M/S. SOUTH EAST ASIA SHIPPING CO. LTD.

v.

M/S. NAV BHARAT ENTERPRISES PVT. LTD. AND ORS.

MARCH 13, 1996

[K. RAMASWAMY AND K. VENKATASWAMI, JJ.]

Code of Civil Procedure, 1908 : Section 20(c).

Suit—Jurisdiction—Cause of action—Contract executed at Bombay—Performance of contract also required to be done at Bombay—Bank guarantee in furtherance of contract executed at Delhi—Transmission of guarantee to Bombay for performance of contract—Suit filed in Delhi High Court seeking perpetual injunction against enforcing bank guarantee—Held not maintainable—Held no part of cause of action had arisen at Delhi—Held execution of bank guarantee at Delhi and transmission to Bombay for performance of contract does not constitute cause of action to lay suit in Delhi—Return of plaint for presentation to proper Court held correct.

Cause of action—Meaning of—Held consists of bundle of facts which give cause to enforce the legal injury for redress.

ABC Laminart Pvt. Ltd. & Anr. v. *A.P. Agencies, Salem*, **[1989] 2 SCC 163, cited.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1116 of 1981.

From the Judgment and Order dated 19.2.80 of the Delhi High Court in F.A.O. (OS) No. 56 of 1979.

R.S. Sodhi, (NP) for the Appellant.

Mrs. A.K. Verma for JBD & Co.,

The following Order of the Court was delivered :

This appeal by special leave arises from the order of the Division Bench of the Delhi High Court made on February 19, 1980 in FAO (OS) No. 56/79. The respondents had filed a suit on the original side of the Delhi High Court for perpetual injunction against the appellant from enforcing

bank guarantee dated July 16, 1977. The learned single Judge held that no part of the cause of action had arisen within the jurisdiction of the High Court and, therefore, the Court lacked jurisdiction to entertain the suit. On appeal, the Division Bench concluded that since the bank guarantee was executed in Delhi and payments were to be made in Delhi, the High Court has jurisdiction to try the suit and the direction of the learned single Judge to return the plaint for presentation to the Proper Court was not correct in law. Thus this appeal by special leave.

The only controversy is whether the Delhi High Court has jurisdiction to entertain the suit. It is an admitted position that the contract was executed in Bombay. It is also an admitted position that the performance of obligations and liabilities under the contract was required to be done in Bombay inasmuch as Cargo of livestock was to be transported in the ship from Kandla to Daman or Jeddah. It is also an admitted position that in furtherance of the execution of the contract at Bombay, the respondents had executed the bank guarantee at Delhi and had transmitted it to Bombay for performance of the contract. The question, therefore, is whether any part of the cause of action had arisen in Delhi. The learned counsel for the respondents had relied upon a judgment of this Court in *ABC Laminart Pvt. Ltd. & Anr.* v. *A.P. Agencies, Salem*, [1989] 2 SCC 163 to contend that since part of the cause of action had arisen in Delhi, the High Court on the original side has jurisdiction to entertain the suit. We are unable to accept the contention.

It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a court of law. The cause of action means, therefore, every fact, which if transversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. In view of the admitted position that contract was executed in Bombay, i.e., within the jurisdiction of the High Court of Bombay, performance of the contract was also to be done within the jurisdiction of the Bombay High Court; merely because bank guarantee was executed at Delhi and transmitted for performance to Bombay, it does not constitute a cause of action to give rise to the respondent to lay the suit on the original

side of the Delhi High Court. The contention that the Division Bench was right in its finding and that since the bank guarantee was executed and liability was enforced from the bank at Delhi, the Court got jurisdiction, cannot be sustained.

We, therefore, hold that the learned single Judge was right in his conclusion that no part of the cause of action had arisen within the jurisdiction on the original side of the High Court of Delhi and direct to return the plaint for presentation to the proper court.

The appeal is accordingly allowed. The order of the Division Bench is set aside and that of learned single Judge is restored. No costs.

Appeal allowed.