

(1986) 06 KL CK 0027

High Court Of Kerala

Case No: C.R.P. No. 151 of 1982-B

Shipping Corporation of India
Ltd.

APPELLANT

Vs

Kandaswamy Chellia

RESPONDENT

Date of Decision: June 16, 1986

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 15, 16, 17, 18, 19

Hon'ble Judges: Varghese Kalliath, J

Bench: Single Bench

Advocate: P.R. Nambiar, for the Appellant; T.L. Viswanatha Iyer, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Varghese Kalliath, J.

This is a Civil Revision Petition by the Defendant. The trial Court on the averments in the plaint considered the question of jurisdiction of the Court to entertain the suit. It held that it has no jurisdiction to try the case. This was done on the basis that no cause of action wholly or in part has arisen within the jurisdiction of the Court.

2. The aggrieved Plaintiff filed an appeal before the Additional Sub Judge, Cochin. The Additional Sub Judge took a different view. He also examined the averments in the plaint. Valued the submissions made by the Defendant and the Plaintiff and found that part of the cause of action has arisen within the jurisdiction of the Munsiff's Court. He held that the Munsiff Court is bound to try the suit. The Defendant is aggrieved. He files this revision.

3. The suit is for a permanent injunction to restrain the Defendant and its officers including its Vice-Chairman and Managing Director from taking any proceedings or holding any enquiry against the Plaintiff pursuant to a memorandum No. V.O./6078,

dated 4th June 1980. The main contention raised by the Plaintiff is that the disciplinary authority as far as the Plaintiff is concerned, is the President of India and not the Defendant. I am not now concerned with the merits of the case. The only point that requires consideration is whether on the averments in the plaint, the alleged cause of action as a whole or any part of it has arisen within the jurisdiction of the Court where the suit has been filed.

4. The complaint of the Plaintiff is that disciplinary proceeding has been initiated by a person who has no competency to do it in regard to his services at Cochin. Obviously, the area of operation of his service as per the averments in the plaint is at Cochin. This is a fact which would be necessary for the Plaintiff to prove if traversed in order to merit a judgment in his favour. It is also disputed before me. Further the counsel for the Respondent submits that since the ultimate result of the disciplinary action, perhaps will be the termination of the services of the Plaintiff, at Cochin, at least part of the cause of action has arisen within the jurisdiction of the Court where the suit has been filed. The appellate Court also has taken the view that since the Plaintiff is working at Cochin under the Respondent (Shipping Corporation of India Ltd.) that has to be taken as one of the circumstances to hold that at least part of the cause of action has arisen within the jurisdiction of the Cochin Court. Section 20 of the CPC runs thus:

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

(b) any 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, provided that in such case either the leave of the Court is given, or the Defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

This Section postulates the rule as to the "place of suing" in cases of personal actions. It is so since the Section begins with a Verbum Sapienti that the provisions in the section are to be applied subject to the provisions of sections 15 - 19 Code of Civil Procedure.

5. The prime devoir of the section is to secure that justice might be brought as near as possible to every citizen. The broad basis of the Code is to categorise actions into three classes: (i) those relate to immovable property; (ii) those which relate to the person of moveable property and (iii) actions partly relating to immovable property and partly personal. Clauses one and three are the subject-matter under sections

16 - 18 of the Code of Civil Procedure. Sections 19 and 20 deal with the second classes of cases. It is plain that a Court would have jurisdiction u/s 20 if (i) the Defendant resides or carries on business or personally works for gain within the local limits of its jurisdiction or (ii) the cause of action arises, wholly or in part within such local limits.

6. Now, the question to be enquired is whether at least a part of the cause of action has arisen at Cochin or not. I feel that it is appropriate to begin my examination from an enquiry as to what is cause of action. Certainly cause of action in a suit is that integral whole of facts constituted of a bundle of facts and circumstances. In *Read v. Brown* (1888) 22 Q.B.D 128, Lord Esher, M.R. defined cause of action to mean: 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. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.

Fry, L.J. agreed and said:-

Everything which, if not proved, gives the Defendant an immediate right to judgment, must be part of the cause of action.

Lord Watson observed:-

Now the cause of action has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour.

7. True that cause of action as is well known means every fact which it would be necessary for the Plaintiff to prove if traversed in order to enable him a judgment of the Court but it will not comprehend every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.

8. Communication of the initiation of a proceeding particularly a disciplinary proceeding is a vital aspect. There is no doubt that communication of a dismissal order is so important that only on an actual communication of the dismissal order, it will take effect. In [State of Punjab Vs. Amar Singh Harika](#), the Supreme Court held:

An order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published.

The above observation of the Supreme Court is a certain indication that an order affecting the valuable right of a person shall and should take effect only when it is

served on the person concerned. The service of the order which affects the person to whom it is served is therefore an important part of the cause of action. In [Sita Ram Goel Vs. The Municipal Board, Kanpur and Others](#), the Supreme Court held thus:-

The cause of action in the present case accrued to the Appellant the moment the resolution of the Board was communicated to him and that was the date of the commencement of the limitation. The remedy, if any, by way of filing a suit against the Board in respect of his wrongful dismissal was available to him from that date and it was open to him to pursue that remedy within the period of limitation prescribed u/s 326 of the Act.

In the present case, of course it is not an order of dismissal that is attacked in the suit. What is attacked in the suit is the initiation of the disciplinary proceedings which may result in an order of dismissal. This proceeding is commenced by a notice. In the circumstance the issue of notice itself is an important element which would form part of the cause of action. The Supreme Court has said that the order of dismissal will take effect only after it is communicated. So the receipt of the communication of the order is also important and vital. If the receipt of the communication of an order is important and vital, no doubt the place at which the person concerned received the order is also important for determining the place where the aggrieved person can commence his action against the order which affected his rights.

9. In a case reported in AIR 1971 Mad 155 *Veeri Chettiar v. S.T. Officer, Bombay* a Division Bench of the Madras High Court observed thus:-

The impact on the addressee caused by a notice of a taxing authority and his proposal to assess relate to that bundle and is thus cause of action in part, for issue of a writ against taxing authority. A writ petition will therefore lie in the High Court of the place of the addressee even if the authority is situate outside that High Court's territorial limits.

10. The learned counsel for the Petitioner referred me to certain decisions u/s 80 of the Code of Civil Procedure, on this aspect of the matter. There is conflict of decision on the question whether a notice u/s 80 CPC would also form part of the cause of action for the suit against the Government. The Bombay High Court in [Bata Shoe Co. Ltd. Vs. Union of India](#), took the view that a notice u/s 80, CPC is only a requirement as the preliminary step for a legal and valid institution of the suit and that it does not really form or constitute part of the cause of action in the suit itself.

This view has been shared by the High Courts of Madras, Calcutta, Madhyapradesh, Punjab and Patna. The courts took the view that cause of action really precedes the issue of notice. Notice u/s 80 serves only the purpose of intimating the authority concerned the cause of action and so it is not part of the cause of action. The High Court of Assam in *P.C. Biswas v. Union of India* AIR 1956 Gau 85 took a different

view. The Calcutta High Court in [Niranjan Agarwalla Vs. Union of India \(UOI\),](#) observed that "in any event no part of the cause of action can arise at the place from which the notice is issued and posted."

11. I feel that for the purpose of jurisdiction, the action of the Defendant is more relevant than those of the Plaintiff. The Plaintiff cannot by his own action create jurisdiction in a particular Court. It is the action of the Defendant in serving the offensive communication on the Plaintiff affecting his right that will give rise to the cause of action. This is plain and clear from the decisions of the Supreme Court I have referred to.

12. I am of the opinion that the statutory notice u/s 80, CPC cannot be equated to a communication to the aggrieved person regarding the action taken against him affecting his right.

13. I feel that it is plain that cause of action is always referable to the congeries of material facts to be proved if traversed which precede the commencement of the proceedings before the Court and if a link of that cumulation of facts is available or referable to have occasioned at a particular place, since it is part of cause of action the Court which has got jurisdiction over that particular place would have territorial jurisdiction over the suit, notwithstanding the fact that the Defendant whose act has created the said cause of action, situates or resides, as the case may be, outside the territorial limits of the Court.

14. In a decision reported in Abdul Sattar v. Union of India 1983 KLT 681, this Court held thus:-

The facts of the case in Assistant Security Officer v. Kullinga Gounder (1976 KLT 673 D.B.) also show that no cause of action, not even a part of it, arose within the jurisdiction of this Court in as much as there was no plea that the petitioners (Respondents) function, in the discharge of their duties, within the territorial jurisdiction of this Court....

15. I think the principle behind this decision can also be applied for understanding what is cause of action in part". I feel the circumstances and facts revealed in the plaint would enable the Plaintiff to maintain the suit in the Court where it has been laid.

In the result, I see no merit in this G.R.P. It is dismissed. No order as to costs. I make it clear that the Defendant should be allowed to file a written statement in the case. The Court should post the case for filing the written statement of the Defendant.