

Indian Mineral And Chemicals Co. And ... vs Deutsche Bank on 4 June, 2004

Equivalent citations: AIR2004SC3615, III(2004)BC179, (2004)3CALLT49(SC), [2005]123COMPCAS4(SC), 2004(3)CTC380, [2004(4)JCR147(SC)], JT2004(5)SC64, 2004(6)SCALE110, (2004)12SCC376, (2004)2UPLBEC1932, AIR 2004 SUPREME COURT 3615, 2004 AIR SCW 3538, (2004) 2 CLR 213 (SC), (2004) 3 CTC 380 (SC), 2004 (4) SLT 135, (2004) 5 JT 64 (SC), 2004 (2) CLR 213, 2004 (3) CTC 380, 2004 (6) SCALE 110, 2004 (12) SCC 376, 2004 (2) LRI 919, (2004) 3 BANKCAS 179, (2004) 2 WLC(SC)CVL 392, (2004) 3 CALLT 49, (2005) 123 COMCAS 4, (2005) 2 PAT LJR 23, (2004) 4 SUPREME 662, (2004) 6 SCALE 110, (2004) 19 INDLD 685, (2004) 2 CAL LJ 235, (2005) 2 BANKCLR 441

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Bench: Ruma Pal, P. Venkatarama Reddi

JUDGMENT

Ruma Pal, J.

1. Leave granted.

2. The appellant is a partnership firm of which the other appellants are its partners. By the impugned order, the Division Bench has allowed the respondent's application for revocation of leave which had been granted under clause 12 of the Letters Patent 1865 to the appellants to file a suit against the respondent in the Calcutta High Court. Leave was revoked on the ground that no part of the cause of action as pleaded in the plaint had arisen within the original jurisdiction of the Court. The plaint was consequently directed to be taken off the file and returned to the appellants for presentation to the Court having jurisdiction to entertain the suit.

3. The suit had been filed in 1995 by the appellants against the respondent alleging that the appellant had supplied goods pursuant to an agreement between the appellant No.1 and a German company, named Kleinsorge (hereinafter referred to as the 'Company'). Payment for the goods supplied was to be made by way of letter of credit. The letter of credit was accordingly issued by the respondent at the instance of the Company in favour of the appellant No.1 for an amount of DM 41,06,080. The goods were supplied by the appellants to the Company.. The plaint goes on to state (wherein the appellants are referred to as "the plaintiffs" and the respondent as "the defendant"):

"8. The said letter of credit was sent by the defendant to the UCO Bank, 4 & 4/1, Red Cross Place, Calcutta-700 001 within the aforesaid jurisdiction and the defendant advised the UCO Bank requesting the UCO Bank to advise the said credit to the plaintiff No.1 without adding its confirmation. In other words, the UCO Bank was acting as the Advising Bank only.

11. On 15th September 1992 and 30th October, 1992, the plaintiffs presented the documents stipulated in the aforesaid letter of credit at the UCO Bank, 4 and 4/1, Red Cross Place, Calcutta 700 001 within the aforesaid jurisdiction.

12. The plaintiffs state that the plaintiffs presented the entire set of documents relating to the shipped goods as required by the aforesaid letter of credit and the said documents were forwarded by the Advising Bank to the issuing Bank being the defendant. The defendant received the said documents in Germany, outside the aforesaid jurisdiction. The plaintiffs reasonably expected to receive the payment under the said letter of credit within a short period of time.

There was no discrepancy in the said documents and till date, no complaint has been received from either the defendant or the Advising Bank or the purchaser in that regard. Payment under the said letter of credit was to be made at the office of the UCO Bank at 4 & 4/1, Red Cross Place, Calcutta 700 001, within the aforesaid jurisdiction."

4. On the allegation that inspite of request and demand, the respondent did not make any payment under the letter of credit, the appellants filed the suit for an amount of Rs.7,01,670.36, further interest and other reliefs after obtaining leave under clause 12 of the Letters Patent.

5. Clause 12 of the Letters Patent which applies to the original jurisdiction of the Calcutta High Court empowers the High Court in exercise of its ordinary civil jurisdiction to receive, try and determine suits, inter-alia, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court".

6. After the suit was filed an application was presented by the appellants under Chapter XIII-A of the Original Side Rules which provides for summary decision in suits to recover a debt or a liquidated demand. Rule 6 of Chapter XIII-A provides that unless the defendant satisfies the Court by way of affidavit or otherwise that he has a good defence to the claim on its merits or discloses such facts as may be deemed sufficient to entitle him to defend, then the court may make an order refusing leave to defend and may forthwith pronounce judgment in favour of the plaintiff. If a triable issue is disclosed by the defendant then under Rule 9 leave to defend may be granted unconditionally or subject to such terms as to giving security, or time or mode of trial or otherwise as the Judge may think fit.

7. On 24th December, 1997 a learned Single Judge of the Calcutta High Court held that the respondent's affidavit in opposition to the application under Chapter XIII-A disclosed a prima facie defence. As such unconditional leave to defend was granted. Directions were given for filing of a written statement, disclosure of documents and the trial of the suit. The written statement was ultimately filed by the respondent after extensions of time were sought and obtained, on 31st July 1998. The respondent filed its documents on 10th August 1999 and the suit has been ready for hearing since that date.

8. On 30th August 1999, the respondent made an application for revocation of leave under clause 12 of the Letters Patent on the ground that no part of the cause of action arose within the jurisdiction of the Calcutta High Court. The learned Single Judge dismissed the application.

9. The Division Bench accepted the submission of the respondent that although the pleadings in the plaint showed that the Calcutta High Court had jurisdiction to entertain the suit, the averments in the plaint were not borne out by the letter of credit which was annexed to the plaint. The Division Bench also accepted the respondents' contention that the letter of credit was to be honoured by payment "at sight" and that if the terms and conditions of credit were fully complied with, the respondent would credit the account of UCO Bank, Dusseldorf Branch upon presentation of the documents indicated in the letter of credit. Payment 'at sight' was therefore to be made at Dusseldorf and not in Calcutta as claimed in the plaint and as such no part of cause of action had arisen within the jurisdiction of the High Court.

10. We are of the opinion that the learned Judges erred in revoking leave under clause 12 of the Letters Patent in view of the clear assertions made in the plaint and the assertions in a plaint must be assumed to be true for the purpose of determining whether leave is liable to be revoked on a point of demurrer See Abdulla bin Ali V. Galappa ; Ritu Sachdev V. Anita Jindal and Secretary of State V. Golabrai Paliram AIR 1932 Cal 146. In the plaint the jurisdiction of the High Court was claimed on the ground that :

- 1) UCO Bank's branch which was within the Courts jurisdiction intimated the plaintiffs that the letter of Credit had been issued by the Respondent;
- 2) The documents were presented by the plaintiffs to the said branch of UCO Bank;
and
- 3) Payment was to be received by the Plaintiffs from the said branch of UCO Bank.

11. The Division Bench could have held that what was alleged to be a part of the cause of action did not form part of the cause of action at all. This the Division bench did not do. It was not open to the Division Bench to come to a contrary factual conclusion in respect of any of these three grounds. The appeal is, therefore, liable to be allowed on this ground alone.

12. Before us the respondent has submitted that even though the documents were presented by the appellants within the jurisdiction of the Calcutta High Court as claimed by it, there was no

authorisation in favour of UCO Bank to accept presentation of the documents. It is said that the UCO Bank was only an advising bank and it was neither the confirming nor the negotiating bank and that therefore there was no valid presentation of documents at Calcutta. The respondent further submitted that the letter of credit provided for payment 'at sight' and that was not conditional upon receipt of the documents by UCO Bank in Calcutta but by its branch in Germany. Finally it is said that the letter of credit was issued in Germany, that the entire transaction took place in Germany, that the documents and witnesses were present in Germany and that, the balance of convenience was in favour of the suit being tried at Germany.

13. On the question of balance of convenience, the Learned Single Judge had, after considering the facts, held that it would not be inconvenient for the respondent to defend the suit from its Branch Office in Calcutta. On the other hand, the appellants would have to incur huge expense and that too in Foreign Exchange in the event the suit was prosecuted in Germany especially as the appellants did not have any office in Germany. The Division Bench did not consider this aspect at all. Speaking for ourselves, we see no reason to interfere with the conclusion arrived at by the Learned Single Judge.

14. On the role of UCO Bank and the validity of the presentation, the respondent has relied upon passages from Paget's Law of Banking as well as the decision of this Court in Federation Bank Limited vs. V.M. Jog Engineering Ltd. and ors (2001) 1 SCC 663 to contend that there was no valid presentation by the appellant at the counters of UCO Bank, Calcutta. This has been countered by the appellant who has referred to Benjamin's Sale of Goods. What the role of UCO Bank in fact was is a mixed question of law and fact. At present, since we have to determine the court's jurisdiction *ex facie* the plaint, we cannot proceed on the assumption that UCO Bank was not authorised to receive the documents or that the payment under the Letter of Credit was to be made, as far as the appellants are concerned, at Dusseldorf. Ultimately it will depend upon whether UCO Bank was acting for the Respondent or the appellants. All these matters will have to be decided on evidence and cannot be decided on an application for revocation of leave under Clause 12 of the Letters Patent.

15. The observations of Rankin CJ in Secretary of State v. Gulab Rai Pali Ram (*supra*) correctly represents the law as to how the Court should approach an application for revocation of leave :

"I do really protest against questions of difficulty and importance being dealt with by an application to revoke the leave under Cl.12, Letters Patent and to take the plaint off the file. Normally it is well settled that the proper way to plead to the jurisdiction of the Court is to take the plea in the written statement and as a substantive part of the defence. Except in the clearest cases that should be the course". (p.147)

16. In the circumstances, we are of the view that the learned Single Judge was justified in rejecting the respondent's application for revocation of leave. The Division Bench should not have allowed the respondent's appeal. The impugned decision is accordingly set aside and the appeal allowed with costs. The High Court is requested to dispose of the suit as expeditiously as is conveniently possible.