(2011) 02 DEL CK 0187

In the Delhi High Court

Case No : Regular First Appeal No. 291 of 2001

United Bank of India APPELLANT

Vs

National Research Development Corp. RESPONDENT

Date of Decision : 14-02-2011

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

Citation : (2011) 122 DRJ 418

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Abhinav Malhotra, for the Appellant; J.M. Kalra, for the Respondent

Final Decision : Allowed

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 judgment and decree dated 16.1.2001 whereby the suit of the Respondent against the Appellant was decreed with respect to the amount payable under the bank guarantee dated 6.4.1983, exhibited as Ex.P-2 before the trial court.

2. The Appellant had contested the suit on various grounds and one of which was that the courts of Delhi did not have territorial jurisdiction. Issue No. 1 was framed in this regard and which issue reads as under:

i) Whether this Court has no jurisdiction to try the suit, if so its effect? OPD

3. This issue has been decided by the trial court with the following observations:

ISSUE No. 1 The onus to prove this issue was on the deft. Nothing has come in the statement of D.W.1 to show that the Courts at Delhi lacks the territorial jurisdiction to try the present suit. The suit is based on the bank guarantee Ex.P-2 which has been furnished at the office of the plff. at Delhi. The payment to the pltf. was also to be made as per bank guarantee at Delhi. Hence the Court at Delhi are vested with the territorial jurisdiction to try the present suit. This issue is decided in favour of the pltf. and against the deft.

4. On a first reading, it appeared that the issue was validly decided, however, once we refer to the bank guarantee, we find that the findings and conclusions in this regard are clearly illegal and perverse because neither the Bank Guarantee was executed at Delhi and nor the payment under the same was to be made at Delhi. The bank guarantee document reads as under:

Bank Guarantee No.20/83

The Managing Director,

National Research Development

Corporation of India,

20-22, Zamroodpur Community Centre,

Kailash Colony Extension

New Delhi:11 00 48

1. Whereas the National Research Development Corporation of India, New Delhi (hereinafter called "the Corporation) has agreed to grant Shri Om Prakash Drolia, S/O Shri Chhedi Lal Drolia, Proprietor of M/s Drolia Fuels, Bariyatu Road, Ranchi, a license for the manufacture of weather Resistant Smokeless Hard and Moulded Fuels developed at Central Fuel Research Institute, Dhanbad for consideration of Rs. 50,000/- (Rupees fifty thousand only) as lump sum premium for the transfer of the know how.

2. Whereas the said Corporation has agreed for receiving the payment of Rs. 50,000/- (in two installments as under:

(a) Rs. 25,000/- at the time of handing over the engineering drawing of six months from the effective date of licence agreement, whichever is earlier.

2.b) Remaining amount of Rs. 25,000/- within one year from the effective date of licence agreement.

3. In consideration of your accommodation to Shri Om Prakash Drolia of payment of premium by way of installments at their request, we, the United Bank of India, Bokaro Steel City, Industrial Estate, Bankers of the Grantee hereby guarantee irrevocably to the Corporation for a sum of Rs. 50,000/- (Rupees fifty thousand only) payable by the said grantee to the Corporation in instalments as stated in Sub-para "a" & "b" of para-2.

4. This Bank Guarantee will remain in force for a period of 2 years from the date of its issue.

Stamp of the Bank and Signature.

For and on behalf of Date: 6.4.1983 (Name of the Bank) Witness: Agent/

Manager

5. With respect to a contract, a suit can be filed where the contract is executed or where the same has to be performed or where the contract is breached or where payment under the contract has to be made. This is the ratio of the judgment of Supreme Court reported as A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, . (A reading of the Bank Guarantee shows that the contract of bank guarantee was executed and came into existence at Bokaro and not at New Delhi. The contract therefore in question being the bank guarantee was executed and completed in Bokaro itself. Payment under this bank guarantee was to be made at Bokaro and not at New Delhi as has been wrongly held by the trial court. There is nothing on record or anything contained in the bank guarantee Ex.P-2 that the payment under the same had to be made at New Delhi. Bank Guarantee is not like a bank draft which could have been payable at a place other than where it had been executed, and assuming it was to be so, it ought to have been stated in the bank guarantee that it was to be payable at New Delhi. A reference to the bank guarantee, which is reproduced above, does not show that payment under the same was to be made at New Delhi. Payment therefore under the bank guarantee has to be made by the branch which issued the bank guarantee and which branch was located at Bokaro Steel City,Bihar.

6. In view of the above, the courts at New Delhi have no territorial jurisdiction. I am not referring to any of the aspects on merits because once it is held that a court does not have jurisdiction, then the said court cannot give any findings on merits because findings given by the court which lacks jurisdiction would be non-est and such findings would not bind the court which has the appropriate jurisdiction.

7. Learned Counsel for the Respondent states that the courts at New Delhi have territorial jurisdiction because the bank guarantee was addressed to the Respondent at New Delhi and was received at New Delhi. I am afraid I am unable to agree. The contract in question become complete once the bank guarantee was executed by the Appellant bank at its Bokaro Industrial Estate Branch in Bihar and once the execution of contract is complete, nothing further remained for enforcing liability there under. Communication of the bank guarantee to the Appellant was only to serve the purpose that the Appellant bank had stood as a guarantor; however, the contract was completed when it was executed at Bokaro city. I may take help also from the decision of the Supreme Court in the case Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas and Co. and Others, in which it is held that in a contract which is entered into by correspondence the contract is completed at the place where the letter of acceptance is posted. If we take the bank guarantee as acceptance of the contract of liability by the Appellant bank, the contract becomes complete on acceptance/execution of the bank guarantee at Bokaro. The argument of the learned Counsel for the Respondent that the contract of Bank Guarantee was concluded at New Delhi is therefore misconceived.

8. Accordingly, I accept the appeal and set aside the impugned judgment and decree dated 16.1.2001. The plaint be therefore returned under Order 7 Rule 10 CPC to the Respondent for being filed in the court of appropriate territorial jurisdiction. The Respondent to appear before the Registrar of this Court on 14.3.2011 on which date, the Registrar shall return the plaint along with the court fees on the plaint to the Respondent. The appeal is therefore disposed of as allowed by returning the plaint under Order 7 Rule 10 CPC for filing in the court of appropriate jurisdiction. The amount deposited by the Appellant in this Court be returned back to the Appellant and such monies in the hands of the Appellant will be subject to further directions of the court of appropriate territorial jurisdiction. Trial court record is sent back.