FULL BENCH

Before S. S. Dulat, Bishan Narain and I. D. Dua, JJ.

FIRM HIRA LAL-GIRDHARI LAL AND ANOTHER,—

Appellants.

versus

BAIJ NATH,—*Respondent.*

Second Appeal from Order No. 6 of 1954.

1960

March, 9th

Code of Civil Procedure (V of 1908)—Section 20(c)—Suit for the price of goods supplied—Court having jurisdiction to try such suit—How to be determined—Rule that debtor must seek his creditor and pay him at his place of business or residence—Whether applicable in India.

Held, per Full Bench—that where territorial jurisdiction of the Court is to be determined on the ground that the price of goods was payable within its jurisdiction, the Court should find as a fact whether the money was agreed expressly or impliedly to be paid within its territorial jurisdiction. To find this fact the Court is entitled to take into consideration the contract, its attending circumstances, the creditor's ordinary place of residence or business and the course of dealings between the parties including all the other factors relevant in a given case. If the Court comes to the conclusion that on the facts and circumstances established in the case the amount sought to be recovered was payable within the jurisdiction of the Court, then it should proceed to entertain the suit, otherwise it has not jurisdiction to do so on the basis of this ground.

Held, per Dulat, J.—that there is no justification for importing into the Indian Contract Act or into the Code of Civil Procedure a rule of law which is not to be found in either statute, either because it is a rule of English Common Law or because it is in itself a good and just rule. It is, therefore, not possible to hold that if money is borrowed or is otherwise due but no place for its payment to the creditor is fixed either expressly or by implication, it is as a

matter of law, payable at the place of the creditor's residence and a suit for its recovery can, therefore, be brought where the creditor resides.

Case referred by Hon'ble Mr. Justice Bishan Narain on 6th September, 1954, to a Division Bench for decision of the important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Bishan Narain and Hon'ble Mr. Justice Dua, referred the same to a Full Bench, on 23rd July, 1959. The Full Bench consisting of Hon'ble Mr. Justice Dulat, Hon'ble Mr. Justice Bishan Narain and Hon'ble Mr. Justice Dua, after deciding the important question of law remanded the same to the Single Bench on 9th March, 1960, for decision of the appeal on merits. The case was finally disposed of by Hon'ble Mr. Justice Bishan Narain, on 22nd April, 1960.

Second Appeal from the order of Shri G. C. Bahl, District Judge, Amritsar, dated 2nd January, 1954, reversing that of Shri Ram Lal, Sub-Judge, 1st Class, Amritsar, dated 25th August, 1953, and remanding the case to the trial Court for deciding the same according to law.

SHAMAIR CHAND, PARKASH CHAND JAIN, and GOKAL CHAND MITTAL, for the Appellants.

HANS RAJ SODHI and K. N. RAINA, for the Respondent.

ORDER

Dulat, J.

DULAT, J.—Messrs Das Mal Baij Nath of Amritsar supplied certain goods to Messrs Hira Lal Girdhari Lal of Haibergaon, district Nowgoing, in the Assam State. The goods, it is said, were supplied on credit. The price was apparently not paid, and to recover it the proprietor of firm Das Mal-Baij Nath brought a suit at Amritsar. Objection was taken to the jurisdiction of the Amritsar Court on the grounds that neither the defendant resided there nor had any part of the cause of action arisen at Amritsar. The trial Court agreed and, therefore, held that it had no jurisdiction and returned the plaint to be presented in

the proper Court. The plaintiff appealed and the learned District Judge was persuaded that if the goods were supplied on credit, then a relationship of creditor and debtor was created between the parties and on the principle that the debtor must seek his creditor to pay the money, he held that the Amrittsar Court would have jurisdiction. The learned Judge, therefore, sent the case back to the trial Court to find if the goods were actually supplied on credit, observing that if that was proved the Amritsar Court would have jurisdiction. Against this order the defendant brought a second appeal to this Court which came up for hearing, in the first instance, before Bishan Narain J. It was urged on behalf of the appellant that unless it could be shown that there was an agreement, either express or implied, that the money was to be paid at Amritsar, the Courts at Amritsar could have no jurisdiction to try the dispute, and that in our law there was no such rule, as mentioned by the learned District Judge, that a debtor must seek his creditor and consequently payments must be made at the creditor's place of residence or business. Bishan Narain, J. considered this question sufficiently important to be decided by a larger Bench and, therefore, referred the case to a Division Bench, and that Bench in turn referred it to this Bench, finding that a decision of a Division Bench of this Court in *Niranjan Singh* v. *Jagjit Singh* (1), supporting the appellant's contention was in conflct with certain decisions of other High Courts.

The case has been argued before us on the assumption that there is in English Law a rule that if money is borrowed and no place for its return is agreed upon, either expressly or impliedly, the debtor must pay at the place of the creditor,

(1) A.I.R. 1955 Punj. 128

Firm Hira Lal-Girdhari Lal and another
v.
Baij Nath

Dulat, J.

and the controversy merely is whether the same or a similar rule applies in India. I have said "on the assumption" because in the absence of accurate information concerning the state of the law in England it would be somewhat presumptuous for this Court to affirm without qualification that a particular rule of law does or does not hold good in England. The question for our decision, however, merely is whether such a rule holds good under our law in order to determine whether a particular suit can be brought at a particular place.

It is admitted that to determine the place of suing we are bound by the provisions contained in the Code of Civil Procedure and those are in sections 15 to 25, the relevant section being admittedly section 20. This runs:—

"20. 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."

It is common ground that a part of the cause of action does arise at the place where money due under a contract is to be paid. It is agreed before us that if the parties agree, either expressly or impliedly, that payment is to be made at a particular place a part of the cause of action arises at that place and the suit would be triable there The question is what happens when there is no such agreement, either express or implied. The appellant's contention in the present case is that unless it can be shown that the parties in fact agreed, either expressly or by implication, that payment was to be made at Amritsar, the cause of action or a part of it cannot be said to arise there and the Amritsar Courts can, therefore, have no jurisdiction. Mr. Sodhi for the respondent admits this but only to a limited extent. He agrees that it has to be shown that the money due from the appellant was payable at Amritsar, but this, he says, need not be proved as a fact but can be inferred as a matter of law, the law being that payment in the absence of an agreement—express or implied—must be made at the creditor's place. This takes us to the law of contract which, as far as this country is concerned, is to be found in the Indian Contract Act (IX of 1872). Mr. Sodhi is unable to point to any provision in the Contract Act to support his contention that, apart from any agreement between the parties, money borrowed is to be paid back to the creditor at the creditor's place. There is no such rule contained in the Contract Act. It is said, however, that such is the rule of common law in England, and that it has been applied in India and has thus become a part of our law. Reference in this connection has been made to a number of decided cases in which the supposed rule of English Law has been applied. The decisions, however, are not all one way, and I shall presently be referring to several of them.

Firm Hira Lal-Girdhari Lal and another
v.
Baij Nath

Dulat, J.

What strikes me, however, at this stage is the impropriety of importing a rule of English law of contract—assuming that there be such a rule—into the law of our country over the head of an exhaustive statute of our Legislature dealing with the law of contract. This is apart from the consideration that by doing so we would be taking the place of the Legislature and introducing into our Contract Act something which the Legislature apparently did not think it necessary or advisable to do.

For the appellant Mr. Shamair Chand has put the case thus: If the money due in this case was payable at Amritsar, the Courts there have jurisdiction, otherwise not. To hold that the money was payable at Amritsar, it has to be found as a fact that the parties, either expressly or impliedly, agreed that it was to be so paid. For this purpose the contract between the parties and every circumstance attending that contract can be taken into consideration, including the important fact that the creditor resides and works in Amritsar. If on a consideration of all the circumstances it cannot be held as a fact that the money was to be paid at Amritsar, then the Courts there have no jurisdiction, as the Indian Contract Act gives no direction that a Court can in the absence of any agreement—express or implied—conclude that the money was to be paid at the creditor's residence. According to Mr. Shamair Chand thus, the question involved here is essentially one of fact, and we cannot invoke an imaginary rule, which is not to be found in the Indian Contract Act, that the creditor must be paid at his place of residence or business even if there was no such agreement between the parties. To me it appears that this contention is sound. That was the view taken by a Division Bench of this Court in *Niranjan Singh* v. *Jagjit Singh*. The suit there was for recovery of money

due from the defendant. The suit was brought at the place of the plaintiff's residences and reliance was placed on the rule that a debtor must seek his creditor and the money was, therefore, payable where the creditor lived. Repelling this contention, G. D. Khosla, J. quoted with approval these observations made by Kapur J. who was also a member of the Bench, in a previous case —

> "The technical rule of the debtor seeking the creditor is not applicable in India for the purpose of determining the local jurisdiction of the Courts because that would be engrafting something on to section 20."

The Division Bench held, therefore, that the suit could not be tried at Delhi, where the plaintiff was residing, merely because he was the creditor.

Mr. Sodhi for the respondent agrees that this Division Bench decision covers the present case but submits that the decision was not correct, and he has referred to several cases taking a different view. In the Lahore High Court, for instance, Tek Chand, J., sitting alone observed in *Fazal Din* v. *Ghulam Mustafa and others* (1):—

> "The proposition of law is firmly established that where it cannot be said that payment was agreed or intended to be made at a particular place, the common law rule applies that the debtor must seek the creditor and pay him there, and, therefore, in such a case the creditor can maintain a suit at the place where he resides."

(1) 32 P.L.R. 737

Firm Hira Lal-Girdhari Lal and another
v.
Baij Nath

Dulat, J.

The report shows, however, that in that case there was really no argument about this matter and learned counsel appearing for the opposite side conceded the applicability of the rule. There are undoubtedly several other cases in which a similar view was adopted but, as I have already remarked, the decisions are not uniform. The earliest case brought to our notice is a decision of the Bombay High Court, *Puttappa Manjaya et al* v. *Virabhadrappa N. and others* (1). In that case, Sir Lawrence Jenkins, C. J., was invited to consider the applicability of the English rule to India, and what he said was this:—

> "There is no suggestion that the contract was made at Sirsi, or that it was to be performed there, but it is said, the payment was to be made there.
>
> This argument rests upon the assumption that the Common Law rule applies that a debtor must seek out his creditor.
>
> We think, however, in India the rule as to the place of performance, whether it be payment or any other mode of performance, is to be determined by section 49 of the Contract Act; and applying that section to the facts of this case, we think, it is impossible to hold that the payment was to be made within the limits of the jurisdiction of the Sirsi Court, for, no such application has been made or place fixed as section 49 prescribes."

It is clear that the learned Chief Justice was wholly averse to his depending on any rule of English Law and thought that the proper rule, if any, must be found in the Indian Contract Act. In

(1) 7 B.L.R. 993

a recent decision of the Bombay High Court, however, *Bharumal* v. *Sakhawatmal* (1), the view taken was that the common law rule of England should be applied because it was a reasonable rule and in conformity with justice and equity. The previous view of Sir Lawrence Jenkins was considered, but the Court found that that view had not been approved by the Privy Council in a later case, *Soniram Jeetmull* v. *R. D. Tata and Company, Ltd.* (2). Mr. Sodhi has largely depended on that Privy Council decision, which has been referred to in several later cases, but, curiously enough in support of each opposing view. It was a case on appeal from Rangoon. The suit was brought by Tata Comany Limited, who had a business branch in Rangoon and the suit was for payment of money due from Soniram Jeetmull on account of certain transactions between the parties. The contract itself was made at Calcutta, and the question was whether the suit to recover the money due could be brought at Rangoon. The High Court apparently found in favour of the plaintiff, and, when the defendants appealed to the Privy Council, it was contended that the Courts at Rangoon had no jurisdiction because the money was not payable there. The Privy Council found that the money was payable at Rangoon, but it does not appear that this was found as a matter of law. On the other hand, the report shows that the Privy Council was satisfied as a matter of fact, on a consideration of the circumstances attending the contract, that the money was to be paid at Rangoon. This is clear from several observations in the judgment, at the conclusion of which Viscount Sumner said:—

> "* * * their Lordships are satisfied that an intention is shown in the contract that payment should be made in Rangoon."

(1) A.I.R. 1956 Bom. 111
(2) A.I.R. 1927 P.C. 156

Firm Hira Lal-Girdhari Lal and another
v.
Baij Nath

Dulat, J.

It is difficult to say that this was not a finding of fact. At an earlier stage their Lordships observed:—

> "It is quite true the contract does not say where Messrs Jeetmull are to pay, but it does say, by an implication which is indisputable, that they are to pay Messrs Tata Sons and Company, and it follows that they must pay where that firm is. Hence one would think that, upon the face of this contract, not indeed in express terms, but by the clearest implication, payment is to be made in Rangoon. In respect of the whole of this business it is not disputed that the business transactions, out of which the outstanding debts arose, took place in Rangoon, and for this purpose the branch of Messrs Tata Sons and Company there were the Messrs Tata Sons and Company concerned."

This leaves no doubt in my mind that the conclusion of the Privy Council rested on the facts and circumstances of that case and not on the basis of any rule of law. The report shows, in fact, that it was objected on behalf of the opposite party that an attempt was perhaps being made to import into India a rule of English common law, and their Lordships denied that suggestion, observing—

> "it was objected, however, in the High Court of Rangoon, that this constituted an importation of a technical rule of the English Common Law into the jurisprudence of India, namely, the rule that the debtor must seek out the creditor. The simple answer to that would have been that on the contrary

> it was a mere implication of the meaning of the parties."

It is thus clear that it was found on the evidence that there was an implied agreement between the parties that the money would be paid at Rangoon and not that the Privy Council approved of the application of any rule of English Law to India. The Privy Council referred to the decision of Sir Lawrence Jenkins in *Puttappa Manjaya et al* v. *Virabhadrappa N. and others* (1), and then went on to refer to some other decisions of that Court, which were not in accord with it, but it does not appear that they disapproved of the view taken by Sir Lawrence Jenkins that a rule of English Law cannot just be imported into the Indian Contract Act.

In the Madras High Court this question, touching the matter of jurisdiction, was considered by a Division Bench, of which Sir Arnold White, C.J., was a member, in *Raman Chettiyar* v. *Gopalachari* (2). Miller, J., facing this question, firmly observed—

> "The case is, therefore, one in which the place of payment is not specified either expressly or by implication, and it seems to me necessarily to follow that sub-division (iii) of explanation III does not apply.
>
> Are we then entitled to apply the general rule of law? I think not. We are bound to seek the jurisdiction of the Court within the provisions of the Code (Civil Procedure Code), and if sub-division (ii) of explanation III is not

(1) 7 B.L.R. 993
(2) I.L.R. 31 Mad. 223

Firm Hira Lal-Girdhari Lal and another
v.
Baij Nath

Dulat, J.

applicable we have to see if any other sub-division is applicable",

and later on—

> "If the framers of the Code had intended that a plaintiff should, in the absence of a contract to the contrary, be allowed to sue at his place of residence to recover debts due to him in pursuance of contracts made elsewhere, there is no apparent reason why they should not have said so."

Recently, in the same High Court, Rama Swami, J., sitting alone had occasion to consider this question in *G. Venkatesha* v. *M/s Kamlapat* (1), and he then said—

> "* * * there has been a pronounced disinclination on the part of the Indian Courts to apply to this country unreservedly the English Common Law that a debtor should find and pay his creditor and that generally speaking the place of payment has to be determined independently of any such general maxim with reference to the terms of the contract, the circumstances attending on it, the necessities of the case and having regard also to the statutory provision contained in the Code of Civil Procedure and in section 49 of the Contract Act."

I might here refer to section 49 of the Indian Contract Act, which is the only provision for a case where no place for performance is fixed. It says—

> "49. When a promise is to be performed without application by the promisee, and

(1) A.I.R. 1957 Mad. 201

no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to performe it at such place."

This provision is, of course, of no assistance in the present case. The point, however, is that our Legislature did not think it necessary to make any other provision, the implication to my mind clearly being that the Legislature did not think it advisable to enact a rule like the one now relied upon by the respondent.

Even more than the Privy Council decision in *Soniram Jeetmull* v. *R. D. Tata and Company Ltd.* (1), Mr. Sodhi relied on *Bharumal* v. *Sakhawatmal* (2), for there the rule was firmly applied. The only reason mentioned, apart from this that it is a rule of English common law, is that it is in itself a reasonable rule and in conformity with justice and equity. It is, however, clear that it would be possible to find several rules of English Law, and for that matter rules of other foreign laws, just as good and just as much in conformity with justice as the rule now in question, but I do not see how that would entitle the Courts to import into our laws all such rules. With great respect, therefore, I am unable to accept this reasoning.

Mr. Sodhi referred to a number of decisions of the Allahabad High Court, starting with *Siri Narain* v. *Jagannath* (3), and going on to *Bhagauti Shukul* v. *Chandrika Prassad* (4), where the rule in dispute was applied. In a recent case, however,

(1) A.I.R. 1927 P.C. 156
(2) A.I.R. 1956 Bom. 111
(3) A.I.R. 1917 All. 128
(4) A.I.R. 1933 All. 147

Firm Hira Lal-Girdhari Lal and another
v.
Baij Nath

Dulat, J.

Sunder Lal v. *Jai Narain* (1), the view seems to have somewhat changed, and this rule was not applied on the ground that the suit was not for the recovery of a debt as such, but for accounts. There are, other decided cases, to which reference was made, but which it is unnecessary to discuss at length. It is clear, that the authorities go both ways, and, as far as this Court is concerned, the decisions are against Mr. Sodhi, for, apart from the Division Bench case I have mentioned, a previous decision in *Piyara Singh* v. *Bhagwan Das* (2), although concerning a negotiable instrument, expressed the view, through one of the members of the Division Bench, that the rule of English Law was not relevant to the matter of jurisdiction, and, in a later case reported as *Prem Nath* v. *Messrs Kaudoomal Rikhiram and another* (3), Tek Chand, J., sitting alone, also expressed the view that the common law rule of England did not apply for purposes of determining the forum where a suit is to be instituted, and for this view relied on the Privy Council decision in *Soniram Jeetmull* v. *R. D. Tata and Company Ltd.* (4).

On principle, I can find no justification for importing into the Indian Contract Act or into the Code of Civil Procedure a rule of law, which is not to be found in either statute, either because it is a rule of English common law or because it is in itself a good and just rule. Nor am I persuaded that on authority we should reverse the view adopted by the Division Bench of this Court when deciding *Niranjan Singh* v. *Jagjit Singh* (5). I am, therefore, unable to hold that if money is borrowed or is otherwise due, but no place for its payment to the creditor is fixed either expressly or

(1) A.I.R. 1955 All. 669
(2) A.I.R. 1951 Pun. 33
(3) 1958 P.L.R. 161
(4) A.I.R. 1927 P.C. 156
(5) A.I.R. 1955 Pun. 128.

by implicaion, it can be held as a matter of law that it is payable at the place of the creditor's residence and a suit for its recovery can, therefore, be brought where the creditor resides.

The true position to my mind is that in each case it must be found as a matter of fact whether money was agreed, either expressly or impliedly to be paid at a particular place if a suit for its recovery is to be brought at the place. To find this fact the Court is entitled to take into consideration the contract and every circumsance attending that contract—including the ordinary residence of the creditor, the nature of the transaction itself, the circumstances in which it was made and various other factors—and, if the Court can find as a fact that payment was to be made at a particular place, then, of course, a suit for its recovery would lie there, but not otherwise. With this answer, I would send the case back, to the learned Single Judge for the decision of the appeal on merits.

BISHAN NARAIN, J.—I have had the advantage of reading the judgment of Dulat, J., and I agree with his conclusions given in last para of his judgment. In view of the importance of the question, I may, however, give my reasons for this conclusion.

The plaintiff firm in the present case has filed a suit for recovery of the price of goods supplied to the defendant. This suit has been filed at Amritsar where the plaintiff firm carries on business, although the defendant firm carries on business at Haibergaon (Assam State). The plaintiff firm's case is that the Amritsar Court has jurisdiction to entertain this suit under section 20(c) of the Code of Civil Procedure.

Firm Hira Lal-Girdhari Lal and another
v.
Baij Nath

Dulat, J.

Admittedly the territorial jurisdiction of a Court can be determined only under section 20, Civil Procedure Code, in a suit of this kind. Under this provision of law a Court has jurisdiction where the defendant or one of the defendants resides or carries on business or where part of the cause of action arises. It is well established and is not disputed that part of cause of action arises where the parties by express or implied agreement have fixed a place for payment of the amount due from the defendant and has not been paid and the plaintiff files a suit for the recovery of this amount. Admittedly there is no express agreement to that effect in the present case. The plaintiff firm can, therefore, succeed in showing that the Amritsar Court has jurisdiction only by showing that there is an implied agreement by which payment was to be made at Amritsar. Obviously the terms of such an implied agreement can be determined only on the facts of each case.

It is in this context that the plaintiff firm relies on the rule that a debtor must seek the creditor and perform his part of the agreement there. The plaintiff's case is that as a matter of law this rule must be deemed to have been incorporated in the agreement and that it must prevail in the absence of any other express or implied term to the contrary therein. In the alternative, the plaintiff's case is that this rule raises a presumption, though rebuttable, that the parties had impliedly agreed for the payment of the amount due at creditor's place of residence or business.

The first contention, in my opinion, is based on misconception of the scope of the rule variously described in England as "ordinary rule", "general rule" or "a common law rule". This description

to my mind excludes it from being considered as an abstract and rigid rule of law. If the learned counsel's contention be correct, then by fiction of law this rule must be deemed to have been incorporated in the agreement arrived at between the parties although the parties had never applied their mind and had never fixed a place of payment even impliedly of the money due. Such an introduction of a term in the agreement of parties by fiction of law, in my opinion, can be done only by statute and not by application of a rule which has been described as an ordinary or general rule. There is no such statutory provision in the Indian Contract Act or in the Evidence Act. Moreover, this contention, if correct, has the consequence of allowing a suit by a creditor in all cases to be filed at the plaintiff's place of residence or business and this is contrary to the provisions of section 20 of the Code of Civil Procedure and to the policy underlying it. Moreover, this conclusion will negative the possibility of proof of an implied agreement fixing a place for payment elsewhere as the incorporation of this rule in the agreement between the parties amounts to an express agreement which would necessarily exclude the existence of an implied agreement.

Neither in England nor in this country has this rule ever been so construed as to lead to the conclusion that its incorporation in the agreement conclusively proves that the payment is to be made at creditor's place of residence or business or raises an irrebuttable presumption to that effect. In England when Courts consider as to where the contract ought to be performed, they invariably consider this rule and also other evidence and attending circumstances and then decide the matter. It is not necessary to discuss these authorities in detail as they are all mentioned in the various cases dealing with the

Firm Hira Lal-Girdhari Lal and another
v.
Baij Nath

Dulat, J.

matter. I may, however, mention the case *Rein* v. *Stein* (1), wherein Kay, L.J., observed:—

> "*Prima facie,* in commercial transactions, when cash is to be paid by one person to another, that means that it is to be paid at the place where the person, who is to receive money resides or carries on business.'

The use of the word "*prima facie*" in this context is significant. I have gone through numerous English cases, but in no case has it been held that the debtor must seek the creditor independently of facts and circumstances of each case.

Similar is the position in India. The Privy Council in *Soniram Jeetmull* v. *R. D. Tata and Company Ltd.* (2), has described this rule as a mere implication of the meaning of the parties, or in other words the rule merely embodies what the parties may be said to have ordinarily intended to agree upon at the time of the contract. In no case in India has this rule been taken as a rigid rule of law raising an irrebuttable presumption in favour of the performance of the contract at the creditor's place of residence or business. I would, therefore, repel this contention raised on behalf of the plaintiff firm.

This brings me to the alternative case of the plaintiff firm. It is argued that the application of this rule involves raising a presumption in the first instance, although rebuttable, that there is an implied agreement between the parties that the amount due from the debtor is payable at the creditor's place of residence or business. It may be stated here that admittedly, and for obvious

(1) (1892) 1 Q.B. 753
(2) A.I.R. 1927 P.C. 156

reasons, this rule has no application, where parties have by express agreement fixed a place for payment of the money due to the creditor. There is no doubt that when money is advanced as a loan or goods are sold for a price, then the parties necessarily intend to fix a place where payment is to be made by the debtor. This is the necessity of the case. If they fail to do so, let us say for reason of forgetfulness, then ordinarily it may be fairly presumed that a place would have been fixed where the creditor will find it convenient to receive the money and such a place may be considered to have been impliedly agreed upon by the parties. There, however, may be circumstances in a particular case where a creditor on the ground of his own convenience or on the ground of expediency or on account of exigencies of business may be said to have impliedly preferred to fix a place other than his own place of residence or business. This rule embodies a rule of evidence based on common course of natural events and on human conduct in commercial transactions. There is nothing in the Indian Contract Act or in any other statute to exclude its application or consideration in this country. Courts are, however, not bound to draw a presumption in favour of creditor's place of residence or business in every case. The applicability of this rule and the extent to which it should prevail depends on the facts and circumstances of each case. When determining the terms of an implied agreement regarding place of payment, the courts must take into consideration all the relevant factors bearing on the point, for example, necessities of the case, convenience of the plaintiff, the place of business or residence of the creditor, the nature of the contract and its other terms, the circumstances in which it was entered into and the course of

Firm Hira Lal-Girdhari Lal and another
v.
Baij Nath

Dulat, J.

dealings between the parties. I may say that this list is not exhaustive but are some circumstances that occur to me at this time. It is for the Court to gather the intention of the parties in this matter after consideration of all relevant circumstances proved in the case. At this stage I may be permitted to say that in this view of the matter the rule under consideration will not be relevant in a case where creditor seeks to recover his dues on the basis of a negotiable instrument as the Negotiable Instruments Act, 1881, lays down rules for determining place of payment of the amount due under a negotiable instrument (section 60 to section 70). If the Court comes to the conclusion that impliedly the parties had agreed to fix place 'A' for payment of the money due, then a part of cause of action would arise there and a suit filed at that place would be within the jurisdiction of the Court. If the Court, however, is unable to come to a definite conclusion as to where the parties in the circumstances intended to have agreed to fix a place for payment at the time that the contract was entered into, then it must be held that the plaintiff has failed to prove any express or implied agreement fixing a place for payment. In that case the plaintiff would have failed to prove that part of the cause of action, so far as it depended on the place fixed for payment, has not been proved to have arisen where the suit has been filed. In that case the plaint must be returned to the plaintiff for presenation to proper Court.

I would, therefore, in agreement with Dulat J. send the case back to the learned Single Judge for decision of the appeal on merits.

DUA, J.—I agree with my learned brethren Dulat and Bishan Narain, JJ., whose separate

judgments I have had the advantage of perusing, that in each case it is for the Court to find as a matter of fact whether the money was agreed either expressly or impliedly to be paid at a particular place and if for that reason a suit for its recovery can under the Code of Civil Procedure be instituted there. The question has been dealt with at great length in the judgments prepared by them and it seems unnecessary for me to discuss those points in detail. I would merely like to add that in order to ascertain the intention of the parties to a contract, and to infer therefrom an implied term, not expressly contained in the agreement, as to the place where the payment may be deemed to have been intended to be made, the Court has to come to a finding which is essentially one of fact. It is true that in ascertaining the implied intention of the parties, the Court may take into account the nature of the transaction, the terms of the contract, the conduct of the parties and all other surrounding circumstances, but this the Court is authorised or entitled to do, not because of, but independently of, the rule of English common law that a "debtor must seek out his creditor." It is hardly profitable in the case in hand to consider the precise extent and scope of the above rule as in force in England; suffice it to say that keeping in view the conditions prevailing in this Republic—particularly its territorial vastness I am extremely doubtful, if any such rule, as its language *prima facie* connotes, can at all, generally speaking, be considered to be just and equitable to be applied in this country for the purpose of ascertaining the place of payment so that the forum for the institution of the suit may be determined. In a small country like England the Courts there may have considered it just and convenient that, in the absence of any agreement, a debtor should, as a

Firm Hira Lal-Girdhari Lal and another
v.
Baij Nath

Dulat, J.

general rule, seek out his creditor, if within the realm, in order to make the payment of the debt to him, but in a big country like ours, to impose an obligation on a debtor, at the time of making payment, to seek out his creditor, wherever he may be in the whole length and breadth of this Union, may, not infrequently, operate as an unjust, inconvenient and inequitable rule: particularly when by applying this rule jurisdiction is sought to be conferred on a Court within the local limits of whose jurisdiction the creditor-plaintiff happens to reside at the time of the institution of the suit. I am not unmindful of the fact that the creditor's place of business or residence, as the case may be, at the time when the contract was made, may often be deemed, by fair implication of fact, to be the place of performance contracted for, but then, as I have already observed, this is without reference to the above principle of the English common law which enjoins upon the debtor to seek out his creditor at the time of making payment; besides, this factor is only one out of several to be taken into account in the light of all the attending circumstances of each case.

It would thus appear that the Court has, if possible to ascertain, as a fact, the alleged implied term of the contract fixing the place of payment—a term to which both the debtor and the creditor may, in a given case, be fairly deemed to have agreed. The existence of such an implied term would, of course, be determined by the Court, taking into account the circumstances mentioned by me earlier, having regard to the common course of human conduct and public and private business, etc. Since the Court has to find an implied term of a bilateral agreement, it is obvious that convenience, when a relevant consideration, must be

taken into account from the point of view of both the parties and not only one of them.

In my opinion, therefore, for the purpose of determining the forum where a suit by the creditor is to be instituted, the Courts in this country cannot apply the rule of English common law that the debtor must seek out his creditor and make the payment wherever he may happen to be; to this extent I would respectfully agree with the decision in *Niranjan Singh* v. *Jagjit Singh* (1). Further than this it is hardly necessary to go in the present case.

With these observations I concur with the order proposed by Dulat, J.

Opinion of the Court

Where territorial jurisdiction of the Court is to be determined on the ground that the price of goods was payable within its jurisdiction, the Court should find as a fact whether the money was agreed expressly or impliedly to be paid within its territorial jurisdiction. To find this fact the Court is entitled to take into consideration the contract, its attending circumstances, the creditor's ordinary place of residence or business and the course of dealings between the parties including all the other factors relevant in a given case. If the Court comes to the conclusion that on the facts and circumstances established in the case the amount sought to be recovered was payable within the jurisdiction of the Court, then it should proceed to entertain the suit, otherwise it has not jurisdiction to do so on the basis of this ground.

We direct that the case be sent back to Single Bench for decision of the appeal on merits.

B. R. T.

(1) A.I.R. 1955 Punj. 128