(1971) KLJ 593

High Court Of Kerala

Case No: C.R.P. No. 210 of 1970

K.T. Joseph		APPELLANT
	Vs	
M/s. Parakh Sons, Calicut		RESPONDENT

Date of Decision: Feb. 22, 1971

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 20, 20(c)#Contract Act, 1872 â€" Section 49

Citation: (1971) KLJ 593

Hon'ble Judges: K. Sadasivan, J

Bench: Single Bench

Advocate: T. Karunakaran Nambiar, for the Appellant; T.L. Viswanatha Iyer and E.R. Venkiteswaran, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Sadasivan, J.
The petitioner is the defendant. Against him the suit was filed by the plaintiff on a contract dated 7-8-1968 entered into

between them according to which the amounts were paid to the defendant in advance for the supply of timber. The defendant failed to supply

timber and so he became liable to the plaintiff for the advance amount received. For a consolidated amount of Rs. 56,000/-- postdated cheques

were issued by the defendant in favour of the plaintiff drawn on the South Indian Bank, Kottayam. In case timber was supplied in the mean time, it

was agreed that the price of the timber so supplied should be adjusted towards the advance amounts agreed to be refunded by the defendant. The

agreements were entered into at Cochin and the timber was to be delivered at Ernakulam. The defendant failed to supply the timber and it so

happened that the cheques were also dishonoured. It was in these circumstances that the suit (O.S. 65/69) was filed by the plaintiff in the

Subordinate Judge''s Court at Kozhikode for the recovery of the balance amount with interest thereon and for damages for breach of the contract.

The defendant contented ""interalia"" that the suit is not maintainable in the Subordinate Judge''s Court, Kozhikode, since no part of the cause of

action arose within the jurisdiction of that Court. Issue No. 9, which related to jurisdiction was tried preliminarily and under Order dated 1-10-

1969, the learned Judge held against the defendant. The matter to be considered for a proper decision of the question of jurisdiction, so far as the

present case is concerned is firstly, as to the place where the amount was intended to be repaid. In Hajee Ummer Koya v. Parthasarathi Rice &

Oil Mills (1957 KLT 953) Varadaraja Iyengar, J., held that where a contract is silent as to the place of payment, it is the duty of the debtor to

seek out his creditor and pay him. This is the English common Law Rule, which has been held to be not applicable in India as a matter of law, to

determine the forum where the suit is to be instituted. This view was taken by the Punjab High Court in Firm Hira Lal Girdhari Lal and Another Vs.

Baij Nath Hardial Khatri, , which was followed by a Division Bench of this Court in Prabhakara Kammath v. Patel (1961-2 K.L.R. 309). But the

question with which we are confronted in the present case can be decided without invoking the aid of the English Common Law Rule of a debtor

seeking the creditor. In Motilal Pratabchand v. Surajmal Joharmal (1906 ILR 30 Bom. 167), Mr. Justice Tyabji held that:

Where no specific contract exists as to the place where the payment of the debt is to be made, it is clear, it is the duty of the debtor to make the

payment where the creditor is.

This follows the principle of Dhunjisha Nusserwanji v. A.B. Fforde (1887 ILR II Bom. 649), where it was held that:

In the absence of stipulation in the contract, itself, the intention of the parties to it was to guide the court in determining the place of its performance.

So also in the present case, the place of performance of the contract, viz., the return of the advance, was not stipulated in the contract. Such being

the case, the payment has to be made at the place of the creditor. This principle was enunciated by the Privy Council in AIR 1927 156 (Privy

Council) . There it was observed:

It is quite true the contract does not say where Messrs. Jeetmull are to pay, but it does say, by an implication which is indisputable, that they are to

pay Messrs. Tata Sons & Company, and it follows that they must pay where that firm is. Hence one would think that, upon the face of this

contract, not indeed in express terms, but by the clearest implication, payment is to be made in Rangoon. In respect of the whole of this business it

is not disputed that the business transactions, out of which the outstanding debts arose, took place in Rangoon, and for this purpose the branch of

Messrs. Tata Sons & Company there were the Messrs. Tata Sons & Company concerned. It was objected, however, in the High Court of

Rangoon that this constituted an importation of a technical rule of the English Common Law into the Jurisprudence of India, namely, the rule that

the debtor must seek out the creditor. The simple answer to that would have been that, on the contrary it was a mere implication of the meaning of

the parties.

On the applicability of S. 49 of the Indian Contract Act, the Privy Council further observed:

Then it is said that no place was fixed by the contract or prior to the institution of this suit for the performance of the obligation of payment, and no

application has been made by the promisee to the promisee to appoint a reasonable place and therefore there is no place of payment

Consequently, this section, which it is said replaces any rule of law with regard to the obligation of the debtor to seek out the creditor, has not been

satisfied, and so there is no part of the contract, which is performable in Rangoon.

Under S. 49 of the Indian Contract Act:

When a promise is to be performed without application by the promisee and no place is fixed for the performance of it, it is the duty of the

promisor to apply to the promisee to appoint a reasonable place for the performance of the promise and to perform it at such place.

In the present case, no such application was made by the promisor to the promisee for appointing a place for the performance of the promise. The

question, therefore, is which exactly was the place implied by the parties where the promise could have been performed. The plaintiff ordinarily

resides at Kozhikode and as a matter of fact the stamp paper for the execution of the agreement was also purchased from Kozhikode. When it

comes to the question of returning the amount received from the plaintiff it is only to think that the payment should be made to the plaintiff at his

place of residence. If the place were to be fixed for payment as indicated in S. 49 of the Contract Act, Kozhikode and no other place could have

been fixed by the plaintiff. The view of the learned judge, in circumstances, has to be upheld.

2. Learned counsel pointed out that so far as our courts are concerned the jurisdiction has to be fixed according to S. 20 of the C.P.C., S. 20 no

doubt, lays down the rule for determining the forum in which action should be brought. S. 20 (c) which alone is relevant for the present case, would

say that territorial jurisdiction is to be determined in relation to the place from where the cause of action wholly or in part arises. This principle is

also attracted in the present case, because the plaintiff has claimed handling charges and interest charged by the Bankers for dishonouring the

cheque and this would amount to Rs. 53/- in all. The cheques were dishonoured on being presented to the bankers at Calicut and this loss was

incurred at Calicut, within the jurisdiction of the Subordinate Judge''s Court. Part of the cause of action has thus arisen within the jurisdiction of the

said Court. So, viewed in the light of S. 20 C.P.C., also the Court has jurisdiction and the suit has rightly been instituted in the Subordinate Judge''s

Court at Kozhikode. The order of the learned Subordinate Judge is hence correct and in confirmation of it, this revision petition is dismissed.