

Bhardwaj & Co. Bombay v. M/s. Jain Solvent Oil Mills Pvt. Ltd.
Patiala (S. S. Sodhi, J.)

N. K. S.

Before S. S. Sodhi, J.

BHARDWAJ & CO., BOMBAY,—*Petitioner*

versus

M/S JAIN SOLVENT OIL MILLS PVT. LTD., PATIALA,—*Res-
pondent.*

Civil Revision No. 1038 of 1982.

November 14, 1983.

Code of Civil Procedure (V of 1908)—Section 20—Sale of Goods Act (III of 1930)—Section 39—Contract Act (IX of 1872)—Sections 49 and 91—Contract for sale of goods entered into at Bombay and price of the goods payable there—Delivery of goods was F.O.R. Bombay—Goods despatched through railways at Patiala—Suit arising from

the breach of contract—Territorial jurisdiction—Court at Patiala—Whether has jurisdiction to entertain the suit.

Held, that the performance of the contract is part of the cause of action and a suit in respect of breach can be filed at the place where the contract should have been performed or its performance completed. In cases of contract of sale of goods (1) the place where the goods have to be delivered, or (2) the place where the payment of money towards the price of the goods is to be made, is the place of performance and the Court of that place will have jurisdiction to entertain the suit in respect of non-delivery of goods in accordance with the contract. Where a contract for sale of goods is entered into at Bombay and the price of the goods is also payable there, the delivery of the goods to a common carrier is only *prima facie* delivery thereof to the buyer, but if the parties by agreement provide otherwise providing for delivery of goods F.O.R. Bombay, then the provisions of section 39 of the Sale of Goods Act, 1930 cannot be invoked. In the face of this stipulation, the delivery of goods to the railways at Patiala could not be treated as delivery thereof to the buyer, such delivery could only be in Bombay. It must, therefore, be held that the Court at Patiala lacked territorial jurisdiction in the matter.

(Paras 7, 8 and 10).

Petition under section 115 C.P.C. for revision of the order of the Court of Shri Gurdev Singh Sub-Judge 1st Class, Patiala, dated the 3rd day of April, 1982 deciding in favour of the plaintiff and against the defendant.

K. S. Thapar, Advocate with Deepak Thapar, Advocate, for the Petitioner.

M. S. Jain, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The challenge here is to the territorial jurisdiction of the Court at Patiala to entertain and adjudicate upon the suit filed by the plaintiffs' firm Ms Jain Solvent Oil Mills (P) Limited, Patiala seeking the recovery of a sum of Rs. 2,56,917.17 Ps. from the defendants firm M/s Bhardwaj and Company, Bombay.

(2) The dispute here arose with regard to the supply of rice bran by the plaintiffs' firm at Patiala to the defendants M/s. Bhardwaj and Company, Bombay. The claim of the plaintiffs being founded upon breach of contract.

**Bhardwaj & Co. Bombay v. M/s. Jain Solvent Oil Mills Pvt. Ltd.
Patiala (S. S. Sodhi, J.)**

(3) In the suit, a plea was raised by the defendants that the Court at Patiala had no territorial jurisdiction as no part of the cause of action arose there. The trial Court, however, negated this plea holding that as goods had been entrusted to the railways at Patiala, delivery thereof to the defendants buyers must be deemed to have taken place at Patiala in terms of section 39 of the Sale of Goods Act, 1930. It is the legality and correctness of this order which now stands challenged in this petition.

(4) It is the common case of the parties that the contract in this case had been entered into at Bombay and in terms thereof the price of the goods was also payable at Bombay, with the further condition in the contract between the parties that the price of the goods would be F.O.R. Bombay rail-head. It was upon this aspect that great stress was laid by Mr. K. S. Thapar, counsel for the defendants. The contention urged being that by virtue of this clause in the contract delivery of the goods to the defendants could only take place at Bombay and at no other place. Reference in this behalf was also made to the statement of P.W. 1 Raj Kumar Jain, a Director of the plaintiffs' firm, where he accepted as correct the fact that delivery of goods was F.O.R. Bombay and further that there was no mention in any documents exchanged between the parties that goods were to be despatched from Patiala.

(5) In dealing with the question raised, it would be pertinent to advert to the observations of Ramaswami, J. in *G. Venkatesha Bhat & others v. M/s. Kamapat Motilal and others* (1) which are reproduced hereunder :—

“If the contract is to be performed at the place where it is made, the suit on the contract must be filed there and nowhere else. In cases of contract of sale of goods the place where the goods have to be delivered is the place of performance and the Court of that place will have jurisdiction to entertain the suit in respect of non-delivery in accordance with the contract. A delivery to a common carrier is, under section 91 of the Contract Act and now section 39 of the Sale of Goods Act, a delivery to the buyer. If they are sent by a common carrier at

(1) A.I.R. 1957 Madras, 201.

seller's risk, the contract is performed at the place where they are delivered to the buyer or at buyer's risk where they are delivered to the carrier. In the case of a contract "free on rails" the place of performance is the place where the goods are delivered to the common carrier viz., railways.

It is only where the contract does not stipulate the place of performance, section 49 of the Contract Act will come into play and where it has not been invoked, the place of performance has got to be determined with reference to the intention of the parties as gathered from their acts, the terms of the contract and the surrounding circumstances, the course of business and the nature of the act to be done and where no actual intention can be inferred recourse may be had to presumptions."

(6) A somewhat similar controversy regarding the territorial jurisdiction of the Court arose in *The Fertilizers Corporation of India Ltd. v. The Tata Iron and Steel Co. Ltd* (2). A suit arising from a breach of contract for the supply of goods was filed in the Court at Hoshiarpur. In this case goods had been sent through railways by the seller at Tata Nagar to the buyer at Nangal. The consignee in the Railway receipt was the seller. Delivery of the goods was taken by the buyer at Nangal. It was held that as payment of the goods was to be at Nangal, and the goods had been consigned in the name of the seller and delivery of the goods was also to be at Nangal, it could not be said that delivery of the goods to the railways at Tata Nagar was delivery to the buyer there in terms of section 39 of the Sale of Goods Act, 1930. It was accordingly held that the Court at Hoshiarpur had territorial jurisdiction.

(7) In holding that a part of the cause of action had arisen within the jurisdiction of the Court at Hoshiarpur, the observations of Jagmohan Reddy, J. in *Dessee Veerabhadrayya Venkata Subbayya Firm v. Biswanath Jagdish Prasad* (3) were cited with approval. It was stated there "the performance of the contract is part of the cause of action and a suit in respect of breach can be filed at the place

(2) A.I.R. 1965 Pb. 143.

(3) A.I.R. 1962 A.P. 338.

Bhardwaj & Co. Bombay v. M/s. Jain Solvent Oil Mills Pvt. Ltd.
Patiala (S. S. Sodhi, J.)

where the contract should have been performed or its performance completed. In cases of contract of sale of goods (1) the place where the goods have to be delivered, or (2) the place where the payment of money towards the price of the goods is to be made, is the place of performance and the court of that place will have jurisdiction to entertain the suit in respect of non-delivery of goods in accordance with the contract."

(8) The legal position thus being as set out above. There is no escape from the conclusion that the trial Court fell in error in invoking the provisions of Section 39 of the Sale of Goods Act, 1930 in the instant case. The delivery of goods thereunder to a common carrier is only *prima facie* delivery thereof to the buyer, but it contains no bar to the parties by agreement providing otherwise, as was done in this case, with the agreement specifically providing for delivery of goods F.O.R. Bombay. In the face of this stipulation delivery of the rice bran to the railways at Patiala could not be treated as delivery thereof to the defendants, such delivery could only be in Bombay.

(9) The authorities cited by the counsel for the plaintiffs Mr. M. S. Jain which had also been relied upon by the trial Court are clearly distinguishable from the facts here. These authorities being *Sasa Musa Sugar Works Pvt. Ltd. v. Chunilal Chororia* (4) and *Mukandi Lal-Munshi Lal v. Noor Ilahi Abdul Ali* (5). Neither of these authorities was a case where the relevant contract provided that the goods were to be delivered F.O.R. the place where the buyer was located.

(10) For the foregoing reasons it must be held that the Court at Patiala lacked territorial jurisdiction in the matter. This revision petition is consequently hereby accepted and the trial Court is directed to proceed in the matter according to law.

N.K.S.

(4) A.I.R. 1975 Gauhati 34.

(5) A.I.R. 1934 Lahore 44.