned Civil Judge also rightly observed that the suit could not be filed in Panaji only because the defendant had their Branch office in Panaji. In our view, the learned Trial Judge rightly distinguished the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, . Since, the Bill was purchased in Bombay and the payment was also demanded and refused in Bombay, it is but obvious that the plaintiffs entire cause of action had arisen in Bombay and therefore the suit ought to have been filed in a competent Court having jurisdiction in Bombay/Mumbai. Jurisdiction cannot be decided on the basis of general rule that debtor must seek his creditor.

10. However, as rightly submitted by Shri. Timble, the learned counsel of the appellant and not disputed by Shri. Usgaonkar, the learned Senior Counsel on behalf of the respondent, the learned Civil Judge, S.D., Panaji, having found that he had no jurisdiction to entertain the suit, the plaint ought to have been returned to be presented to the Court in which the suit ought to have been instituted. Both the learned counsel have shown their inclination that they are not averse for the return of the plaint to be presented to the Court having jurisdiction.

11. Consequently, we allow the appeal partly, and direct the learned Civil Judge, Senior Division to return the plaint to the plaintiff in terms of Order 7, Rule 10, CPC to present the same in a Court in which the suit ought to have been instituted in Bombay/Mumbai. We further direct the plaintiff to present the plaint to the Court in which the suit should have been instituted in Bombay/Mumbai within a period of six weeks from the date the plaint is returned to the plaintiff by the learned Civil Judge, Senior Division. We consider it appropriate that the other findings given by the learned Civil Judge Senior Division be set aside, with liberty to the Court in which the plaint will be presented to decide all the contentions afresh. We leave the parties to bear their own costs.