

Delhi High Court

Rotary Foundation (India) vs Purshottam Das Bansal on 4 September, 2006

Equivalent citations: 134 (2006) DLT 37

Author: V Sen

Bench: V Sen

JUDGMENT Vikramajit Sen, J.

IA No. 3097/2005

1. Appearance has been entered by the Defendant. No further Orders are called for in this application which stands disposed of accordingly.

IA No. 3093/2005

2. The Defendant has applied for Leave to Defend. No further Orders are called for on this application which stands disposed of accordingly.

IA No. 1438/2005 & 2631/2006

3. Counsel for the Defendant states that he has no connection with M/s. Munshi Ram Vilayati Ram at Patiala under license No. PB864. He states that, therefore, he is not concerned whether Order dated 25.2.2005 should be made absolute or not. 4. The Orders dated 25-2-2005 are made absolute.

Applications disposed of accordingly.

IA No. 4384/2006

4. I shall now dispose of the Defendant's application under Order xxxvII Rules 3 & 5 of the CPC, seeking Leave to Defend the summary Suit. It has been stated by learned Counsel for the Plaintiff that the Defendant was served on 18.3.2005 and he filed his Appearance on 28.3.2005. Thereafter Summons for Judgment were moved by the Plaintiff on 21.4.2005 and the Defendant was served with them on 6.5.2005. The Defendant, therefore, was bound, under Order xxxvII Rules 3 & 5 of the CPC, to apply for grant of Leave to Defend within ten days. Counsel for the parties have assumed that an application seeking Leave to Defend had been filed on 16.5.2005, but this is not borne out from the record. What appears to have transpired is that the Plaintiff was served with a copy of an application, intended to be filed in the Registry, seeking Leave to Defend. The Plaintiff filed its "Reply" on July 21, 2005 to the said application which was not on the Court record and may not even have been filed. The Defendant filed a Rejoinder thereto on 22.9.2005. However, factum of the application seeking Leave to Defend not being available on the record was noted in the Orders dated March 6, 2006. Counsel for the Defendant was directed to check up in the Registry and have the application placed on record. It was further clarified that if the application was not traceable for any reason, a duplicate copy thereof should be filed. Instead of filing a duplicate copy, an altogether fresh application has been filed on 18.4.2006 which, therefore, may be patently barred for consideration on the principles of limitation. However, since this objection has not been raised by

learned Counsel for the Plaintiff, I shall decide the application on merits.

5. A preliminary objection has been raised by the Defendant pertaining to the absence of territorial jurisdiction of Courts in Delhi for deciding the present dispute. Mr. Mehta, learned Senior counsel for the Defendant has contended that the Plaintiff has itself averred that payments were received by the Defendant in Nabha, District Patiala, Punjab. He has placed reliance on the decision in *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies*. It is contended that the Defendant resided and carried on business in Punjab where payments were received and hence Courts in Delhi would have no jurisdiction. Whilst the Supreme Court has indubitably enumerated in *ABC Laminart* the several places where the cause of action could be seen to have arisen, this was done primarily to investigate and determine whether the place to which jurisdiction had been restricted, by ousting all others, itself enjoyed jurisdiction. Otherwise, as is trite, such a clause would become legally inefficacious since it is not possible to infuse, by contract, jurisdiction on a Court which does not otherwise possess it. The position that obtains today is that primacy is accorded to the place where the cause of action substantially arises. The following passage of *ABC Laminart* is extremely instructive:

15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have (been) performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.

6. It has been submitted by learned Counsel for the Plaintiff, and not controverted by the Defendant, that the Rotary Foundation Matching Grants Application was submitted/forwarded to the Plaintiff at New Delhi where the decision to allow it was eventually taken. Therefore, whilst a part of the cause of action may well have arisen at Nabha where the funds were made payable, Court in Delhi would also possess territorial jurisdiction to adjudicate the legal disputes. The judicial records are replete with correspondence emanating from the Defendant to the Plaintiffs in New Delhi. The agreement for grant of funds came into existence in Delhi. This preliminary objection is without merit and is accordingly over-ruled.

7. The second preliminary objection which has been raised by learned Senior counsel for the Defendant is that in the factual matrix disclosed in the Plaint a Suit under Order xxxvII of the CPC is not maintainable. In this regard reliance has been placed on the decision in Syed Moosa Emami v. Sunil Kumar 1982 Rajdhani Law Reporter 724, where it has been held that whilst a 'cheque' is certainly a bill of exchange, if payment against that loan transaction is made by means of a cheque, it would not transform the suit into an action predicated on cheque. In that case the cheque was only the means by which the money was transferred to the Defendant. This decision would, therefore, have no application to the facts of the present case. The Plaintiff has not sued only on the basis of dishonoured cheques. Order xxxvII Rule 1(2) enumerates the classes of suits which may be treated as 'summary suits' namely (a) suits upon bills of exchange, hundies and promissory notes which would not be attracted in the facts of the present case, and (b) suit predicated on a written contract. I am satisfied that the Undertaking extracted above contains all the necessary concomitants of a written contract. It inter alia contains the agreement between the parties for receiving a sum of Rs. 10 lacs by way of demand drafts and a further sum of Rs. 19 lacs by way of post-dated cheques. It also contains an admission by the Defendant of his liability to the Plaintiff to the tune of Rs. 58,64,122/-. The Defendant/Applicant has himself placed on record an Affidavit of Shri Mohit Bansal son of Shri Kedar Nath which states inter alia that a settlement had been arrived at between Rotary Foundation and that a total sum of Rs. 29 lacs was payable by the Defendant towards full and final settlement of all the claims of the Plaintiff. Although worded as an Undertaking, it partakes the nature of a written contract. The second preliminary objection is also rejected.

8. Succinctly stated the Plaintiff's case is that "The Rotary Foundation Matching Grants Application" was filed by Rotary Club, Bhawanigarh Rotary International Distt. 3090, India, The Defendant was the Past District President and therefore wielded considerable influence and power over Rotary Club, Bhawanigarh. A total sum of Rs. 58,64,122/- was advanced by the Plaintiff pursuant to acceptance of these sundry applications of the Rotary Club, Bhawanigarh.

9. The scheme of arrangement in respect of the matching grants made by the Rotary Foundation appears to be that the Foundation provides half the required funds to Applicants once the latter raises the corresponding half. The Plaintiff asserts that it discovered that the Defendant had forged the signatures of the President of the Rotary Club, Bhawanigarh not only on the 'Matching Grants' applications but also on sundry documents resulting in the misappropriation of the funds made available by the Plaintiff to the said Club /District.

10. On the discovery of these numerous falsifications and manipulations, the Defendant was confronted by the Plaintiff's officers as a result of which the Defendant furnished to the Plaintiff the following Undertaking which has been filed in original and stands admitted.

UNDERTAKING I, PARSHOTTAM DASS BANSAL S/o Sh.Ruldu Ram Bansal, R/o H. No. 678, Hira Mahal Colony, Nabha do hereby undertake as under:

1.I admit that I prepared the following fictitious Matching Grants applications and that I received from the Rotary Foundation (India) Rs. 58,64,122/- (Rupees Fifty Eight Lacs Sixty Four Thousand, One Hundred and Twenty Two Only) made up as follows:

Grant no. (INR)	Rotary Club	Grant Amount
13602	Bhawanigarh	724,808.00
19000	Dulladi	846,000.00
19002	Dulladi	724,834.00
14444	Amloh	625,152.00
14445	Amloh	1,033,824.00
16895	Bhadson	611,000.00
17382	Bhadson	593,768.00
19027	Bhadson	704,736.00
		5,864,122.00

2. That in furtherance of letter dated 20/7/2003 written by me to Rtn. Ravi Kant Gupta, the then District Governor and Rtn. Ashwini Kumar Sachdeva, District Governor, Rotary International and in continuation of the discussion held at Hotel Narain Continental, Patiala, Punjab on 5 August 2003 in the matter of Project Implementation, I tender D.D. No. 4400 dated 6/8/2003 drawn on Bank of Punjab for Rs. Five Lacs only. D.D. No. 849344 dated 6/8/2003 drawn on Andhra Bank for Rs. Five Lacs Only.

3. That I also submit two post-dated Cheques i.e. Cheque No. 23351 dated 5/9/2003 for Rs. Ten Lacs Only and Cheque No. 23355 dated 5/10/2003 for Rs. Nine Lacs Only. The Cheques will be replaced by Demand drafts before the due date. I further undertake that the said Cheques shall be honoured at the time of presentation.

4. I further certify that I am not in a financial and medical position to pay the entire amount (Rs.5864122).

Date: 6 August 2003 PARSHOTTAM DAS BANSAL WITNESSES:

1. JIWAN LAL GUPTA

2. MOHIT BANSAL

11. The Defendant has deposed that he has got as many as twenty five projects approximately approved from Rotary International and that he could not complete eight projects due to his inexperience and ill health. He has further deposed that as per the Rules and Norms of Rotary International, in case of a Matching Grants the amount funded by Rotary International is required to be matched with an equivalent amount which is required to be provided by/arranged for by the Rotary Club within whose jurisdiction the particular project is proposed to be installed. Accordingly, 50% of the amount of each Matching Grant was provided by/arranged for by the Defendant, being the Governor of District 3090 at the relevant point of time. The Defendant has deposed that it was ultimately resolved that he would have to pay a total sum of Rs. 29 lacs to Rotary Foundation towards full and final settlement of all claims relating to or arising from the eight unfinished projects. However, the Defendant has failed altogether to prove this agreement which, in any event,

runs counter to his own Undertaking. Assuming that it is the Defendant who had arranged for the 50% funds which were the sine quo non for the release of Matching Grants by the Plaintiff these were gifts or donations made to the Plaintiff over which the Defendant ceased to have any claim or control. Having said that, I must also clarify that there is no evidence on record which would indicate that the 50% funds to be arranged by the concerned Club/District had been arranged for by the Defendant. Llearned Counsel for the Defendant had himself argued that a quarter of the funds had been raised from Brazil and 25% by the Club concerned. It is not possible to accept the argument that the Defendant is entitled to retain, appropriate, claim or pocket the 50% funds which had been arranged by the Club/District through his alleged initiative. Since the Defendant cannot lay any claim to the half of Rs. 58,64,122/-, representing eight unfinished projects, he is liable to return the entire sum to the Plaintiff. No defense has, therefore, been disclosed by the Defendant.

12. This case has to be decided within the parameters of Mechalec Engineers & Manufacturers v. Basic Equipment Corporation which should be adhered to since the spectrum of possibilities has been spelt out in that judgment. These have been adumbrated in this celebrated judgment to comprise- " (a) If the defendant satisfies the Court that he has a good defense to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend, (b) If the defendant raises a trivial issue indicating that he has a fair or bona fide or reasonable defense although not a positively good defense the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend, (c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defense, yet, shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defense to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security, (d) If the defendant has no defense or the defense set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend, (e) If the defendant has no defense or the defense is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defense to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defense". The case set up by the Defendant is illusory, sham and practically moonshine, falling in classification (d) above. Leave to Defend the Suit is accordingly declined and the application is dismissed.

CS (OS) No. 244/2005

13. Leave to Defend the Suit has been declined. The Suit is accordingly decreed for a sum of Rs. 29,64,122/-. The prayer for grant of pendente lite and future interest at the rate of 24% is, however, declined. The Plaintiff shall be entitled to recover interest at the rate of 9% from the date of the institution of the Suit till recovery of the decretal amount. The Plaintiff shall also be entitled to costs.