

(2011) 02 DEL CK 0345

In the Delhi High Court

Case No : Regular First Appeal No. 240 of 2001

The New India Assurance Co. Ltd.

APPELLANT

Vs

Economic Transport Organization and Another

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 96

Citation : (2011) 02 DEL CK 0345

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Ramesh Kumar, for the Appellant; None, for the Respondent

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 is to the impugned order dated 2.2.2001 whereby the suit has been dismissed because the Court lacked territorial jurisdiction. Of course, when a Court has no territorial jurisdiction, the suit should not be dismissed and in fact the plaint has to be returned for presentation to the Court having jurisdiction as per Order 7 Rule 10 of the CPC . In fact this eventuality has to follow because there is no merit in the appeal for the reasons given hereinafter.

2. The facts of the case are that the Respondent No. 2 took the benefit of the services of Respondent No. 1 transportation company for its machine known as one Compact Sheet Line Extruder Model CS-50 from Nasik in Maharashtra to Sahibabad in UP. The consignment when it reached the premises of the Respondent No. 2 at Sahibabad it was noticed that the same was damaged and since the consignment was insured with the Appellant insurance company, the Appellant company settled the claim of the Respondent No. 2 and consequently obtained an assignment deed-cum-subrogation bond on the basis of which the subject suit came to be filed.

3. Admittedly, the Appellant/plaintiff only steps into the shoes of the Respondent

No. 2 whose machine was damaged during the contract of transportation. The contract of the Respondent No. 2 with the Respondent No. 1 was not at Delhi but was at Nasik. The performance of the contract was also not at Delhi because the machine was not taken by the Respondent No. 1 at Delhi for transportation and the same was taken at Nasik and the machine was delivered not in Delhi but in Sahibabad, UP. Quite clearly the Courts in Delhi had no territorial jurisdiction. The Trial Court has rightly held that merely because there was an inquiry and complaint office of the Respondent No. 1 at New Delhi with whom correspondence was entered into would not mean that the whole cause of action arises in Delhi. Learned Counsel for the Appellant contended that the Central Administrative Office of the Respondent No. 1 was at Delhi and therefore Courts at Delhi have territorial jurisdiction. I am unable to agree because this issue is no longer *res integra* and has been pronounced upon by the Supreme Court in its decisions reported as *Patel Roadways v. Prasad Trading Company* 1991 (4) SSC 270 and *New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. and Others*, . It has been held in these judgments by the Supreme Court that unless and until whole or part of the cause of action arises within the jurisdiction of the principal office, a suit cannot be filed against a Corporation in the Courts situated at its principal office and the suit has necessarily to be filed in the Court within whose jurisdiction the branch office is situated and where the whole or part of the cause of action arises within the jurisdiction of the branch office. Since no part of cause of action arose at Delhi, merely there was an office of the Respondent No. 1 at Delhi will not give the courts have territorial jurisdiction.

4. In view of the above there is no illegality or perversity in the impugned judgment and the appeal is therefore dismissed. However, once it is found that the Courts at Delhi do not have territorial jurisdiction the plaint will have to be retuned for presentation to the appropriate Court having territorial jurisdiction. In this case, the territorial jurisdiction will be either at Nasik or at Sahibabad or at any place in which whole or part of the cause of action arises. Accordingly, the impugned judgment and decree is sustained except that instead of dismissing the suit, the Appellant/plaintiff is directed to appear before the District and Sessions Judge on 28th March, 2011 and on which date or any other subsequent convenient date the District and Sessions Judge will return the plaint to the Appellant/plaintiff for presenting the same to the Court which has the territorial jurisdiction.

5. With the aforesaid observations, the appeal is disposed of and the Appellant is directed to appear before the District and Sessions Judge on 14th March, 2011 and on which date the District and Sessions Judge will return the plaint to the Appellant or on any other subsequent date as may be found convenient. The appeal is accordingly disposed of. Trial Court Record be sent back.