

(1977) 09 CAL CK 0043
In the Calcutta High Court
Case No : Appeal No. 25 of 1973

Union of India (UOI)

APPELLANT

Vs

Kuppuswamy Naicker

RESPONDENT

Date of Decision : 27-09-1977

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : AIR 1978 Cal 211

Hon'ble Judges : Sankar Prasad Mitra, C.J;S.K. Datta, J

Bench : Division Bench

Advocate : N.C. Roy Chowdhury and Dipak Shome, for the Appellant; P.K. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Sankar Prasad Mitra, C.J.—This is an appeal arising out of a judgment delivered by Ghose, J. on the 11th June 1970 revoking leave under Clause 12 of the Letters Patent. The Union of India instituted the suit on the 2nd Jan. 1969 being Suit No. 39 of 1969 against the defendant M/s. M. Kuppuswamy Naicker, who carries on business at Madras inter alia, for a decree for Rs. 2,14,259.38P. or in the alternative accounts be taken of the transactions had by and between the defendant and the plaintiff and decree be passed under Order 20 Rule 16 of the Civil P. C. or in such form as the Court may think proper.

2. The basis of the plaintiff's claim is that the defendant was employed as the plaintiff's agent to handle the import of 3338.680 long tons of steel materials which the plaintiff had imported through the Iron & Steel Controller, Calcutta under the U. S. Development Loan Fund Scheme at Madras.

3. In terms of the contract the defendant was to clear the goods at the Port of Madras, pay or incur all necessary expenses in connection with the clearing of the said goods and despatch the same to the various consignees or parties whom the Iron & Steel Controller had named. The defendant was to get a

commission as per agreement between the parties on the actual tonnage of goods which the defendant had handled as such agent.

4. It is alleged that the defendant cleared all the goods imported into the Port of Madras and delivered and/or despatched the same to various persons nominated and/or named by the plaintiff through the Iron & Steel Controller as per terms of the agreement between the parties. The defendant was to realise from the said nominees or allottees of the said goods 100 per cent of bills charging base price with "admissible extras."

5. According to the plaintiff the defendant realised or ought to have realised from the said nominees or allottees on account of the said goods despatched or delivered to them an aggregate sum of Rs. 23,88,883.55P. The defendant paid to the plaintiff only a sum of Rs. 19,31,769,48 P. The defendant was entitled only to a sum of Rs. 2,42,854.69P. as commission. This a balance of Rs. 2,14,259.38 p., according to the plaintiff, is due and owing by the defendant to the plaintiff. In the plaint it is alleged that the agreement between the parties was entered into at 33, Netaji Subhas Road in Calcutta within the jurisdiction of this Court.

6. The learned trial Judge has rightly pointed out that in an application for revocation of leave granted under Clause 12 of the Letters Patent, the Court has to proceed on the basis that the allegations made in the plaint are true. The learned trial Judge has, therefore, accepted as correct the allegation that the contract was made in Calcutta. But his Lordship is of view that only a minor part of the cause of action has arisen within the jurisdiction of this Court. The most overwhelming part of the cause of action, the learned trial Judge is of opinion, arose at Madras, outside the jurisdiction of this Court. The learned Trial Judge is of the view that the defendant has to call witnesses from Madras and also bring documents from Madras to establish the defendant's case. Principally on the ground of balance of convenience, Ghose J., has revoked the leave granted under Clause 12 of the Letters Patent.

7. It is well settled that in giving or refusing leave or maintaining or revoking leave the Court would ordinarily take into consideration the balance of convenience and may, if the balance is definitely in favour of the defendant, apply the doctrine of forum convenience, vide *Madanlal Jalan v. Madanlal* reported in AIR 1949 Cal 495.

8. Ghose J., has applied this principle to the facts of this case in arriving at his Lordship's decision.

9. In the affidavit in support of the summons by K. Rajendran, the sole proprietor of Messrs. M. Kuppuswamy Naicker, affirmed on the 12th Sept. 1969 it has been admitted that a negligible part of the cause of action arose within the jurisdiction of this Court, vide paras. 2, 4 and 6 at pages 5 and 6 of the paper book. But Mr. Pradip Kumar Ghose, learned Counsel appearing for the respondent has argued before us that no part of the cause of action arose within the jurisdiction of the Court and, as such, leave granted under Clause 12 of the Letters Patent should

be revoked. Mr. Ghose's point is that according to the plaintiff the contract was made in Calcutta. That contract would be evidenced by two letters, being letters dated the 12th Oct. 1959 and the 21st July 1960, which are annexures "A" and "B" to the plaintiff. These are letters addressed from Calcutta to the defendant in Madras containing the plaintiff's offers to appoint the defendant as handling agent. The offer was accepted in Madras and posted in Madras. As soon as the acceptance was posted the contract was complete. The contract, therefore, was entered into not in Calcutta but in Madras. And no part of the cause of action of the plaintiff's suit arose in Calcutta at all. Mr. Ghose has placed strong reliance on the Supreme Court's judgment in *Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas and Co. and Others*, in which the Supreme Court has observed that making of an offer at a place which has been accepted elsewhere does not form part of the cause of action in a suit for damages for breach of contract.

10. Mr. Ghose has submitted to us that this point was not taken before the Trial Court but it is a point of law and it is open to him to urge the point in the appellate Court.

11. On the facts of this case it seems to us that the Supreme Court's judgment on which Mr. Ghosh relies has no relevance to the instant appeal. Let us read carefully the letter of the 12th Oct. 1969. It is a letter addressed by C. V. Ramachandran, Price and Accounts Officer of the Ministry of Steel, Mines and Fuel in Calcutta to the defendant. The letter is in the following terms:--

"You are hereby authorised to handle the following quantity of steel under DLF Scheme to the Port of Madras noted against the quantities.

(As per Schedule attached)

You are requested to clear the materials immediately on arrival at the port by furnishing an indemnity Bond to the Shipper's Agent/Port Commission. The Bill of Lading and other relevant documents received in this office enclosed herewith. Further documents will be forwarded to you as and when received in this office. The formal appointment letter of Handling Agency will follow shortly. In the meantime you must furnish bank guarantee for C and F value of the materials."

12. This letter shows that there were negotiations between the parties before the letter was addressed. By this letter the defendant was being appointed a Handling Agent subject to formal appointment in terms of Article 299 of the Constitution of India. This formal letter of appointment was addressed from Calcutta on the 21st July, 1960, which was signed by S. S. Sinha, Deputy Price and Accounts Officer, "for and on behalf of the President of India." The last paragraph of this letter is :-- "please acknowledge receipt of this letter by returning duly signed the enclosed duplicate copy to this office in unqualified acceptance of the terms and conditions of this Contract."

13. Though we are not expressing any final opinion, for the purpose of disposing

of this application we have to record that the two documents aforesaid tend to support the averment in paragraph 2 of the plaint, which is as follows :--

"Under an agreement in writing entered into by and between the plaintiff and the defendant at 33, Netaji Subhas Road within the aforesaid jurisdiction, the plaintiff authorised the defendant to handle the import of 3338.680 long tons of steel materials"

Para 2 specifically refers to the letters dated the 12th Oct. 1959 and the 21st July, 1960 and it is stated that copies of these letters are filed with the plaint and marked "A" and "B".

14. in these circumstances the case of the plaintiff that the contract was made in Calcutta cannot prima facie be brushed aside and the argument of Mr. Ghosh on behalf of the respondent does not appear to us, as at present advised, to be of substance. We have to add that according to the pleading in para 2 of the plaint all payments by the defendant had to be made to the plaintiff in Calcutta.

15. The learned Trial Judge has referred to the witnesses who have to be called from Madras and the evidence that has to be brought from Madras. But upon going through the papers it does not appear to us that the evidence indicated by the learned Trial Judge are materials for the purpose of defence. We have to bear in mind the relationship between the parties and the nature of the transactions as pleaded in the plaint. It was a transaction between principal and agent. A sum of money alleged to be due by the agent to the principal has been claimed in the suit. In the alternative, the agent has been called upon to render accounts of his dealings and transactions. The law on the subject appears to be clear.

16. In Halsbury's Laws of England, 4th Edition, Article 780, at page 466 it is stated:

"It is the duty of an agent to keep accurate accounts of all his transactions and to be prepared at all times to produce them to his principal. If he fails to keep proper accounts every presumption consistent with the facts will weigh in favour of the principal. Thus, if he improperly mixes the principal's property with his own, all that he cannot show to be his own will be presumed to belong to the principal. Further, all books and documents relating to the principal's business must on demand be produced to the principal or to some person named by him, provided that such person is not one against whom the agent may have reasonable grounds of objection."

17. In the instant case the defendant was the Handling Agent of the plaintiff. The defendant's duty was to keep accurate accounts of all its transactions and to be prepared at all times to produce them to the principal in Calcutta. All books and documents relating to the principal's business had also on demand to be produced to the principal in Calcutta or to a person named by the principal. In these premises, it is difficult for us to revoke leave under Clause 12 of the Letters patent.

18. The same principles have been communicated in "Bowstead on Agency" 14th Edition, Article 53 at page 159. In this Article it is observed as follows :--

"It is the duty of every agent :--

(a) to keep the money and property of his principal separate from his own and from that of all other persons;

(b) to preserve and be constantly ready with correct accounts of all his dealings and transactions in the course of his agency;

(c) to produce to the principal, and to a proper person appointed by the principal all books and documents in his hands relating to the principal's affairs."

19. In the plaint in the present appeal there is a claim for a decree for Rs. 2,14,259.38p. alleged to be due by the agent to the principal. There is an alternative prayer that accounts be taken of the transactions had by and between the defendant and the plaintiff and a decree be passed under Order 20 Rule 16 of the Civil P. C. or such other form as this Hon"ble Court may think fit and proper. In other words, in the plaint the principal claims that a specified amount is due by the defendant to the plaintiff. In the alternative, the principal has asked for rendition of accounts by the agent. The principal is in Calcutta and according to well settled principles we have quoted above, the principal may demand that the rendition of accounts should be in Calcutta. We cannot, therefore, hold that leave under Clause 12 of the Letters Patent was not properly obtained and should be revoked. We cannot hold that the balance of convenience is in favour of the defendant.

20. Mr. Roy Chowdhury appearing for the appellant and on proper instructions has informed us that should the defendant make an application for examination of witnesses on Commission and should that application be allowed, the Union of India is prepared to bear in the first instance the expenses of both the parties to hold the Commission or Commissions wherever necessary outside Calcutta.

21. In the result, this appeal is allowed. The judgment and order of the Trial Court are set aside. The suit will proceed in this Court on condition that if any application for examination of the defendant's witnesses on Commission be allowed by this Court, all the expenses of both the parties for holding the Commission or Commissions shall be paid in the first instance by the Union of India subject to final orders of the Court. The costs of this appeal would abide by the result of this suit. Written Statement is to be filed within four weeks after the reopening of the Court after long vacation. Discovery within a fortnight thereafter, inspection forthwith thereafter. The suit will appear at the top of the appropriate prospective list on the 14th February, 1978.

S.K. Datta, J.

22. I agree.