

(2005) 11 CAL CK 0016

Calcutta High Court

Case No: G.A. No. 4014 of 2004 and C.S. No. 3 of 2004

Uniworth Bio-Tech Limited

APPELLANT

Vs

Orissa Industrial Infrastructure
Development Corporation and
Another

RESPONDENT

Date of Decision: Nov. 23, 2005

Citation: (2006) 1 CHN 709

Hon'ble Judges: Kalyan Jyoti Sengupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Kalyan Jyoti Sengupta, J.

This motion has been taken out for revocation of leave under Clause 12 of the Letters Patent and/or dismissal of the suit on the ground of non-disclosure of cause of action against the defendant No. 1. In the petition being the grounds of Notice of Motion it has been stated that no part of the cause of action has arisen as per disclosure of the plaintiff within the territorial limit of this Court in its Ordinary Original Civil Jurisdiction and also nondisclosure of cause of action as a whole. In an action of this nature the Court is to look into the plaint and plaint alone. As far as non-disclosure of cause of action as contended by learned Counsel Mr, Mitra appearing for the defendant No. 1 is concerned, I do not accept his submission as it has been specifically pleaded in paragraph 26 of the plaint that on account of the aforesaid dealings and transactions there is now due and owing by the defendants jointly and severally to the plaintiff a sum of Rs. 32,91,85,305.00.

2. The claim and contention may be true, may not be, but at this stage statements and averments of the plaint are to be assumed to be correct. No amount of evidence nor any other materials can be looked into to examine the correctness of the averment. I read the plaint as a whole and I find the action of . the plaintiff against the defendants and each of them is the defendants" failure to transfer, convey an

area of land measuring about 50,930 acre in Deogarh in favour of the plaintiff, though payment of the price of the same has been made within the jurisdiction of this Hon"ble Court. The land was allotted subject to permission, which was to be obtained by the defendants. On receipt of the possession the plaintiff had also acquired the private land in and around the said plot of land at Rangelbeda site for establishment of a big project and to develop in all respect and for constructing office site etc. Costs of acquiring private land and construction of building and development of site are Rs. 12,90,527.80p. Ultimately, the permission could not be obtained nor the said land could be conveyed by the defendants. On account of this failure as an alternative measure defendant allotted non-forest land situates at Berkote site by granting a lease for a long period. For consideration of this lease the plaintiff paid and deposited a sum of Rs. 12,46,025.00p and spent on stamp-duty of Rs. 62,302/- and other incidental expenses aggregating to Rs. 14,47,854.60p. at Barkote site. The defendant agreed to transfer 45.31 acres of land though the lease was granted as above but failed and neglected and/or refused to remove unauthorized encroachment and trespassers to hand over possession of the said 45.31 acres of land at Barkote site. Thus, the defendants in both the cases committed breach of their agreement and/or assurance. As a result whereof the plaintiff has suffered damages.

3. In the plaint I find the plaintiff stated that all the negotiations, dealings and transactions took place at the plaintiffs place of business, payment of the premium of lease in lieu of untransferred plot of land was made at the place of business of the plaintiff also. The claim of the plaintiff, as it appears on account of breach of the agreement, mostly related to refund of the consideration money and also reimbursement of other costs and expenses allegedly incurred by the plaintiff on account of failure.

4. In my view, as rightly contended by Mr. Sidhartha Mitra, Id. Advocate, as far as the compensation for damages on account of breach is concerned no part of the cause of action can be said to have accrued within the jurisdiction of this Court as breach has not been committed by the defendants within the territorial limit of this Court. The defendants and each of them whose place of business admittedly situates outside the territorial jurisdiction of this Court, are to hand over the plot of land and/or to obtain permission at the place admittedly situates outside the territorial jurisdiction. Admittedly, the defendants and each of them have executed a lease-deed but possession could not be given. I think, therefore, when the possession thereof was required to be given outside the jurisdiction of this Court, and resultant failure thereof had taken place at the site of the land situates outside the jurisdiction, cause of action can not be said to have arisen within the jurisdiction of this Court.

5. I hold that the claim for compensation for the damages because of breach cannot be entertained as no part of cause of action has arisen nor can arise within the

jurisdiction of the Court. The statements and averments made in the plaint in relation thereto in my view cannot be cause of action for the relief for compensation for damages. Certainly cause of action relatable to the refund of the money paid by the plaintiff can be said to have arisen within the jurisdiction partly for it is specifically pleaded in the plaint payment was made within the jurisdiction of this Court at 17, Braborne Road, Calcutta - 700 001. Whether the payment was truly received by the defendant as contended in their affidavit or not cannot be decided at this stage unless the evidence is led. As such at this stage as far as the relief of refund of the money and interest thereon can be entertained by this Court.

6. Mr. Joy Sana, Id. Advocate, appearing for the plaintiff submits that when the part of cause of action in relation to the specific performance of an agreement has arisen the suit can be maintained as a whole as all the claims against the defendants are interlinked, interconnected with the breach of the agreement. He contends that factum of payment of money has taken place within the jurisdiction and so also negotiations, dealings and agreements within the jurisdiction, which constitute unseverable part of the cause of action. As such, there is no embargo to entertain the suit as a whole. I am unable to accept this contention of Mr. Saha as the plaintiff has to disclose and aver cause of action either wholly or partly, having arisen within the jurisdiction in connection with the reliefs claimed in its entirety. The claim for compensation for damages cannot be maintained in the suit on account of breach of agreement, unless such breach took place within the jurisdiction of this Court. Reliefs claimed in the plaint may have interlinking and/or nexus with one transaction but it has to be shown that breach committed at least partly within the jurisdiction of this Court. In the plaint it is not stated which part of the agreement had to be performed within the jurisdiction and such part had not been performed.

7. The suit I find is also bad for joinder of several causes of action namely multifariousness. The plaintiff has not elected as to which part of the relief can be retained in the plaint. Considering the balance of convenience and inconvenience I find since the suit covering all claims can be filed before the appropriate Court within whose jurisdiction both the defendants are carrying on business, the plaint can be returned.

8. From the cause title it appears both the defendants have their places of business at Bhubaneswar so it would be ideal if this plaint instead of rejecting, or dismissing the suit, is returned to the plaintiff for presentation before the Court at Bhubaneswar. In the event the plaint is taken back, and is presented within fortnight from the date of taking return, before the appropriate Court, the suit can be filed thereat subject to all questions as taken by the defendants except the question of jurisdiction. Thus the application is dismissed of.

9. Prayer for stay of operation of the judgment and order is made. Such prayer is opposed. Having considered the submissions, I think no stay is required in this matter. As such prayer for stay is rejected.

10. All parties concerned are to act on a signed copy of the operative portion of the judgment and order on the usual undertakings.