
(2012) 04 DEL CK 0180

In the Delhi High Court

Case No : I.A. No. 13000 of 2010 in CS (OS) No. 1656 of 2009

Unimers India Limited

APPELLANT

Vs

The IFCI Limited and Ors

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 113, 20, 53

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 11, Order 7 Rule 2, 15, 16

Citation : (2013) 197 DLT 693 : (2012) 129 DRJ 608

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : K.N. Bhat with Mr. Anil Grover and Ms. Divya, for the Appellant; Dinkar Singh, with Mr. Hari Sharan Singh, for D-1. Mr. Ashwini Mata, with Mr. C.S. Chauhan, for D-3, for the Respondent

Judgement

Manmohan Singh, J.—By this order, I propose to decide the defendant No. 3's application under Order VII Rule 10 Code of Civil Procedure, 1908 seeking return of the plaint to the plaintiff for presenting in the proper Court having territorial jurisdiction, as this Court lacks territorial jurisdiction. The facts are that the plaintiff has filed the present suit for declaration, that purported transfer evidence by deed of assignment dated 01.10.2009 executed between defendants No. 1 and 3 is null and void, and mandatory injunction, thereby restraining the defendants 2 and 3 or any one from taking any action or doing or executing any acts or deeds including, but not limited to, dealing with the immovable properties or moveable assets of the plaintiff or from, in any manner whatsoever, interfering with the management of the plaintiff company by its present promoters or otherwise asserting any rights attaching to the said debentures in any manner, particularly by virtue of the transfer as evidenced by the deed of assignment The defendant No. 3 is the Managing Director of the defendant No. 2 who has taken over the debts of plaintiff from defendant No. 1 by way of an instrument of Assignment of Debt between defendant No. 1 and defendant No. 2 executed

through defendant No. 3.

2. The main contention of defendant No. 3 is that a bare reading of the plaint, along with the documents, demonstrates that this Court has no jurisdiction. Thus, under the provision of Order VII, Rule 10 CPC, the plaint is liable to be returned to be presented in the proper Court.

3. It is stated in the application that the suit is to be filed either in the place where the defendant resides or carries on business or the place where the cause of action arises. Since the registered office of defendant No. 3 is at Mumbai and it carries on business from Mumbai only, therefore, the present suit has to be filed at Mumbai. It is further stated that even the cause of action has arisen at Mumbai.

4. The following are the main reasons given by defendant No. 3 that this Court has no territorial jurisdiction to entertain the present suit u/s 20 CPC:

(a) The plaintiff has registered office at Mumbai and carries on its business from Mumbai and there is no subordinate office of the plaintiff in Delhi. The defendant No. 1 has its registered office at New Delhi, but has its regional/ subordinate office at Mumbai through which all the financial documents as well as the subscription agreement dated 21.09.2011 were executed with the plaintiff.

(b) As per clause 1.13 of Article 1 of the subscription agreement dated 21.09.2001, all the monies payable by the company to the defendant No. 1 was to be paid at Mumbai by cheque or bank draft on scheduled bank at Mumbai. The debentures, which form part of the suit, arose out of the above said restructurings and the plaintiff, by allotment letters, both dated 21.09.2001, had allotted Zero Coupon Non-Convertible Debentures (ZCNCD) aggregating to Rs.693.79 lac at the face value of Rs.100/- each at Mumbai.

(c) The case of the plaintiff for restructuring was referred to the CDR Cell of RBI which is also in Mumbai and subsequently in 2006, the Mumbai Regional Office of defendant No. 1, by its communication dated 13.02.2006, informed the plaintiff about the approval of CDR restructuring package. The CDR Cell, Mumbai, by its letter dated 04.11.2008, informed the Mumbai Regional Office of defendant No. 1 that CDREG had accepted the proposal of withdrawal of the plaintiff from CDR system.

(d) The Mumbai Regional Office of defendant No. 1, by letter dated 29.09.2009, informed the plaintiff that as the plaintiff failed to perform its contractual obligations towards payment of dues to defendant No. 1, therefore, the defendant No. 1 had revoked all the reliefs and concessions.

(e) The Deed of Assignment dated 01.10.2009 was also executed in favour of defendant No. 3 through the regional office of the defendant No. 1 at Mumbai, whereby the said debentures, issued by the plaintiff in favour of the defendant No. 1, were assigned in favour of defendant No. 3.

(f) Though the defendant No. 1 has its registered office at Delhi, but, all the correspondences with the plaintiff had been made by its regional office at Mumbai only. If it is presumed that the decision of restricting of debt of the plaintiff in 2001 might have been taken by the defendant No. 1 at Delhi, still, the fact remains that the communication of the said decision was made by Mumbai regional office of defendant No. 1.

(g) Since the cause of action had arisen in Mumbai where the regional/subordinate office of defendant No. 1 is situated, therefore, the said place of Mumbai is to be the relevant place for filing of a suit and not the principal place of business.

5. In support of his submissions, Mr. Mata, the learned Senior Counsel, has referred to the following judgments:-

(i) Harshad Chiman Lal Modi Vs. DLF Universal and Another,

(ii) Gujarat Insecticides Ltd. Vs. Jainsons Minerals and Another,

(iii) New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. and Others,

(iv) M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company,

6. The relevant paras of the case of Harshad Chiman Lal Modi (supra) read as under:-

15. Now, Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of Courts. They regulate forum for institution of suits. They deal with the matters of domestic concern and provide for the multitude of suits which can be brought in different Courts. Section 15 requires the suitor to institute a suit in the Court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. Proviso to Section 16 declares that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the Court within whose jurisdiction the property is situate or in the Court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different Courts. Section 18 applies where local limits of jurisdiction of different Courts is uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.

16. Section 16 thus recognizes a well established principle that actions against res or property should be brought in the forum where such res is situate. A Court within whose territorial jurisdiction the property is not situated has no power to deal with and decide the rights or interests in such property. In other words, a Court has no jurisdiction over a dispute in which it cannot give an effective judgment

7. The defendant No. 3 resides, carries on its business outside the territory of this Court and Section 20(b) of CPC specifies that 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.

8. It is alleged that from read of amended plaint as well as documents filed by the plaintiff, no cause of action has arisen within territorial jurisdiction of this Court. The decision of this Court is referred to in the case of Gujarat Insecticides Ltd. (supra). The relevant para reads as under:-

15.....It is, however, not disputed that the goods were supplied by the plaintiff from its Parwanoo depot to the defendants at its Fatehabad (Haryana) Office. The contract is thus performed outside Delhi. Merely because the defendants have its principal office at Delhi would not confer the jurisdiction if the defendants also have its subordinate office at other place and cause of action has also arisen at that place and in that case suit will be filed only in the Court within whose jurisdiction the company/corporation has its subordinate office and not in the Court within whose jurisdiction it has principal office....

9. The relevant paras of the case of New Moga Transport Co. (supra) read as under:-

10. On a plain reading of the Explanation to Section 20 CPC it is clear that Explanation consists of two parts, (i) before the word "or" appearing between the words "office in India" and the word "in respect of" and the other thereafter. The Explanation applies to a defendant which is a Corporation which term would include even a company. The first part of the Explanation applies only to such Corporation which has its sole or principal office at a particular place. In that event, the Court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression "at such place" appearing in the Explanation and the word "or" which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose

jurisdiction the principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate office which alone have the jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office.

11. Section 20 before the Amendment by CPC in 1976 had two Explanations being Explanation I and II. By Amendment Act, Explanation I was omitted and Explanation II was renumbered as the present Explanation. Explanation which was omitted reads as follows:

Explanation 1.- Where a person has a permanent dwelling at one place and also temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

12. This Explanation dealt with the case of place of residence of the defendant and provided with regard to a person having a permanent dwelling at one place and also temporary at another place that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. The language used in Explanation II on the other hand which is the present Explanation was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places the language used in Explanation II would have been identical to that of Explanation I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place.

10. The Hon'ble Apex Court in Patel Roadways Ltd. (supra) has clearly observed that the explanation in Section 20(c) of CPC deals with two parts; (a) As to where the corporation can be said to carry on business and (b) A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office at such place.

11. In reply to the submissions made by the defendant No. 3, the plaintiff's contention is that this Court has territorial jurisdiction to adjudicate the present suit as the necessary cause of action arose in Delhi within the jurisdiction of this Court and the defendant No. 1 has its registered office in Delhi. There is clear averment in the plaint that the cause of action arose in Delhi. The averment made in the plaint has to be treated as correct unless proved otherwise at the trial. It is stated that the decisions and approvals for executing the financing documents, for grant of reliefs and concessions and revoking the same, for the structuring of the debt of the plaintiff and all other actions were taken at the registered office of defendant No. 1 at Delhi. Therefore, this Court has the territorial jurisdiction to entertain the present suit.

12. It is stated that by the plaintiff that the plaintiff company being situated at

Mumbai and carrying on its business from Mumbai is not the test for satisfying the issue of jurisdiction. Even execution of the subject subscription agreement and other financial documents is not the issue in the present suit. It is contended that the decisions and approvals for executing the financing documents for grant of reliefs and concessions and revoking the same, for structuring of the debt of the plaintiff and other actions, which were taken at the registered office of defendant No. 1 at Delhi, are sufficient to confer jurisdiction upon this Court and not the place of business of defendant No. 3, which was impleaded as a party to the present suit at a subsequent stage.

13. It is further stated that the decision for restructuring the plaintiff in 2001 was taken in Delhi and the decision as to the apprehended transfer of the debentures will also have to be taken in Delhi by Credit Committee/Board of Directors/CMD of defendant No. 1. Irrespective of where implementation or execution of documents or creation of security may take place, the final decision making is only at New Delhi by its Credit Committee/Board of Directors/CMD.

14. It is also stated that bulk of the shares constituting about 4.77% of the 5.78% were sold pursuant to decision taken by defendant No. 1 at New Delhi.

15. It is stated by the plaintiff that allotment of debentures by the plaintiff has taken place at Delhi where the registered office of defendant No. 1 is situated and two letters of declaration and undertaking dated 21.09.2001 issued by the plaintiff were also addressed to the registered office of the defendant No. 1. It is also contended that since letter of undertaking and declaration with respect to the allotment of the Zero Coupon secured Non-convertible debentures have been posted at the registered address of the defendant No. 1 in Delhi, therefore, some part of cause of action arisen within the jurisdiction of this Court.

16. It is submitted by the plaintiff that in absence of any exclusion clause with respect to jurisdiction in the Subscription Agreement dated 14.09.2001, the jurisdiction of this Court to adjudicate the present suit cannot be ousted. Since the cause of action has arisen in Delhi, as the decision to transfer the debentures from defendant No. 1 to defendant No. 3 was taken at Delhi office of defendant No. 1, this Court has the necessary jurisdiction to decide the present suit.

17. In support of his submissions, Mr Bhat, learned Senior Counsel, has referred to the following judgments:

(?) HCL Info Systems Limited vs. Anil Kumar: (2007) 139 Comp Case 788 (Ker). Relevant para is reads as under : Going by the amended plaint, the cause of action has obviously arisen at Madras and Bombay only. Thus, for the purpose of Section 20, it has to be deemed that the defendant/company carried on business at New Delhi, Madras or Bombay only. The Court at Ernakulam will not have jurisdiction in view of the conceded position that no part of cause of action has arisen within the local limits of that Court. The suit could be entertained by Courts either at New Delhi, seat of the company's registered office or at Madras or Bombay where the cause of action arose in part, but not at Ernakulam.

Gopal Singh Hira Singh, Merchants Vs. Punjab National Bank and Another, The plea that this Court had no jurisdiction is equally unsustainable. The jurisdiction of the Court is clearly justified with reference to the situs of the residence of the bank. The bank admittedly had its head office during all material time in Delhi and that being so, the Delhi Court had the necessary jurisdiction to take seizing of the suit. I have, therefore, no hesitation in holding that the suit was maintainable."

Kuldeep Singh vs. Union of India & Ors: AIR (1986) Delhi 56. The Court held that there is no justification to split up the concept of principal place of business of a Corporation by seeking to sub-divide or identified the place of running by relating to each tender. Principal place of business cannot be made to depend on each tender, for it is well known that, tenders are issued by various authorities depending on their respective financial power, principal place of business must be a regular fixed place independent at each tender. As such, it was held that just because tender was issued and accepted at Lucknow, it will not mean that the suit could be filed at Lucknow only (the Division Office). It could be filed at Delhi also which is the headquarters of the concerned Railway." H.V. Jayaram Vs. The Industrial Credit and Investment Corporation of India Ltd. and others, . Relevant para-11 reads as under: "11. In our view, it appears that the attention of the learned Judge was not drawn to the decision rendered by this Court in H.P. Gupta v. Hiralal [(1970) 1 SCC 437 : 1970 SCC (Cri) 190] and also to Section 113 of the Act, which, inter alia, provides that a company shall deliver the documents, such as certificates of shares, debentures and certificates of debenture stocks allotted or transferred in accordance with the procedure laid down in Section 53. Section 53 prescribes the mode of delivery, inter alia, by sending the document by post at the registered address and sub-section (2) is the deeming provision for delivery of such letter. In Upendra Kumar Joshi v. Manik Lal Chatterjee [(1982) 52 Comp Cas 177 (Pat)] the Patna High Court has followed the decision rendered by this Court in the case of H.P. Gupta [(1970) 1 SCC 437 : 1970 SCC (Cri) 190] and has rightly arrived at the conclusion that the cause of action would arise at the place where the registered office of the company is situated."

Laxman Prasad Vs. Prodigy Electronics Ltd. and Another, Relevant para 46 reads as under : "46. Territorial jurisdiction of a Court, when the plaintiff intends to invoke jurisdiction of any Court in India, has to be ascertained on the basis of the principles laid down in the Code of Civil Procedure. Since a part of "cause of action" has arisen within the local limits of Delhi as averred in the plaint by the plaintiff Company, the question has to be considered on the basis of such averment. Since it is alleged that the appellant-defendant

had committed breach of agreement by using trade mark/trade name in Trade Fair, 2005 in Delhi, a part of cause of action has arisen in Delhi. The plaintiff Company, in the circumstances, could have filed a suit in Delhi. So far as applicability of law is concerned, obviously as and when the suit will come up for hearing, the Court will interpret the clause and take an appropriate decision in

accordance with law. It has, however, nothing to do with the local limits of the jurisdiction of the Court."

Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others, . Relevant para 46 reads as under : ¶12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the Court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants."

Begum Sabiha Sultan Vs. Nawab Mohd. Mansur Ali Khan and Others, Relevant paras 10 and 11 read as under : There is no doubt that at the stage of consideration of the return of the plaint under Order 7 Rule 10 of the Code, what is to be looked into is the plaint and the averments therein. At the same time, it is also necessary to read the plaint in a meaningful manner to find out the real intention behind the suit. In Moolji Jaitha and Co. v. Khandesh Spg. and Wvg. Mills Co. Ltd. [AIR 1950 FC 83] the Federal Court observed that:

"The nature of the suit and its purpose have to be determined by reading the plaint as a whole."

It was further observed:

"The inclusion or absence of a prayer is not decisive of the true nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments made in the plaint and on which the reliefs asked in the prayers are based."

It was further observed: (AIR p. 98, para 59)

"It must be borne in mind that the function of a pleading is only to state material facts and it is for the Court to determine the legal result of those facts and to mould the relief in accordance with that result."

This position was reiterated by this Court in *T. Arivandandam Vs. T.V. Satyapal and Another*, by stating that what was called for was a meaningful-not formal-reading of the plaint and any illusion created by clever drafting of the plaint should be buried then and there. In *Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another*, this Court approving the statement of the law by Mukherjee, Acting Chief Justice in *Hriday Nath Roy v. Ram Chandra Barna Sarma* [ILR 48 Cal 138 (FB)] held: (Official Trustee, W.B. case [AIR 1969 SC

823 : (1969) 3 SCR 92], AIR p. 828, para 15) "Before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties.

18. In terms of the ratio in the case of *HCL Info Systems Limited (supra)*, the present suit can be entertained at Delhi, the seat of the defendant No. 1's registered office or at Bombay, the seat of the regional office of the defendant No. 1. It is submitted that in absence of any exclusion clause with respect to jurisdiction in the Subscription Agreement dated 14.09.2001, the jurisdiction of this Court to decide the present suit cannot be ousted. It is further submitted that in the present case there is a clear averment in the plaint that the cause of action arose in Delhi and that averment has to be treated as correct unless proved otherwise at the trial. The cause of action, being the decision to transfer the debentures from defendant No. 1 to defendant No. 3 taken at the Delhi office of the defendant No. 1, this Court has the necessary jurisdiction to decide the present suit.

19. Similarly in *Kuldeep Singh (supra)*, this Court had held that there is no justification to split up the concept of principal place of business of a corporation by seeking to sub-divide or identify the place of running by relating to each tender. Principal place of business cannot be made to depend on each tender, for it is well known that tenders are issued by various authorities depending on their respective financial power, principal place of business must be a regular fixed place independent at each tender. As such, it was held that just because tender was issued and accepted at Lucknow, it will not mean that the suit could be filed at Lucknow only (The Division Office). It could be filed at Delhi also, which is the Headquarters of the concerned Railway.

20. In the present case, the allotment of debentures by the plaintiff has taken place where the registered office of the defendant No. 1 is situated and the two letters of declaration and undertaking dated 21.09.2001 issued by the plaintiff were also addressed to the registered office of the defendant No. 1. Therefore, the letter of undertaking and declaration with respect to the allotment of the Zero Coupon secured Non-convertible debentures have been posted at the

registered address of the defendant No. 1 in Delhi and thus some part of the cause of action has arisen within the jurisdiction rendered by the Supreme Court in H.V. Jayaram (supra), the cause of action for the present has arisen at the place where the registered office of the defendant No. 1 is situated i.e. within the jurisdiction of this Court. The plaintiff also seeks to place reliance on the judgment referred by the Supreme Court in Laxman Prasad (supra).

21. Let me now examine the present case in view of rival submissions made by the parties.

22. Section 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 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.

23. From the reading of the aforesaid Section, it is clear that Section 20 prescribes mode by which the other suits can be instituted which are not falling within Section 15 to 19 of the CPC. The said Section 20 prescribes following eventualities for the Court to assume jurisdiction:-

a) the suit can be instituted in a Court within local limits of whose

jurisdiction the defendants or each of the defendant more than one at a time of institution 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, as aforesaid, acquiesce in such institution; or

c) the cause of action, wholly or in part, arises.

24. All these eventualities are disjunctive in nature and therefore satisfaction of one will enable the Court to assume jurisdiction. In the case where there are more than one defendants either the suit can be instituted at the place where each of the defendants resides as per eventuality (a) or it can be instituted

where any of the defendants resides provided that in such cases either leave of the Court is given or the defendants who do not reside, acquiesce any such institution.

26. All this would mean that the thumb rule is that the jurisdiction is vested in the Court where each of the defendants resides, if, there are more than one in the case and unless there is clear cut waiver or the leave of the Court, the Court cannot assume jurisdiction in the case where there are multiple defendants residing outside the jurisdiction of the Court.

26. The third eventuality, however, which completely operates independently to that of eventuality (a) or (b) is a case that if the cause of action is shown to be wholly or in part arising within the jurisdiction of a particular forum, in that eventuality as well the Court can conveniently assume jurisdiction. There is an explanation appended to the said Section as under:-

[Explanation].-A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

27. The said explanation clearly provides two further events relating to "carrying on business" of the corporation. The said explanation provides that corporation shall be deemed to be carrying on business at the principal place or the sole office in India or in such a case, where cause of action arises at the place where subordinate office is situated.

28. It is noteworthy to mention that the said explanation appended to Section 20 has come up for interpretation time and again before the Supreme Court so as to adjudge as to whether the corporation can be given a complete clean sweep by virtue of deeming fiction of law to be said to be carrying on business at the place where the principal office is situated irrespective of the fact whether the cause of action has arisen in that place or not.

29. The Supreme Court has categorically held that the explanation appended to Section 20 does not mean that the rigors of said Section can be ignored altogether for a corporation. Supreme Court rather stated that the explanation is only relating to clarificatory part to the eventuality (a) only and cannot be read to be in isolation with that of entire section meaning thereby, that it is only for the purposes of carrying on business of the corporation, the said clarification is made and in case where there is cause of action arising at one place where the subordinate office is situated then, the corporation shall also be said to be carrying on business at that particular place.

30. It is not as if that in all the cases a corporation shall be deemed to be carrying on business at the principal office even if there is a subordinate office situated at the different territory proximate to the cause of action and in those cases, the second condition envisaged in the explanation shall be attracted which is that for the purposes of carrying on business, subordinate office shall be said

to be carrying on business and in those cases, the jurisdiction of the Court will vest in the territory where subordinate office is situated and not at the place where the principal office is situated.

31. This view has been laid down by the Supreme Court in the case of Patel Roadways Limited, Bombay (supra) wherein the Supreme Court has held as under:-

9. Clauses (a) and (b) of Section 20 inter alia refer to a Court within the local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a Court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently clause (c) is not attracted to the facts of these cases. What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the Courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which

term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the Courts within whose jurisdiction the sole or principal office of the defendant is situated will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situated but the Court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

Here we may point out that the view which we take

finds support from a circumstance which, in our opinion, is relevant. Section 20 of the Code before its amendment by the CPC (Amendment) Act, 1976 had two Explanations being Explanations I and II. By the Amendment Act Explanation I was omitted and Explanation II was renumbered as the present Explanation. Explanation I so omitted read as hereunder:-

"Explanation I: Where a person has a permanent dwelling at one place and also temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence."

This Explanation dealt with the case of place of

residence of the defendant and provided with regard to a person having a permanent dwelling at one place and also temporary at another place that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. The

language used in Explanation II on the other hand which is the present Explanation was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places the language used in Explanation II would have been identical to that of Explanation I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place. The marked difference in the language of the two Explanations clearly supports the view which we have taken with regard to the interpretation of the present Explanation to Section 20 of the Code which was Explanation II earlier as indicated above.

12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of clauses (a), (b) and (c) together with the first part of the explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under clause (c) (irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose of the explanation. The explanation is really an explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to where the corporation can be said to carry on business. Thus, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the

intention of the legislature was that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the explanation would have read "and in respect of any cause of action arising at any place where it has a subordinate office, also at such place."

32. This is exactly the view as propounded above which has found favor of Supreme Court. Supreme Court again had an occasion to deal with the same very view again in the case of New Moga Transport Co. (supra) wherein the Supreme Court has again approved the same view of Patel Roadways (supra) as under:-

8. Section 20 of CPC reads as follows:

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-

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

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.

(Explanation) - A corporation shall be deemed to carry on business at its sole or principal office in (India) or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

Normally, under clauses (a) to (c) plaintiff had a

choice of forum and cannot be compelled to go to the place of residence or business of the defendant and can file a suit at a place where the cause of action arises. If the defendant desires to be protected from being dragged into a litigation at some place merely because the cause of action arises there it can save itself from such a situation by an exclusion clause. The clear intendment of the Explanation, however, is that where the Corporation has a subordinate office in the place where the cause of action arises it cannot be heard to say that it

cannot be sued there because it does not carry on business at that place. Clauses (a) and (b) of Section 20 inter alia refer to a Court within local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a Court within local limits of whose jurisdiction the cause of action wholly or in part arises.

On a plain reading of the Explanation to Section 20 CPC it is clear that Explanation consists of two parts, (i) before the word "or" appearing between the words "office in India" and the word "in respect of" and the other thereafter. The Explanation applies to a defendant which is a Corporation which term would include even a company. The first part of the Explanation applies only to such Corporation which has its sole or principal office at a particular place. In that event, the Court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression "at such place" appearing in the Explanation and the word "or" which is disjunctive clearly suggest that if

the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate office which alone have the jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

Section 20 before the Amendment by CPC in 1976 had two Explanations being Explanation I and II. By Amendment Act, Explanation I was omitted and Explanation II was renumbered as the present Explanation. Explanation which was omitted reads as follows:

Explanation 1.- Where a person has a permanent dwelling at one place and also temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence."

This Explanation dealt with the case of place of residence of the defendant and provided with regard to a person having a permanent dwelling at one place and also temporary at another place that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. The language used in Explanation II on the other hand which is the present Explanation was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places the language used in Explanation II would have been identical to that of

Explanation I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place.

33. On the basis of aforementioned discussion and observations of Supreme Court in Patel Roadways (supra) and New Moga (supra), it can be easily discerned that the explanation appended to Section 20 of CPC cannot be said to be giving a wide leeway to the corporation or to the plaintiff to sue or being sued solely at the places where registered office is situated.

34. It does not invariably hold good in cases where the cause of action has arisen at different place and coupled with the fact subordinate office of the company is situated at that different place, then in those cases, the plaintiff has to approach that forum only where subordinate office is situated and cannot invoke the limited deeming fiction of carrying on business at the principal office.

35. It is only in the cases where there is a sole or principal office of the corporation/company is situated as mentioned in the explanation, plaintiff can sue at the principal office and deeming fiction shall operate.

36. Additional reasoning of adopting this view is also that the explanation appended to Section 20 CPC uses the term "sole" or "principal office".

37. It is well settled principle of law that language of the statute has to be read in the context of words which are used together and the terms used in the provisions take colour from each other or from accompanying words. The terms which are like in nature, are used together with the expression "or". Had there been any intention to give a wide sweep to this deeming fiction, then the word "sole" would not have been used. The use of the expression "sole" or "principal office" in India would indicate that the said fiction is engrafted only in those cases where the corporation ordinarily is not carrying on business in India at other places, but, has sole or principal office at one place and in those cases for the purposes of suing the corporation or a company, shall be deemed to be carrying on business in India at the place where such principle or sole office is situated.

38. It is well settled that the fiction engrafted under the statute must be given fullest effect but only to the extent of which the fiction permits and not beyond the same. In the present case, explanation provides a limited fiction in a limited eventuality wherein, the corporation shall be deemed to be carrying on business where the sole or principal office is situated. The fiction has to be given only the limited effect, taking into consideration of later part of the same very explanation which speaks otherwise in the cases where the cause of action is there and subordinate office is also situated.

39. Rather the later part of the explanation has the effect of equal fiction for the purposes of subordinate office as it is in continuation of the same sentence of the explanation. Therefore, in the cases where the cause of action has arisen and subordinate office is situated rather by virtue of fiction of law, the subordinate

office shall be deemed to be carrying on business.

40. In simple words, what follows from the above discussion is that the mere fact that the corporation has principal office or situs or seat at one place and the cause of action and the subordinate office is situated at another place, then the Court has to assume jurisdiction on the basis of second part of the fiction, as mentioned in the explanation and the Court will not assume jurisdiction solely on the count that the place of suing is the place where principal office is situated when there is subordinate office which is situated at different territory, where part of cause of action has arisen.

41. Learned Single Judge of Delhi High Court equally approves the view as laid down in Patel Roadways (supra) in the case of Gujarat Insecticides Ltd. (supra) wherein the learned Judge in para 15 and 16 of the order approves the same view expressed by the Hon''ble Supreme Court in Patel Roadways (supra) and Moga (supra) and has given the conclusion in para 17 as under:-

?15. The reasons given for conferring the jurisdiction in Delhi are (a) defendants reside and work for gain at Delhi (b) the cheques towards the part payment were handed over by the defendants to the plaintiff at Delhi. It is, however, not disputed that the goods were supplied by the plaintiff from its Parwanoo depot to the defendants at its Fatehabad (Haryana) Office. The contract is thus performed outside Delhi. Merely because the defendants have its principal office at Delhi would not confer the jurisdiction if the defendants also have its subordinate office at other place and cause of action has also arisen at that place and in that case suit will be filed only in the Court within whose jurisdiction the company/corporation has its subordinate office and not in the Court within whose jurisdiction it has principal office. This is so held by the Supreme Court in the case of Patel Roadways Ltd. v. Prasad Trading Company. In the process Section 20 of the CPC was interpreted in the following manner:

9. Clauses (a) and (b) of Section 20 inter alia refer to a Court within the local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a Court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently Clause (c) is not attracted to the facts of these cases. What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the Courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect Page 1376 of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its

sole or principal office at a particular place. In that event the Courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office."

16. The following observations in the case of *New Moga Transport Co. v. United India Insurance Co. Ltd.* (supra) needs specific mention:

Section 20, before the amendment of CPC in 1976, had two Explanations being Explanations I and II. By the Amendment Act, Explanation I was omitted and Explanation II was renumbered as the present Explanation. Explanation which was omitted reads as follows:

Explanation I.-Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

This Explanation dealt with the case of place of residence of the defendant and provided with regard to a person having a permanent dwelling at one place and also temporary at another place, that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. The language used in Explanation II, on the other hand, which is the present Explanation, was entirely

different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places, the language used in Explanation II would have been identical to that of Explanation I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place.

17. Merely because cheques given to the plaintiff are deposited by the plaintiff in Delhi would not be of an indicator that part of action has arisen in Delhi. Though learned Counsel for the plaintiff made oral submission to the effect that the order was placed in Delhi and part of the goods were also supplied Page 1377 from this depot at New Delhi. However, there is no such averment made in the plaint and

as far as jurisdiction is concerned the only grounds taken are that office of the defendants is situated in Delhi where they reside and work for gain and cheques towards the part payment were handed over by the defendant to the plaintiff at Delhi. Thus this oral submission is not supported by any pleadings. I am, therefore, of the view that this Court has no territorial jurisdiction. Issue No. 1 is accordingly, decided in favor of the defendants and against the plaintiff and plaint is returned herewith to be presented at a Court of Competent jurisdiction.

42. Therefore, if one applies the tests laid down by the Hon"ble Supreme Court as well by this Court to the case in hand then, the mere fact of suing at the principal place will not confer jurisdiction upon the Court if otherwise, there is subordinate office situated at the territory wherein cause of action has also arisen.

43. Now, one has to also advert to aspect as to where the cause of action is said to have arisen in the present case.

44. Let us first have a look as to what is the case of action as mentioned in Section 20 wholly or partly means. The phrase cause of action has received judicial interpretation number of times and it has been held by the Hon"ble Supreme Court number of times that the cause of action is a bundle of essential facts which are necessary for the plaintiff to prove before he can succeed any suit or which gives the plaintiff the right to sue or seek relief against the defendant. (Kindly see the judgment of AIR 1922 23 (Privy Council)) This has been followed by A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem,

45. Therefore, the meaning ascribed to the phrase "cause of action" has to be necessarily a bundle of facts which are essential facts giving plaintiff the right to sue. Thus, the facts which are to be pleaded for the purposes of occurrence of cause of action either in whole or in part as per Section 20 CPC have to be the essential facts which are inextricably connected with the right to sue of the plaintiff and not all facts which may arise incidentally in the case can be said to be a "cause of action" for the purposes of invocation of the jurisdiction of the Court.

46. Therefore, the said facts for the purposes of cause of action must essentially have nexus directly with the complaint or the grievance as stated in the plaint and not all other facts which are unrelated to the complaint or grievance but are incidentally related to the case can be said to be the ones by virtue of which the cause of action either in whole or in part can be said to have arisen for the purposes of Section 20 (c) of the Code.

47. The fine distinction between the essential facts which may constitute the cause of action and the incidental facts which could not constitute part of cause of action has been drawn by Bombay High Court in the case of Baroda Oil Cakes Traders Vs. Parshottam Narayandas Bagulia and Another, wherein the Bombay High Court observed thus:-

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 as "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. The position under S. 20(c) is very clear. If it is shown by the plaintiff that the cause of action has arisen wholly or in part within the local limits of the jurisdiction of the trial Court, the trial Court would be entitled to deal with the suit.? (Emphasis Supplied)

48. From the reading of afore-quoted observations of the Court, it is manifest that not every fact which may be incidental or connected with the cause and may be a matter of evidence can be a part of cause of action and all the material facts relating to cause can be said to be part of cause of action for the purposes of Section 20(c).

49. Likewise, one tests the proposition of material fact in the case involving the contract, in the case of contract or agreement, the place where the contract has been made or the place where the breach has occurred or for that matter, the place where it should have been performed, can be said to be the facts which are determinative of the occurrence of the part of cause of action at the relevant place. Kindly see ABC Laminart (supra). The initial negotiations or the decision making relating to contracts which are the facts incidental to the execution of the contract, performance of contract or breach of the contract, cannot be said to be aiding to the complaint of the plaintiff which the plaintiff is directly concerned with, and therefore, the said facts cannot be said to be part of cause of action but can be said to be the incidental facts or the ones which are ancillary in nature rather than the material facts.

50. Therefore, the said facts cannot be pressed into service for the purposes of invocation of occurrence of part of cause of action u/s 20(c) CPC being not the integral part of the cause of action.

51. The Hon"ble Supreme Court in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, has laid down that the issuance of advertisement or making representation from particular place does not constitute the facts forming the integral part of the cause of action by extending the doctrine of material facts. The Supreme Court thus observed:-

(Merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action.

52. Applying the test relating to material facts and those relating to incidental facts for the purposes of invocation of Section 20(c) and testing the present case on the touchstone of the said principle, it can be seen that the mere fact that the principal office of the corporation exists in Delhi, would attract explanation appended to Section 20 and therefore, would not confer jurisdiction to this Court.

53. Furthermore, the fact that the decision making relating to restructuring of the company is not the fact which is directly relating to the agreement or the agreement assailed in the case or the grievance which is the transfer of debentures by the defendant No. 1 in favour of the defendant No. 3. Therefore, the same is again incidental fact and cannot be said to be the one forming integral part of the cause of action leading to the suit.

54. Likewise, the negotiations and discussions relating to the contract in hand or the approvals by the Board of Directors sitting in Delhi giving go-ahead to execute the contract would again not be part of cause of action for the complaint or the suit in hand. The facts like the execution of the contract which has actually occurred in Mumbai, the subordinate office of the defendant which is also situated in Mumbai which has executed the contract in fact may be so at the instructions of the Delhi office, the payment which is effected in Mumbai, the property against which the said debentures are secured is situated in Mumbai, are all indicative of the material facts and that the cause of action or the material part of cause of action has arisen in Mumbai.

55. The mere fact of existence of seat of one of the defendants will not confer any jurisdiction when the defendant office is situated at the place where cause of action has arisen. Therefore, applying the said principle to the present case, the present case will not attract Section 20(a) or (b) as there are more than one defendants and only the principal office of defendant No. 1 is situated, that too at the place totally unconnected to the cause of action. Section 20 (c) will not be applicable in the present case, as seen from the above discussion relating to material facts constituting the part of cause of action have arisen in Mumbai. Section 16 shall also not come to the rescue of the plaintiff, as the property which has been secured in lieu of the debentures is situated in Mumbai. None of the decisions referred by the plaintiff is applicable to the facts of the present case and the propositions laid down by the Courts in those cases cannot be disputed with and none of the provisions are satisfied which enable the Court to assume jurisdiction in Delhi and thus the plaint has to be returned to the appropriate competent Court. Accordingly, the application filed by the defendant No. 3 being I.A. No. 13000/2010 is allowed. The plaint is returned under the provision of Order VII Rule 10 CPC. Registry shall follow the procedure as prescribed under Rule 2 of Order VII Rule 10 CPC. The application is disposed of.