

Arcadia Shipping Ltd.
v.
Tata Steel Limited and Others

(Civil Appeal No. 5599 of 2024)

16 April 2024

[Sanjiv Khanna* and Dipankar Datta, JJ.]

Issue for Consideration

Whether the Division Bench of the Delhi High Court was correct in setting aside the finding of the Single Judge that the Delhi High Court has no territorial jurisdiction.

Headnotes

Territorial Jurisdiction – Suit by Bhushan Steel & Strips Ltd. (now Tata Steel Limited) – Section 20(c) of the Civil Procedure Code, 1908 – Scope of, Explained.

Held: Section 20(c) of the Civil Procedure Code, 1908 accords dominus litis to the plaintiff to institute a suit within local limits of whose jurisdiction the cause of action, wholly or in part, arises – Situs of the cause of action, even in part, will confer territorial jurisdiction on that court – Two transactions took place – One of sale of goods of galvanised steel in Delhi and one of shipment of goods by Arcadia from Mumbai to Djibouti, Ethiopia – Although Arcadia’s involvement was restricted to the second transaction only, the transactions were intrinsically intertwined – The supply order was placed in Delhi and the payment was to be released in Delhi – However, the sale of goods and then their shipment (from Mumbai to Djibouti) was connected and synchronised – Therefore, the Delhi High Court has jurisdiction under Section 20(c) of the CPC as the cause of action arose in part in Delhi. [Paras 7, 8, 10, 13 and 14]

Code of Civil Procedure, 1908 – Order 1, Rules 3 and 7 – Scope of, Explained.

Held: Order 1 Rule 3 of the CPC provides that the plaintiff may join as a defendant in one suit, all persons against whom, the plaintiff claims the right to relief in respect of, or arising out of, the same act or transaction or series of transactions – The claim

* Author

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viz. the defendants can be joint, several or in the alternative – It is permissible to file one civil suit, even when, separate suits can be brought against such persons, when common questions of law and fact arise – Order 1 Rule 7 of the CPC permits a plaintiff to join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, can be decided in one suit – As per Order 1, Rules 3 and 7 of the CPC, it was permissible for Bhushan Steel to enjoin in a single suit all the defendants, including Arcadia – The cause of action could not have been adjudicated without impleading all the defendants as parties – Thus, in terms of Order 1 Rule 3 of the CPC, the relief claimed by Bhushan Steel lies against all the defendants, albeit to different extents and arising out of a series of transactions – Thus, Bhushan Steel was within its rights to enjoin all the defendants under a single suit as per Order 1 Rule 7 of the CPC. [Paras 11, 12 and 13]

Bill of Lading – Purpose of, Explained.

Held: A Bill of Lading serves the following purposes: (a) it is receipt of the goods shipped and the terms on which they have been received; (b) it is evidence for the contract of carriage of goods; and (c) it is a document of title for the goods specified therein. [Para 8]

Territorial Jurisdiction – Question of – Stage at which to be decided – At the outset.

Held: The issue of territorial jurisdiction should be decided at the outset rather than being deferred till the matter is resolved. [Para 15]

List of Acts

Code of Civil Procedure Code, 1908.

List of Keywords

Territorial Jurisdiction, Bill of Lading, Dominus Litis, Letters of Credit, Sale of Goods.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5599 of 2024

From the Judgment and Order dated 08.01.2024 of the High Court of Delhi at New Delhi in FAO (OS) (COMM) 19 of 2019

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Appearances for Parties

E.R. Kumar, D.P. Mohanty, Ms. Sonal Gupta, Ms. Manisha Arya, Abhishek Thakral, M/S. Parekh & Co., Advs. for the Petitioner.

Joy Basu, Shashank Gautam, Arvind Thapliyal, Surya Kapoor, Ms. Saravna Vasanta, Siddhant Pandey, Rajesh Banati, Ashish Sareen, Anoop George, Kunal Chatterjee, Ms. Aagam Kaur, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

Sanjiv Khanna, J.

Leave granted.

2. This order gives reasons and decides a question of territorial jurisdiction under the Code of Civil Procedure, 1908¹.
3. We begin by briefly referring to the facts of the case and pleadings in the plaint - Suit No. 458/2000:
 - o The original plaintiff is Bhushan Steel & Strips Ltd². Bhushan Steel has merged with Tata Steel Limited (respondent no. 1 before this Court).
 - o The defendant nos. 1-4 are, TYO Trading Enterprises³ (respondent no. 2 before this Court), Commercial Bank of Ethiopia⁴ (respondent no. 3 before this Court), Arcadia Shipping Limited⁵ (appellant before this Court) and M.G. Trading Worldwide Pvt Ltd⁶ (respondent no. 4 before this Court).
 - o Bhushan Steel was, *inter alia*, a manufacturer of galvanized steel corrugated sheets.
 - o TYO Trading was a company based in Ethiopia that had instructed its agent, M.G. Trading, to place certain supply

¹ For short, "Code."

² For short, "Bhushan Steel".

³ For short, "TYO Trading".

⁴ For short, "Bank of Ethiopia".

⁵ For short, "Arcadia".

⁶ For short, "M.G. Trading".

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orders for galvanized steel corrugated sheets with Bhushan Steel.

- o Accordingly, M.G. Trading placed orders with Bhushan Steel, at Delhi, for the supply of 400 MT of galvanized steel corrugated sheets.
- o TYO Trading had initially opened the Letter of Credit in favour of its agent M.G. Trading.
- o Subsequently, the Letter of Credit was transferred in the name of Bhushan Steel, pursuant to which, the material was dispatched by Bhushan Steel, as per the supply orders.
- o The material was loaded by the shippers, Arcadia, in their vessel - Winco Pioneer, from a port in Mumbai, India to a port in Djibouti, Ethiopia.
- o Arcadia undertook the shipment *vide* two bills of lading - (i) Bill of Lading No. DJB-06 for 200 MT of galvanized steel corrugated sheets and (ii) Bill of Lading No. DJB-07 for 198 MT of galvanized steel corrugated sheets.
- o The freight charges for shipping were prepaid by Bhushan Steel to Arcadia.
- o Arcadia was directed to deliver the goods to the order of the Bank of Ethiopia, to whom documents had been submitted by Bhushan Steel through their bankers, Punjab National Bank⁸. The documents were to be negotiated under the Letter of Credit. ‘
- o PNB had sent the said documents to the Bank of Ethiopia for making the payments. All formalities for encashing the Letter of Credit had been completed by Bhushan Steel.
- o However, Bank of Ethiopia refused to encash the Letter of Credit on the grounds of discrepancies.
- o *Vide* fax message dated 25.08.1999, Bhushan Steel was informed by Arcadia that both the shipments had been released to the consignee, TYO Trading, as they had duly presented a Bill of Lading, endorsed by Bank of Ethiopia.

8 For short, “PNB”.

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- o *Vide* letter dated 07.09.1998, TYO Trading informed Bhushan Steel, through M.G. Trading, that they had made the payment, which would be released by the Bank of Ethiopia.
- o The payment was not received by Bhushan Steel. The material was delivered and could not be shipped back to Bhushan Steel.
- o Thus, the defendants had taken a contradictory stand. While TYO Trading had stated that they had paid for the goods, the Bank of Ethiopia had refused to honour the Letter of Credit. Arcadia had stated that the material had been released to TYO Trading upon presentation of the Bill of Lading which was duly endorsed by the Bank of Ethiopia. Further, PNB had returned the original documents, including the Bill of Ladings to Bhushan Steel stating that they had received them without any encashment of the Letter of Credit by the Bank of Ethiopia.
- o Paragraphs 22 and 29 of the plaint read as under:

“22. That thus the fact remains that the payment of the said bill of lading has not been paid to the plaintiff and is still liable to be paid to the plaintiff and the plaintiff is fully entitled for an amount of US\$ 2,76,510 which is the liability of defendant no.1 and 2 in the event of goods rightly being released by defendant no. 3 after obtaining duly endorsed bill of lading from defendant no. 2, but in case the goods had been released without obtaining the endorsement then it is the liability of defendant nos. 1, 2 and 3 jointly and severally towards plaintiff for making payment thereof as defendant no. 2 cannot escape its liability under any circumstances as if the irrevocable Letter of Credit would not have been issued by defendant no.2 duly transferred in favour of plaintiff, the plaintiff would not have supplied the said goods and since despite the fact that all the conditions of supply was fulfilled by plaintiff of the irrevocable Letter of Credit, the defendant no.2 have not released the payment, therefore the liability of defendant no.2 remains in all eventuality and the liability of defendant no.3 arises if they had delivered the goods without obtaining endorsement from defendant no.2 and as such in

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order to escape their liability defendant no. 3 to establish and prove that they hold with them the original Bill- of Lading duly endorsed by defendant no.2 to release the said goods in favour of defendant no.1, otherwise defendant no.3 cannot escape its liability for payment. This is so the original documents have been returned back unpaid to the plaintiff by their bankers Punjab National Bank and as such it is surprising as to how the goods had been released by defendant no. 3 as confirmed by them in favour of defendant no. 1 vide their fax dated 29th August, 1999.

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29. That the cause of action arose for the first time when defendant no.4 assigned the said order placed by defendant no.1 in favour of plaintiff; again arose on 23rd June, 1998 when the goods were supplied to defendant no.1 and was sent to defendant no. 3; again arose on 7th September, 1998, when defendant no. 1 confirmed having made the payment to defendant no.2 and assure the early release of the payment; again arose when the documents were returned to the plaintiff on 23rd August, 1999 when the plaintiff enquired about the status of the goods; again arose on 25th August, 1999 when defendant no.3 confirmed having delivered the goods to defendant no.1 and the authority of defendant no.2 and finally arose on 29th November, 1999 when despite the legal notice the defendants failed to release the payment and is a continuing one.”

In this manner, it was pleaded that if an endorsement on the Bill of Lading was made by the Bank of Ethiopia, they would be liable. Arcadia would be liable if they were not able to establish and prove that the original Bill of Lading was duly endorsed by the Bank of Ethiopia.

- o Accordingly, the defendants were jointly and severally liable.
- o Paragraph 30 of the plaint relating to the territorial jurisdiction reads as under:

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“That the cause of action arose at Delhi as the order was placed at Delhi and the payment was to be released at Delhi, therefore this Hon’ble Court has got the Jurisdiction to try and adjudicate upon the present suit.”

Bhushan Steel had thus pleaded that the High Court at Delhi possessed territorial jurisdiction to decide the Suit.

4. *Vide* judgement/order dated 20.12.2017, the Single Judge of the High Court at Delhi recording the following findings:
 - o Bank of Ethiopia had refused to honour the Letter of Credit on account of discrepancies as the goods were shipped late and the documents were presented after the course of negotiation.
 - o Goods were released and in spite of efforts of Bhushan Steel to call back the shipment, the goods could not be retrieved.
 - o TYO Trading Enterprises was untraceable and were proceeded *ex-parte*.
 - o Arcadia had loaded and shipped the goods, however, they failed to divulge the actual recipient in Ethiopia. Arcadia failed to inform Bhushan Steel about their due compliance. Arcadia had taken conflicting and inconsistent stands regarding the person to whom the goods were released. The original documents, including the Bills of Lading were returned to Bhushan Steel and were in their possession. Thus, the goods could not have been released by Arcadia without the production of the original Bill of Ladings which were with Bhushan Steel.
 - o Therefore, the goods were released by Arcadia unauthorisedly and have not been accounted for by them. Accordingly, Arcadia is liable to Bhushan Steel for the loss suffered.⁹ Arcadia should pay Bhushan Steel the value of the goods, without any interest.

⁹ The judgment records that Arcadia had not disclosed who was the 'Principal', who was an undisclosed foreign party. Arcadia had not produced document to show if the freight charges were received on behalf of the 'Principal' etc.

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Despite these findings, the Single Judge directed the return of the plaint on the question of territorial jurisdiction, as reproduced below:

“Issue No. 1

27. This Court agrees with defendant No.3’s contention that this Court lacks territorial jurisdiction to entertain and decide the present suit. Apparently, no cause of action arose against defendant No.3 within the jurisdiction of the Court to grant the relief prayed for. Defendant No. 3 carries on its business at Mumbai. It is not at controversy that the goods in question were shipped / loaded at Mumbai, the freight charges were paid there. The goods were to be delivered at Djibouti Port, Ethiopia Apparently, no cause of action whatsoever qua defendant No. 3 arose at Delhi to attract the territorial jurisdiction of this Court. This Court has no jurisdiction to entertain and decide the present suit qua the defendant No. 3. This issue is decided in favour of the defendant No.3 and against the plaintiff.

Relief

28. Since this Court has no territorial jurisdiction to entertain and decide the present suit qua defendant No. 3, the relief claimed by the plaintiff against defendant No. 3 cannot be granted.

29. Plaint be returned to the plaintiff to be presented before the Court of Competent Jurisdiction, as per law.”

5. A Division Bench of the High Court at Delhi, *vide* judgment/order 09.01.2024, allowed an appeal against the judgement/order passed by the Single Judge dated 20.12.2017, in an appeal preferred by Tata Steel Limited.
6. The present appeal has been preferred by the appellant – Arcadia against the judgment/order of the Division Bench of the High Court at Delhi, dated 08.01.2024.
7. Arcadia submits that two distinct transactions occurred: first, the sale of goods and second, a shipment of goods from Mumbai to Djibouti. Arcadia emphasizes that their involvement was restricted to the second transaction. Notably, the supply orders, integral to the first transaction, were placed in Delhi. Thus, Arcadia submits that a suit

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cannot be brought against them in Delhi, as they were not a part of the first transaction and their businesses were located out of Mumbai.

8. In our opinion, the contention raised by Arcadia has no merit. The transactions are intrinsically intertwined and cannot be compartmentalized into watertight silos. The shipment of goods was linked and connected with the sale of goods by Bhushan Steel through, inter alia, the Bill of Lading. A Bill of Lading essentially serves a tri-fold purpose: (a) it is receipt of the goods shipped and the terms on which they have been received; (b) it is evidence for the contract of carriage of goods; and (c) it is a document of title for the goods specified therein. Consequently, the release of goods by the shipper, Arcadia, hinged upon the presentation of the Bill of Lading by the receiver, TYO Trading at the point of receipt. However, the Bill of Lading necessitated proper endorsement by the Bank of Ethiopia since they were the issuers of the Letter of Credit. Bhushan Steel remained the owner of the goods. In this manner, the actions of Arcadia and the transactions were interconnected with each other. Upon reading paragraphs 22, 29 and 30 of the plaint referred to above and after perusing the facts of the case, it is clear to us that a part of the cause of action had arisen in Delhi.
9. It would be opportune to refer to the provisions of the Code.
10. Section 20(c) of the Code accords dominus litis to the plaintiff to institute a suit within local limits of whose jurisdiction the cause of action, wholly or in part arises.¹⁰ Every suit is based upon the cause of action, and the situs of the cause of action, even in part, will confer territorial jurisdiction on the court. The expression 'cause of action' can be given either a restrictive or wide meaning. However, it is judicially read to mean - every fact that the plaintiff should prove to support their right to the judgment.
11. Order I Rule 3 of the Code states that the plaintiff may join as a defendant in one suit, all persons against whom, the plaintiff claims the right to relief in respect of, or arising out of, the same act or

10 "20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

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

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transaction or series of transactions.¹¹ The claim viz. the defendants can be joint, several or in the alternative. Thus, it is permissible to file one civil suit, even when, separate suits can be brought against such persons, when common questions of law and fact arise.

12. Order I Rule 7 of the Code permits a plaintiff who is in doubt as to the person from whom they are entitled to obtain redress, to join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, can be decided in one suit.¹²
13. The supply order was placed in Delhi and the payment was to be released in Delhi. Accordingly, the cause of action arose in part at Delhi, in terms of Section 20(c) of the Code. As per Order I Rules 3 and 7 of the Code, it was permissible for Bhushan Steel to enjoin in a single suit all the defendants, including Arcadia. Their claim of right to relief lies against all such defendants. Further, the relief claimed was in respect of or arising out of a series of transactions, the sale of goods and then their shipment, which transactions were connected and synchronized with the relief claimed. The cause of action could not have been adjudicated without impleading all the defendants as parties. Thus, in terms of Order I Rule 3, the relief claimed by Bhushan Steel lies against all the defendants, albeit to different extents and was 'in respect of and arises out of a series of transactions'. Thus, Bhushan Steel was within its rights to enjoin all the defendants under a single suit as per Order I Rule 7 of the Code such that the extent of liability of each defendant could be decided in the same suit.
14. Therefore, the Division Bench of the High Court was right in setting aside the finding recorded by the Single Judge viz issue no. 1 – territorial jurisdiction.
15. However, we must also record that a question of territorial jurisdiction should ordinarily be decided at the outset rather than being deferred

11 "3. Who may be joined as defendants.—All persons may be joined in one suit as defendants where—
(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
(b) if separate suits were brought against such persons, any common question of law or fact would arise."

12 "7. When plaintiff in doubt from whom redress is to be sought. — Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties."

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till all matters are resolved. In the judgment dated 20.09.2017, the Single Judge held that no liability can be fastened to TYO Trading and Bank of Ethiopia. However, it held that liability could be fastened to Arcadia. In the context of the dispute in question, the different and divergent stands of the defendants, the remedy was to file a civil suit against the defendants, which in the facts was maintainable in Delhi, a part of the cause of action having arisen in Delhi.

16. Hence, the Single Judge erred in upholding Arcadia's contention regarding lack of territorial jurisdiction of the Delhi High Court and absence of any cause of action arising against them in Delhi, based on their businesses being located in Mumbai.
17. For the aforesaid reasons, the present civil appeal is dismissed.
18. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by:
Raghav Bhatia, Hony. Associate Editor
(Verified by: Kanu Agrawal, Adv.)

Result of the case:
Appeal dismissed.