

of posting [(2004) 6 SCC 299]. In another case the Hon'ble High Court of Punjab and Haryana has dismissed a PIL saying it to be vexatious, thereby imposing punitive costs. The said *PIL was filed* questioning eligibility of a Doctor to hold a post where as earlier a criminal case filed against the Doctor was dismissed [*H.K.Chopra vs. P.G.I.Chandigarh*. AIR 1992 Punj & Har 30.]

In a very recent decision of the Supreme Court in *Dattaraj Nathuji Thaware vs. State of Maharashtra- Special Leave Petition (Civil) No.26269 of 2004 dated 14.12.2004* [*Alagaapuram R.Mohan Raj Vs The Secretary to Government of Tamil Nadu & Others*, Writ Petition No.31670 of 2004, M.Katju (CJ) & N.V. Balasubramanian.]. A PIL was filed seeking a writ for enquiry against several officers of Salem Corporation. The Hon'ble Supreme Court has held that it is not "Public Interest Litigation" but "Publicity Interest Litigation" and a "Private Interest Litigation" as the whole purpose of such litigation was to harass and blackmail.

STEPS NECESSARY:

Even though it is very much essential to curb the misuse and abuse of PIL, any move by the

Government to regulate the PIL results in wide-spread protests from those who are not aware of its abuse and equate any form of regulation with erosion of their fundamental rights.

Under these circumstances the Supreme Court of India is required to step in by incorporating safeguards provided by the Civil Procedure Code in matters of stay orders/injunctions in the arena of PIL. In the landmark case of *Raunaq International Limited v/s IVR Construction Ltd*, Justice Sujata V Manohar rightly enunciated that - when a stay order is obtained at the instance of a private party or even at the instance of a body litigating in public interest, any interim order which stops the project from proceeding further must provide for the reimbursement of costs to the public in case ultimately the litigation started by such an individual or body fails.

In other words the public must be compensated both for the delay in the implementation of the project and the cost escalation resulting from such delay. The three pitfalls in the PIL *i.e.*, private interests, political interests and publicity interests should not be allowed to be used for routine violations of municipal laws and such things.

**A NOTE ON THE DECISION OF HIS LORDSHIP
HON'BLE SHRI L. NARASIMHA REDDY, J.,
IN S.S.V. PRASAD v. Y. SURESH KUMAR AND OTHERS,
REPORTED IN AIR 2005 AP 37 = 2004 (5) ALD 57 = 2004 (5) ALT 814
= 2004 (2) L.S 510**

By

**—A.S. RAMA CHANDRA MURTHY,
ADVOCATE,
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1. In the above decision, His Lordship decided that an endorsement of a promissory note cannot be treated as a part

of the cause of action within the meaning of Section 20(c) of Civil Procedure Code, and that the place of transfer or endorsement

cannot be a place for filing a suit by the transferee.

2. In the decision under discussion, the original promisee under the promissory note dated 20-9-1995 endorsed that pronote in favour of the plaintiff in that case at Kavali on 1-4-1998, and on the basis of such endorsement, the transferee filed a suit in the Court at Kavali for enforcing the promissory note. From the judgment it is found that the transfer in the case is one for consideration because the case is decided from the angle of a holder in due course. The defendant in the case contended that he being a resident of Ongole, and the transaction having taken place there, the suit if at all could be filed at Ongole only and that the endorsement of the instrument at Kavali does not give a right to the holder in due course [endorsee] to file the suit in the Court at Kavali. The Trial Court held that the Kavali Court has no territorial jurisdiction to entertain the suit and therefore ordered return of the plaint to plaintiff for presentation in the proper Court. That means, the Trial Court opined that the endorsement in favour of a holder in due course does not give him a right to file a suit in the Court where the endorsement took place. The unsuccessful plaintiff approached the Hon'ble High Court assailing the view taken by the Trial Judge. The learned Judge His Lordship Hon'ble Shri L. Narasimha Reddy J, confirmed to view taken by the Trial Court and dismissed the CPC.

3. The main reasoning of His Lordship is based on the sections of the Negotiable Instrument Act, *i.e.* Sections 68 to 70. According to His Lordship Sections 68 to 70 of the N.I. Act lay down the matter of making, transferring, presenting and enforcing the instruments and that these provisions prevail over the provision in Section 20(c) of the CPC.

4. Previously, the view was that an endorsement by transfer of a negotiable instrument gives jurisdiction to the Court

where the endorsement took place or was made.

5. (a) This question was considered by our High Court in the decision reported in 1966 (1) An.W.R 282. In this decision, His Lordship Hon'ble Mr. *Gopal Rao Ekbote*, J (as he then was) held that if the right of the plaintiff depends upon assignment in his favour, the assignment would constitute a part of the cause of action and that the Court within whose jurisdiction the assignment took place will have jurisdiction to entertain the suit on the pronote although it was executed at a place where the original parties to it were residing and over which place a different Court had jurisdiction. The purport of cause of action with reference to earlier decision was considered in this decision.

(b) In a subsequent decision, the same view was taken by His Lordship Hon'ble Mr. *Sherfuddin Ahmed*, J. reported in 1969 (1) An.W.R 222. The reasoning adopted in this decision was that Section 70 of N.I. Act does not lay down the place where the suit has to be filed. The plea that Section 70 of N.I. Act over-rides Section 20 CPC is not accepted for the reason that Section 70 of N.I. Act does not deal with cases of assignment, which has been held to constitute part of the cause of action.

(c) While the matter stood like this, another Judge Hon'ble Sri *Lakshmaiah*, J held in 1978 (2) APLJ 245 that a restricted endorsement of the instrument merely for collection of the amount due thereunder would not give jurisdiction to the Court where it was transferred for the reason that the transferee merely becomes an agent. This reasoning is based on Section 50 of the N.I. Act, and the decision reported in AIR 1942 Mad. 742. His Lordship Hon'ble Sri *Lakshmaiah*, J, distinguished the decision of His Lordship Hon'ble Sri *Gopal Rao Ekbote*, J as that was a case of assignment.

(d) A reading of the above decisions shows that the sad decisions laid down

principles and that they are not either *obiter dicta* or *per incuriam*.

6. With respect, I submit that the view taken by His Lordship Hon'ble Shri L. Narasimha Reddy, J in the decision under discussion is not correct and the reasons for my view are as follows:

(A) Section 68 of N.I. Act deals with a case where the amount due under the instrument is payable at a specified place and not elsewhere. That means, where the parties fixed the place for payment. Section 69 speaks of presentation for payment at such specified places. It is interesting to note that if big places like Chennai, Poona or Bombay are specified as places in a general way, then it is held that Section 69 would not apply. [AIR 1936 Bombay 218 and 1959 ALT 733]. In the case covered by AIR 1936 Bombay 218, the pronote is payable at Poona or Bombay or elsewhere. Suit was filed by holder at Poona without making presentation. In the circumstances of this case, it was held that presentation at any place is not incumbent. In the case of AP High Court reported in 1959 ALT 733 (DB) the effect of Sections 64, 69 and 76 of N.I. Act was considered and it was held that if the place for payment is mentioned, the pronote should be presented for payment at such place, unless the presentment becomes unnecessary under the circumstances mentioned in Section 76. It is further held in this decision that if payment is not fixed at a specified place, there is no question of any presentment at all, and that Section 69 presupposes that the place for presentment should be with sufficient particularity to meet the holder at that place. If such place is a

large city or town or area making it impossible to locate the holder then it cannot be said that there is a specified place.

(B) Section 70 deals with cases other than those covered by Sections 68 and 69 of N.I. Act. Then, Section 64 of the N.I. Act is to be considered.

Section 64 says: "Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder."

Where authorized by agreement or usage, a presentment through the Post Office by means of a registered letter is sufficient.

Exception :—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

N.B. I have not extracted the amended portion in this section.

Sub-section (1) of Section 64 provides for presentment as laid down by Sections 68 to 70. The exception to Section 64 is important which says that in case of promissory notes payable on demand but not payable at a specified place, no presentation is necessary to make the maker thereby liable.

(C) Sections 68 to 70 only refer to presentation for payment. Generally in many promissory notes the words

are found. That means, the parties stipulate the lender's place as the place for repayment,

which in its turn means that the debtor has to seek the creditor for repayment. Therefore

in cases where the place for repayment is fixed there may not be difficulty.

(D) In the other cases where the place is not so fixed as required by Section 68 or 69 of the Act, then it should be presented for payment at the usual place of business or at the usual residence of the maker, drawee or acceptor thereof, as the case may be. Reference can be made to:—

(I) AIR 1940 Calcutta 443.

(II) AIR 1960 A.P. 155

In the decision AIR 1940 Calcutta 443, there was no place specified for presentation in the pronote. But it was a pronote payable on demand. The Calcutta High Court held that under these circumstances the common law principle that the debtor should seek the creditor applies and that therefore the place for payment will be the place where the creditor resides.

In the decision of our High Court in AIR 1960 AP 155, it was held that an instrument not payable at a specified place, it should be presented for payment at the usual place of business or at the residence of the maker, and that if a dispute regarding such place of residence of maker is raised, and a case of specified place is set up, then the onus of proving it rests on him.

7. Therefore the scope of Sections 68 to 70 appears to be limited. This aspect was considered earlier and it was laid down that Section 70 of N.I Act is not a specific provision, which can override Section 20 CPC, and that Section 70 N.I. Act does not lay down the place where the suit is to be filed. Section 70 does not deal with a case of an assignment. In this angle of the matter, the purport of Section 20(c) CPC and Section 70 of N.I Act was considered by our High Court in the decision reported in 1960 ALT 32 NRC = ILR 1960 (2) AP 195 and held

that “the rule governing jurisdiction prescribed by Section 20(c) CPC is unaffected by Section 70 of N.I Act. Therefore, the Court at the place of transaction of the negotiable instrument has jurisdiction, because assignment is a part of cause of action”. In another decision reported in 1985 (2) ALT 44 S.N, His Lordship Hon’ble Sri *Ramaswamy*, J (as he then was) also took a similar view. In the case covered by this decision, the pronote was executed at Annavaram. Neither the original promisee nor the maker thereof belonged to that place Annavaram. The holder of that instrument, a transferee filed a suit on the basis of that pronote in the Subordinate Judge’s Court at Tanuku, which is the place of residence of the original promisee. The pronote was transferred in favour of the transferee (Plaintiff) at Srikakulam. When a question about territorial jurisdiction arose in that matter, it was held that the two Courts at Tanuku as well as Srikakulam have got territorial jurisdiction because part of the cause of action arises at Srikakulam by virtue of the transfer.

In yet another decision reported in 1985 (2) Current Civil Cases 581 (*Barikara Narasayya v. R. Basavana Gowd*), our High Court held that assignment of a promissory note by the payee forms part of the cause of action and that assignee can sue on the basis of the assignment in the Court having jurisdiction where the assignment took place, and held that assignment of a negotiable instrument is part of the cause of action recognised under the N.I Act. Even the assignment of a debt or a negotiable instrument is a part of the transaction itself, and therefore, when part of the cause of action takes place in a particular place, the Court having jurisdiction over that place would have the jurisdiction to entertain and try the suit.

[I could not get this decision but I extracted the above from All India 15 years Digest published by Vinod publications :- Volume-2, Page 1793].

8. In another view also, it can be said that the place of assignment will have jurisdiction. By the transfer or assignment, the transferee or the assignee becomes the creditor. It is held in 1969 (2) ALT 16 NRC that the principle that a debtor should seek the creditor for payment is applicable to cases of negotiable instruments also. This principle was laid down by the High Court of Calcutta in AIR 1940 Cal. 443, which is referred to in Para 6 supra. In a recent decision reported in AIR 2002 Kerala 397, the Kerala High Court held that the rule of debtor seeking the creditor is applicable to cases of negotiable instruments also.

9. Keeping the above aspects in view, the further question that is to be seen, is the question of territorial jurisdiction in cases of transfer or assignment of negotiable instruments. Whether the transfer is for collection or for consideration the place of transfer or assignment gives a right to file a suit in that place, because the transfer or assignment forms part of the "cause of action". "Cause of action" (as extracted from several rulings) is:

"Every fact which is material to enable the plaintiff to succeed, and every fact which the defendant would have a right to traverse".

"Bundle of essential facts which is necessary for a Plaintiff to prove before he can succeed in the suit".

"An action for which the defendant is answerable to the Court".

"Bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It does not comprise the evidence necessary to prove the bundle of facts and equally has no relation whatsoever to the defence, nor does it depend on the character of relief prayed for by the plaintiff. If the plaintiff is able to show that at least one

of such essential facts required to be proved to secure an order in his favour has arisen within the territory of the particular Court".

In the decision reported in AIR 2001 SC 416, the Hon'ble Supreme Court held as follows about "cause of action".

"The expression cause of action has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the plaintiff to prove if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every place of evidence, which is necessary to prove each fact, comprises in cause of action. It has to be left to be determined in each individual case as to where the cause of action arises".

....At Page 422

"The litigant has the right to go to a Court where part of the cause of action arises".

"The Court will find in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action".

10. Where there is a transfer or assignment, the transferee or endorsee steps into the shoes of the original promisee and as such the transferee will be a person entitled to present. So the place for presentation, if any, governs. If there is no mention of any such place, the place will be the place where the assignment is made has to be taken as place of jurisdiction. This is because of the

various views expressed in the decisions referred to above and for the reason that Section 70 of N.I. Act is not a specific provision overriding Section 20 CPC, and that Section 70 of N.I. Act does not lay down the rule where the suit is to be filed, and that the rule governing jurisdiction prescribed by Section 20 CPC is unaffected by Section 70 of N.I. Act. Negotiable instrument gives a right of negotiation. Hence such assignment forms part of the cause of action and as such the Court situated at the place of the assignment of the negotiable instrument has jurisdiction.

11. Therefore it is to be taken that Section 70 of the Act is an exception to Sections 68 and 69 of the N.I. Act. As such, in cases falling under Section 70 of the Act, the rule-governing jurisdiction prescribed by Section 20 CPC remains unaffected.

12. In another view, I am of the opinion that all the said principles mentioned above apply to cases of transferred or assigned promotes also because the assignee or the transferee becomes the creditor. In such a case the creditor can file the suit at his place, it being the place for payment. Therefore it becomes a place where a part of the cause of action arises as provided under Section 20(c) of CPC.

13. In conclusion I submit that I am of the opinion that apart from Sections 68 and 69 of N.I. Act, in all other cases the assignment or transfer gives a cause of action and as such the place where the said transaction took place can be said to have jurisdiction. In this view of the matter I feel that the principle of law laid down in the decision under discussion does not seem to be correct and that it requires reconsideration.

CONTRACTUAL RELATIONS UNDER INFORMATION TECHNOLOGY ACT 2000 VIS-A-VIS UNCITRAL MODEL LAW - EMERGING TRENDS

By

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In this article, I specifically centered around the emergence of Information Technology infrastructure with its most conspicuous feature of world wide network of interconnected computer networks known as the 'INTERNET' as well as the felt need for a legal framework to recognize and regulate the commercial transactions conducted through the media of such information infrastructure, exclusively focused on the recognized need to regulate commerce and trade conducted through electronic means of contemporary information technology be developing a homogenous legal framework that understood the far-reaching implications of electronic commerce

towards this end of developing an international legal mechanism to cognize Electronic Commerce, the United Nations Commission On International Trade Law or Uncitral evolved a Model Law as a guide for national specific legislation on Electronic Commerce. It is this Model Law that by its guiding provisions inspired the legislation in this area by the Republic of India titled INFORMATION TECHNOLOGY ACT 2000. This article consequently tries to briefly examine the said Act in its outline before addressing the question of status of contracts in the aforesaid Model Law as well as Information Technology Act 2000.