

Surinder Kumar Arora v. The Bengal National Textile Mills,
Limited (D. S. Tewatia, J.)

have been possible for him to submit an explanation if he was allowed atleast to take notes of the statements. From the correspondence it is clear that the Bank was insisting that the petitioner should merely peruse the statements and not copy the statement or make any notes. In the reply now filed on behalf of the Bank it is stated that the Bank was willing to permit the petitioner to make notes at the time of perusing the statements. This is a statement which has been made for the first time in this Court. In none of the letters addressed by the Bank to the petitioner is there the slightest indication that the Bank was willing to permit the petitioner to take notes of the statements. We have no doubt that the present case of the Bank is a mere after thought. In the circumstances we are compelled to say that the petitioner was not given reasonable opportunity to submit his explanation to the charges levelled against him. There was a clear breach of the principle of natural justice incorporated in Circular No. 20 dated October 28, 1952, the relevant part of which has been extracted by us.

(14) We, therefore, allow the writ petition and quash the order dated September 29, 1976. The petitioner will be reinstated in service with all consequential benefits. The petitioner is entitled to have his costs.

Gurnam Singh, J.—I agree.

REVISIONAL CIVIL

H. S. B.

Before D. S. Tewatia, J.

SURINDER KUMAR ARORA,—Petitioner.

versus

THE BENGAL NATIONAL TEXTILE MILLS LIMITED,—Respondent.

Civil Revision No. 83 of 1974

July 26, 1977.

Code of Civil Procedure (V of 1908)—Section 20(a) Explanation II—Corporation having a branch office at a place where no part of the cause of action has arisen—Courts at such place—Whether have jurisdiction to entertain a suit against the corporation.

Held, that if the cause of action, wholly or in part had arisen within the jurisdiction of a given court, then it is superfluous for the party to invoke either clause (a) or clause (b) for then the matter would squarely fall within the ambit of clause (c). It is only when the case does not fall within clause (c) that it has to be seen whether it falls within the ambit of clauses (a) or (b). A plain reading of section 20 shows that unless a case could be brought within the ambit of clause (c), it is the convenience of the defendant which appears to be uppermost in the mind of the framers of the Code. That is why, clauses (a) and (b) sought to confer the jurisdiction only on such courts where the dependant or the defendants resided or carried on business etc. Explanation II, in some measure, sought to take into view the convenience of the plaintiff as well where it happened to be pitched against a corporation having, apart from its Head Office, Branch offices located at different places, for in such a case, so far as the corporation as a defendant is concerned, it would not be inconvenienced for the reason that it happened to have its Branch office at the place on the courts whereof Explanation II read with clause (a) sought to confer jurisdiction in a suit against it. Hence a court would have jurisdiction to entertain a suit in view of the fact that a Branch office of the defendant company is located within its jurisdiction and by virtue of Explanation II, the Company shall be deemed to be carrying on business there whether or not that Branch office, in fact, carries on any business. (Paras 9, 10 and 11).

Petition under section 25 of Act IX of 1887 for revision of the Order of the Court of Shri Sukhdev Singh, Judge Small Causes Court, Amritsar, dated 29th October, 1973, holding that this court has no jurisdiction in deciding this point accordingly in favour of the defendant company and against the plaintiff and directing that the plaint be returned to the plaintiff for presentation to a Court of proper jurisdiction.

Bhagirath Dass, Advocate with S. K. Hirajee, Advocate, for the Petitioner.

K. L. Kapur, Advocate, for the Respondent.

JUDGMENT

D. S. Tewatia (Oral).

(1) This revision petition arises out of a small causes suit for the recovery of Rs. 1,500 by way of refund of the said amount allegedly representing excess price paid by the plaintiff (petitioner herein) to the defendant Company (respondent herein) on account of goods supplied by the latter to the former.

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(2) The defendant Company challenged the jurisdiction of the trial Court. The issue relating thereto was tried as the preliminary issue. The same having been held against the plaintiff, so this revision petition at its instance.

(3) Before proceeding to examine the question pertaining to jurisdiction, a few relevant facts bearing on the said issue may be taken notice of. These can be stated thus :—

(4) The plaintiff Surinder Kumar Arora is the sole proprietor of the concern known and styled as Quality Textile Mills, Katra Jallianwala, Amritsar, while the defendant Company is the Bengal National Textile Mills Limited with its registered office at 87, Dharamtola Street, Calcutta. Admittedly, the defendant Company also has a Branch Office at Amritsar. The plaintiff concern was engaged in the manufacture of woollen textiles. The distribution of the woollen yarn, which the plaintiff concern needed, was controlled by the Woollen Textile (Production and Distribution Control) Order, 1962. The Textile Commissioner, who dealt with the distribution of woollen yarn, allotted 400 kgs. of woollen yarn to the plaintiff concern and assigned the responsibility of supplying the same to it to the defendant Company. The defendant Company supplied in the first instance 140 Kgs. of the woollen yarn of the requisite quality. However, the balance woollen yarn coming to 260 Kgs., that was supplied by the defendant Company, was not of the requisite quality and the price that had been charged for it exceeded the price fixed by the Textile Commissioner. The plaintiff sought to recover the excess price, as also the interest thereon which amounted to Rs. 1500 in all.

(5) It is admitted on all hands that no part of cause of action arose at Amritsar and, therefore, the case did not fall under clause (c) of section 20 of the Civil Procedure Code. The Courts at Amritsar were sought to be invested with the jurisdiction in the matter under clause (a) of section 20 with the aid of Explanation II thereof which are in the following terms :

“20. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the

suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

* * * * *

Explanation II.—A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

(6) The learned trial Judge interpreted the explanation ‘shall be deemed to carry on business....at such place’ as meaning ‘the place where, if any Branch Office is located, that office had the power and authority to sell, deliver, purchase or enter into any contract’ and since the Branch Office at Amritsar, according to the trial Judge, could not transact either of the business aforesaid, the Amritsar Courts could not be held to be having jurisdiction by virtue of clause (a) aided with Explanation II of section 20 of the Civil Procedure Code.

(7) The view taken by the learned trial Judge is quite contrary to Explanation II and is obviously fallacious and the learned counsel for the respondent, very rightly, has desisted from supporting the ultimate decision on that basis.

(8) The learned counsel for the respondent has, on the other hand, sought to support the decision of the learned trial Judge on the ground that to give jurisdiction to a Court in a matter it is not enough that the Branch Office of the defendant, if the same happens to be a Corporation, exists at that place, for it must further be established that within the jurisdiction of the said Court the part of the cause of action had also arisen and since, admittedly, no part of the cause of action had arisen at Amritsar, so the Amritsar Courts had no jurisdiction to entertain the suit and the learned trial Judge rightly held so.

(9) I am afraid this plea of the learned counsel does not carry conviction with me. If the cause of action, wholly or in part, had arisen within the jurisdiction of a given Court, then it is superfluous for the party to invoke either cause (a) or clause (b), for then the matter would squarely fall within the ambit of clause (c). It is

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only when the case does not fall within clause (c) that it has to be seen whether it falls within the ambit of clauses (a) or (b).

(10) A plain reading of section 20 would show that unless a case could be brought within the ambit of clause (c), it is the convenience of the defendant which appeared to be uppermost in the mind of the framers of the Code. That is why, clauses (a) and (b) sought to confer the jurisdiction only on such Courts where the defendant or the defendants resided or carried on business etc. Explanation II, in some measure, sought to take into view the convenience of the plaintiff as well where it happened to be pitched against a Corporation having, apart from its head-office, Branch Offices located at different places, for in such a case, so far as the Corporation as a defendant is concerned, it would not be inconvenienced for the reason that it happened to have its Branch Office at the place on the Courts whereof Explanation II read with clause (a) sought to confer jurisdiction in a suit against it.

(11) Mr. K. L. Kapur, learned counsel for the respondent, has vehemently urged that if a Corporation has more than one Branch Office, then only that Court would have the jurisdiction where, in addition to the location of a Branch Office of the defendant Corporation, the cause of action, partly or wholly, had also arisen, otherwise it would be open to the plaintiff to file a suit in the Courts of a place where any of the Branch Offices of the said defendant Corporation may happen to be located. I see no harm in this, because so far as the convenience of the Corporation is concerned it stands in no way affected if that view is taken, because its interest shall be looked after by its Branch Office. As far as the plaintiff is concerned, he shall see his own convenience which apparently appears to be the purpose behind Explanation II. Hence for the reasons aforesaid, I am of the view that Amritsar Courts do have jurisdiction to entertain the present suit in view of the fact that, admittedly, a Branch Office of the defendant Company is located at Amritsar and by virtue of Explanation II the Company shall be deemed to be carrying on business there whether or not that Branch Office in fact, carries on any business.

(12) In the result, the revision petition is allowed and the order of the trial Court is set aside. However, in view of the circumstances of the case and the important question of law being involved, the parties are left to bear their own costs. The parties are

directed through their counsel to appear before the trial Court on 22nd August, 1977. The records of the case be sent back forthwith.

K. T. S.

APPELLATE CIVIL

Before M. R. Sharma and S. S. Sidhu, JJ.

NEW INDIA ASSURANCE COMPANY,—Appellant.

versus

NORATI DEVI,—Respondent.

First Appeal From Order No. 218 of 1977.

July 29, 1977.

Motor Vehicles Act (IV of 1939)—Section 96—Insurer not impleaded as a party in claim proceedings—Insurance Company—Whether can be held liable to meet the claim.

Held, that if the Insurance Company is allowed to contest the claim in accordance with the principles of natural justice or the procedure envisaged by the Act and the rules on the subject, it is not open to it to escape liability on the basis of a hypertechanical plea that the insurer was not pleaded as a party in the claim proceedings because in the ultimate analysis it alone has to satisfy the claim. Section 96 of the Motor Vehicles Act 1939 only clarifies that if an award is made, it would be the duty of the Insurance Company to meet the claim. It nowhere lays down that if the Insurance Company is allowed to contest the liability in the absence of the insurer it should not be held liable. Thus, the Insurance Company will be held liable even if the insurer is not impleaded as a party to the proceedings or having been impleaded his name is ordered to be struck off from the array of respondents. (Para 2).

First Appeal from the order of the Court of Shri Jai Singh Sekhon, Motor Accident Claims Tribunal (District Judge) Patiala, dated the 31st March, 1977, awarding compensation to the tune of Rs. 11,000 to Smt. Norati Devi from the Insurance Company and shall also be entitled to the costs of this litigation as well as interest at the rate of Rs. 6 per cent per annum, if the Insurance Company fails to pay the same within one month of this order (31st March, 1977).

B. R. Sabharwal, Advocate, for the Petitioner-Company.