

(1973) 03 MAD CK 0019
In the Madras High Court
Case No : A.A.O. No. 193 of 1970

The Karur Vysia Bank Ltd., Coimbatore

APPELLANT

Vs

Ramachandra C. Oza and Others

RESPONDENT

Date of Decision : 02-03-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : AIR 1974 Mad 209

Hon'ble Judges : Maharajan, J

Bench : Single Bench

Judgement

Maharajan, J.—This is an appeal against the order of the learned Subordinate Judge of Coimbatore, directing the plaint in O. S. No. 155 of

1966 on his file to be returned for presentation to the appropriate court, on the ground that the Sub-Court, Coimbatore, has no territorial

jurisdiction to entertain the suit. The plaintiff attacks the order of the court below in this appeal.

2. In order to understand the basis of the lower court's order, it is necessary to set forth a few facts.

3. The Karur Vysia Bank, the appellant before me was the plaintiff in the court below, and it sued Ramachandra C. Oza (first defendant). The

International Trading Co., Bombay (second defendant), Devakaran Nanjee Banking Co., Bombay (third defendant) and the Kanara Bank Ltd.,

Bombay (fourth defendant) for the recovery of Rs. 14,987-97 p, with future interest and costs upon the following averments-

4. On 13-12-1965, the first defendant applied to the plaintiff's bank at Coimbatore for a demand draft on the Bombay Bank in favour of the

second defendant for a sum of Rs. 15.03. Plaintiff thereupon issued on that day,

a crossed cheque for Rs. 15.03 p. The cheque itself was drawn on the 4th defendant bank at Bombay and the amount was payable to the second defendant. The plaintiff claimed that its officers had drawn the cheque with usual care and diligence by clearly writing in the cheque the amount of Rs. 15.03 p. in words and figures. The counterfoil of the cheque (NO. 401994) was produced by the plaintiff into court, in support of its allegation that the cheque was issued only for Rs. 15.03 p. ON 30-12-1965, the 4th defendant issued a wire to the plaintiff asking for the correct amount for which this cheque No. 401994 had been issued in favour of the second defendant on 13-12-1965. By a wire and letter, the plaintiff made it clear to the 4th defendant that the cheque was drawn only for Rs. 15.03 p. The plaintiff, however, received a letter dated 3-1-1966 from the 4th defendant to the effect that the cheque No. 401994 had been presented to the 4th defendant by the third defendant on 23-12-1965 and that the 4th defendant had paid the sum of Rs. 15,003, which appeared to be the amount for which the cheque had been issued. The 4th defendant in its letter, while explaining its own conduct in paying the higher amount, informed the plaintiff that the matter had been placed in the hands of the Police and that it would advise the plaintiff about further developments later on.

5. It was in these circumstances, that the 4th defendant debited the plaintiff's account with a sum of Rs. 15,003 instead of with a sum of Rs. 15.03

p. The complaint of the plaintiff was that defendants 1 and 2 and/or, others, on their behalf, had daringly and fraudulently altered the original figure

of Rs. 15.03 found in the cheque into Rs. 15,003. The plaintiff claimed recovery of the excess amount of Rs. 14,987-97 from defendants 1 and 2

on the basis that they had acted fraudulently and dishonestly enriched themselves. The plaintiff claimed the same amount from defendants 3 and 4

on the ground that inasmuch as they had failed to detect the fraudulent alterations in the cheque, they were guilty of dereliction of duty and gross

negligence in the matter of honouring the cheque which has been fraudulently and materially altered.

6. Defendants 1 and 2 remained ex parte. The third defendant, and the 4th defendant, who had a branch at Coimbatore, filed answers in which

they contended that the Coimbatore Sub-Court had no territorial jurisdiction to

entertain the suit. According to them the suit being one for damages for wrongful payment and the plaintiff having failed to allege as to where the alteration of the figures in the cheque had been effected, it is only the Bombay court which has jurisdiction to entertain the suit and not the Coimbatore court. This objection prevailed with the court below.

7. Section 20, Civil Procedure Code, reads as follows:--

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.

8. Clause (a) would have no application because defendants 2 and 3 do not actually reside or carry on business or personally work for gain at

Coimbatore. The plaintiff filed an application for the leave contemplated in clause (b), but, the court below dismissed that application. It is

unnecessary, in the view that I propose to take, to canvass the merits of the order of the lower court rejecting the plaintiff's application for leave. I

shall, therefore, consider whether under clause (c) of Section 20, Civil Procedure Code, the cause of action for this suit has arisen, wholly or in

part, within the local limits of the territorial jurisdiction of the Coimbatore Sub-court.

9. The meaning of the expression "cause of action" has been the subject of judicial discussion in several cases.

10. In *Read v. Brown*, 1888 22 QBD 128, Lord Esher M. R. defined "cause of action" to mean--

Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not

comprise every piece of evidence which is necessary to prove each fact, but

every fact which is necessary to be proved.

11. Fry L. J. in the same ruling observed--

Everything which, if not proved gives the defendant an immediate right to judgment must be part of the cause of action".

12. In Mt. Chand Kour v. Partab Singh, (1888) 15 Ind App 156, Lord Watson observed--

Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of

the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media

upon which the plaintiff asks the court to arrive at a conclusion in his favour.

The above observations have been quoted with approval by the Supreme Court in The State of Madras Vs. C.P. Agencies and Another, .

13. I shall next proceed to apply the principles laid down above, to the facts of this case. In order to succeed in this suit, the plaintiff has to prove

the following facts:--

(1) That the cheque issued at Coimbatore was for Rs. 15.03 p.

(2) That the cheque has been altered into one for Rs. 15,003.

(3) That D. 1, or D.1 and D.2 collusively and fraudulently, have altered the amount from Rs. 15.03 to Rs. 15,003.

(4) That D.3 and D.4 negligently failed to detect the material alterations in the cheque which were apparent on the face of the cheque and paid the

second defendant a sum of Rs. 14,987.97 p. in excess of the amount for which the cheque was actually drawn.

If any of the four facts stated above is not proved, the defendant would get an immediate right to judgment and the plaintiff's suit would have to be

dismissed. In other words, in the light of the decisions quoted above, every one of these four facts must be part of the cause of action. Learned

counsel for the defendant contends that though in an action upon the cheese, it would be necessary for the plaintiff to prove the issue of the cheque

at Coimbatore, it would be wholly unnecessary for him in an action for wrongful payment, to prove the issue of the cheque at Coimbatore. It is,

however, conceded by the learned counsel for the defendants that without proving the alteration the cheque, the plaintiff is bound to fail and the

defendants are bound to succeed. How, then, can the plaintiff prove the alteration except by proving the state of the cheque before it was altered

and the state of the cheque after it was altered? Alteration involves a transition from one state of affairs to another and unless the plaintiff proves for

what amount the cheque was originally issued at Coimbatore, it is impossible for him to prove into what amount it has been altered.

14. It is next contended on behalf of the defendants that the issue of the cheque at Coimbatore is not disputed by the defendants and consequently

it is not necessary for the plaintiff to prove it. A cause of action does not become the less of a cause of action merely because some of the facts

constituting it are admitted by the defendants; it has no relation to, and is independent of the defences that may be set up by the defendant. The test

is, what are the facts which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court? It

may be that the defendant may not traverse some of the facts which would be necessary for the plaintiff to prove. But, the attitude of the defendant

has no relevance to the question as to what is the cause of action for the plaintiff's claim and what are the facts which the plaintiff has got to prove

in order to support his right to a decree of the court.

15. In this connection, I may refer to a ruling of the Mysore High Court in *Munirangappa v. Venkatappa*, AIR 1965 Mys 316, in which it has been

held that even an infinitesimal fraction of a cause of action will be part of the cause of action and confer jurisdiction on the court within the territorial

limits of which that little occurs. This ruling has been quoted with approval in *Ujjal Talukdar Vs. Netai Chand Koley*, . It is true that in *Baroda Oil*

Cakes Traders Vs. Parshottam Narayandas Bagulia and Another, a Division Bench of the Bombay High Court has observed as follows:--

Section 20(c) provides that every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action wholly or in part

arises. The expression "cause of action" has received judicial interpretation on numerous occasions. Every student of the Code is familiar with the

explanation of this expression which describes it as a bundle of essential facts necessary to be proved by the plaintiff in order to succeed in his suit.

This explanation appears to be clear and facile; but it is not always easy to decide which facts can legitimately enter this bundle and which must be

excluded from it....

After quoting the English rulings, their Lordships proceeded to observe as follows--

It is, however, important to bear in mind that the bundle of facts which constitute the cause of action in a civil suit does not and is not intended to

comprise every fact which may be proved in evidence. It is only material facts which must be proved by the plaintiff before he can obtain a decree

that constitute the cause of action. Facts which the plaintiff may allege incidentally and facts which may be brought in evidence at "*res gestae*"

would not necessarily constitute a part of the cause of action. The distinction between facts which are relevant and material and those that are

incidental and immaterial is sometimes not easy to be drawn; but the said distinction is nevertheless important for the purpose of deciding which

facts constitute the cause of action and which are not included in it....

16. With great respect to their Lordships of the Bombay High Court, I think the proposition has been too broadly stated by them. I prefer the

Mysore view for two reasons. In the first place, it would be in accordance with the language of Section 20, clause (e), which refers to the place,

where even a part of the cause of action arises. It is difficult to discriminate between part of a cause of action with reference to their relative

importance. It is sufficient under the Code that any part of the cause of action arises within the local limits of the territorial jurisdiction of the court.

In the second place, once it is conceded that a bundle of facts constitutes the cause of action, it would be a needless technicality to sift one set of

such facts from the other set by applying relative standards of relevancy and materiality. Even assuming that the Bombay view is the correct view, I

think that out of the bundle of facts that constitute the cause of action in the plaintiff's suit, the fact that the cheque issued at Coimbatore was for a

sum of Rs. 15.03 p. is a very material and relevant fact, without proof of which the plaintiff is bound to fail.

17. The learned Subordinate Judge erred in holding that it was unnecessary for the plaintiff in this action to prove the preparation and issue of a

cheque for Rs.15.03 p. and that the only facts that are required to be proved before the plaintiff getting a judgment in his favour are the fraudulent

and dishonest conduct of D-1 and D-2 and dereliction of duty on the part of D-3

and D-4. How could the plaintiff prove that the conduct of D-1

and D-2 was either dishonest or fraudulent, unless he proved that they have been responsible for a material alteration in the cheque that was issued

at Coimbatore by the plaintiff's bank? And how could the alteration be proved except by proving that cheque No. 401994, the disputed cheque

was issued by the Coimbatore Branch only for Rs. 15.03 and that this figure has been subsequently converted into Rs. 15,003, as a result of the

dishonest and fraudulent conduct of defendants 1 and 2?

18. I am, therefore, clearly of the view that a part of the cause of action for this suit, viz., the issue of a cheque for only Rs. 15.03 p. has arisen

within the local limits of the territorial jurisdiction of the Coimbatore Sub-Court. The order of the court below is, therefore, set aside and the appeal

is allowed with costs. The court below is directed to restore the suit to its file and dispose of the suit on the merits.

19. Appeal allowed.