

HIGH COURT OF ORISSA, CUTTACK

F.A.O. NO. 51 OF 2013

From the order dated 22.04.2010 passed by the learned Civil Judge (Senior Division), Rourkela in C.S. No. 88 of 2009.

M/s. Shree Balaji Mining Pvt. Ltd.. Appellant

Versus.

M/s. Extec Screens & Crushers
(India) Pvt. Ltd.. Respondent

For Appellant : M/s. R.K.Mohanty, S.Mohanty,
Sumitra Mohanty, N.Mohanty,
S.N.Biswal, A.Mohanty,P.Jena,
advocates.

For Respondent: M/s.P.R.Barik, P.Choudjhury,
S.Priyadarshini, advocates.

PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

Date of hearing : 04.02.2015 : Date of judgment: 25.02.2015

The appellant in this appeal being the plaintiff in C.S. No.88 of 2009 has challenged the order passed by the learned Civil Judge (Sr. Division), Rourkela allowing the petition under Order-7, Rule-10, C.P.C. filed by the defendant respondent.

2. Facts necessary for the purpose of this appeal are as under:

The appellant as the plaintiff filed the suit claiming damage against the defendant-respondent. It is stated in the plaint that the plaintiff is having its registered office at Rourkela. The defendant being a registered

company is having its office at Gurgaon. The plaintiff had purchased a screening machine from the defendant in the year 2006 which was installed at the mines at Uliburu for execution of the contract job of M/s. Deepak Steel and Power Ltd. It is stated that after two years the machine started malfunctioning. So, the plaintiff sought for quotation for urgent supply of a new engine and the defendant submitted the quotation assuring the delivery within a period of 10 to 15 days and that the machine was to be supplied at Kolkata. The plaintiff then agreed and sent a letter to that effect and thereafter payment was made and the machine was to be supplied. However, the defendant deviating from the promise delayed in delivery and so they have claimed the damage of RS.52,50,000/-

The defendant entering appearance raised the question of lack of territorial jurisdiction of the court of the Civil Judge (Sr. Division), Rourkela to entertain and adjudicate upon the suit. According to them, the contract was not made at Rourkela nor it was to be performed at Rourkela and the payment has also not been made at Rourkela. So the suit cannot be filed at Rourkela as no part of cause of action has arisen there.

3. Learned counsel for the petitioner placing reliance upon the decision of the Hon'ble Apex Court in the case of **A.B.C. Laminart Pvt. Ltd. Vrs. A.P. Agencies, Salem**, A.I.R. 1989 S.C. 1239 submits that the offer was accepted by the petitioner at Rourkela and the amount has been remitted from Rourkela. So part of cause of action had arisen at Rourkela and, therefore, the learned Civil Judge (Sr. Division), Rourkela had also the

jurisdiction to entertain the suit. Thus, she submits that the order accepting the prayer for return of the plaint as passed by the trial court is unsustainable in the eye of law.

4. Learned counsel for the opposite party submits that in the present case neither the contract was made at Rourkela nor the payment was to be made there and the delivery of machine has been admittedly given at Kolkata. In view of that he contends that the trial court has rightly returned the plaint to the plaintiff to present it before proper court having jurisdiction to try the same.

Learned counsel for the respondent also places reliance on the very decision in case of A.B.C. Laminart Pvt. Ltd. (supra) as placed by the learned counsel for the petitioner. He has again relied upon the decision of East Asia Shipping Company Ltd. Vrs. Nav Bharati Enterprises Pvt. Ltd., S.A.R. (Civil) 1996 (S.C.) 616.

5. In the instant case the appellant in support of the jurisdiction of the court of the learned Civil Judge (Sr. Division), Rourkela relies on two factual aspects. (i) that the quotation being received at and being accepted at Rourkela and correspondences to that effect was made from Rourkela; and ii) money was remitted from Rourkela.

The respondent's response is that those facts are not giving rise to the cause of action for filing the suit in the court of the learned Civil Judge (Sr. Division), Rourkela. It has been held in case of A.B.C. Laminart (supra) that the jurisdiction of the court in the matter of contract will depend on the

situs of the contract and the cause of action arising through the connecting factors. In Para-15, it has been held that in the matter of contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer from a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in the court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have been performed or its performance is completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part

of the cause of action clothing jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.

The cause of action in a suit for damage for the breach of contract arises where the contract is made, where the contract is to be performed and where the contract is breached.

6. Accepting the plaint averments in entirety it is seen in the case in hand that neither the contract can be said to have been made at Rourkela nor it can be said to have been agreed to be performed there nor the breach to have occurred. For mere communication of the acceptance of the offer by making correspondence from a place, it cannot be said that the contract was made at that place. Contract is made at a place when acceptance is received and part of the cause of action for suit for damage for breach arises at that place. As per the provision of section 4 of the Contract Act, the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. So by despatch of letter of acceptance of offer from Rourkela, the contract cannot be said to have been made there. Also remittance of money from that place would not suffice the purpose of bringing in the jurisdiction of said Court to entertain the suit claiming damage for breach of contract saying that cause of action has arisen there since the payment by that cannot be said to have been made to the defendant at Rourkela which is not the place where the money being remitted was payable. In the instant case there being late delivery the breach is said to

have been committed and damage is claimed on account of that. Therefore, the trial court has rightly accepted the prayer of the respondent that it has no jurisdiction to try the suit and has accordingly followed the right path of returning the plaint to the appellant for being presented in the proper court. In view of above, this Court finds no such illegality or infirmity with the order impugned in this appeal so as to be interfered with.

7. For the aforesaid discussions and reasons, the appeal stands dismissed and in the circumstances without cost.

15. In the result the appeal stands dismissing and in the circumstances without cost throughout.

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D. Dash, J.