

MSTC Ltd. v. Standard Chartered Bank

MSTC Ltd.

...Appellant

Standard Chartered Bank

...Respondent

Case No: Misc. Appeal No. 29/2014

Date of Judgement: 03/04/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Gaurav Joshi, Senior Counsel along with Mr Rohit Gupta & Mr Amit & Ms Anamika Singh & Ms Nasrin Shaikh, i/b M/s Indus Law, Advocate.

For Respondent: Mr Tushad Cooper, Senior Counsel along with Ms Radhika Gupta & Ms Rashika Bajpai, i/b M/s Khaitan & Co., Advocate.

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Facts:

MSTC Ltd. (Appellant), a Government of India enterprise, challenged the order dated 26.09.2013 of the Debts Recovery Tribunal-I, Mumbai (DRT) in I.A. No. 33/2013 in Original Application (O.A.) No. 43/2012, wherein the DRT dismissed the Appellant's plea of lack of territorial jurisdiction to entertain the O.A. filed by Standard Chartered Bank (Respondent). The Respondent Bank had filed the O.A. for the recovery of ₹191,03,54,070.96 from the Appellant. The Appellant had contended that no part of the cause of action concerning the transaction between the Applicant and the Defendant arose in Mumbai, and the dispute was taken cognizance of in a pending civil suit before the 1st Civil Judge (Senior Division), Alipore, Kolkata. The Appellant argued that the

Receivable Purchase Agreement (RPA) executed on 29.08.2008, which was the subject matter of the claim, and all connected transactions were performed and concluded at Kolkata, where the Appellant company is situated. The Respondent Bank contended that the RPA and various memoranda of agreements with some associates in India took place in Mumbai, the associates had their offices in Mumbai, business orders were given from Mumbai, and articles were dispatched from Mumbai, constituting a substantial part of the cause of action arising in Mumbai. The Debts Recovery Appellate Tribunal (DRAT) initially dismissed the Appellant's appeal vide order dated 03.02.2017, finding the contentions challenging territorial jurisdiction unsustainable. The Appellant filed a Writ Petition No. 1804/2017 before the Bombay High Court, challenging the DRAT's order. During the Writ Petition proceedings, the Respondent Bank produced an executed version of the RPA dated 29.08.2008, which differed from the photocopy earlier produced. The Bombay High Court observed that the DRAT should consider the executed version of the RPA and revisit the issue of jurisdiction, remanding the matter for de novo consideration.

Arguments by the Parties:

Appellant's Arguments:

The O.A. failed to reflect that the RPA was executed in Mumbai or through the Respondent's Mumbai branch. The story of the RPA being executed in Mumbai was concocted during the hearing. The Respondent did not mention the transaction of Bills of Exchange or the insurance policy in the O.A. to confer jurisdiction upon the DRT-I, Mumbai. The Respondent was trying to confer jurisdiction on the DRT at Mumbai by relying on an incomplete RPA produced with the O.A., disregarding the final executed original RPA. The Respondent had deliberately concealed the final executed RPA and obtained orders from the DRT and DRAT by misrepresenting facts and producing incomplete and unreliable documents. The RPA was executed at Kolkata, on West Bengal stamp paper, and was to be performed in Kolkata, with monies received in Kolkata and payable in Kolkata. The Appellant's account was debited in Kolkata, and the RPA mentioned the monies were payable to the bank's Kolkata branch. A third-party transaction cannot be construed as a

cause of action for the RPA proceedings. The cause of action for the O.A. was non-payment of the debt by the Appellant, which was required to be paid in the accounts maintained with the Respondent at Kolkata. The unilateral action of the Respondent in issuing a demand notice from Mumbai cannot vest jurisdiction in the DRT, Mumbai. The Appellant argued that even if the demand notice was considered, it was issued from the Respondent's Bandra Kurla Complex branch, falling within the jurisdiction of DRT-III, and not DRT-I, Mumbai. The claim under the insurance policy had no nexus with the reliefs sought in the O.A., and the repudiation of the insurance claim by the insurance company at Mumbai cannot be considered a cause of action. The Bills of Exchange had no correlation with the cause of action based on which the O.A. was filed, and the O.A. did not mention or annex the Bills of Exchange. The default by customers to make payment to the borrower cannot be construed as a cause of action for the bank to file recovery proceedings against the borrower. The purchase orders pertained to transactions between the Appellant and its buyers and cannot be the basis for determining jurisdiction for the bank to file recovery proceedings against the borrower. The Appellant relied on various Supreme Court decisions to argue that not every fact leads to a cause of action conferring territorial jurisdiction, and facts unrelated to the lis or dispute involved do not give rise to a cause of action.

Respondent Bank's Arguments:

The jurisdictional challenge raised by the Appellant was frivolous and untenable. The Appellant attempted to contend that there was a deliberate suppression of the original (modified) RPA to obtain orders from the DRT, and the RPA was ultimately produced under compulsion in the Writ proceedings. The Respondent Bank argued that there was no deliberate suppression of the RPA, as it was voluntarily produced before the Bombay High Court during the Writ Petition hearing. When the O.A. was filed on 13.03.2012, the original RPA was not traceable, and a photocopy was filed. The Appellant had relied on an identical version of the RPA in a civil suit filed before the Civil Judge (Senior Division) at Alipore, Kolkata, on 03.04.2012. In the reply to an interlocutory application filed by the Respondent in the O.A., the

Appellant had referred to and relied upon the same RPA. Even in the written statement filed in the O.A., the Appellant did not raise any dispute regarding the RPA produced by the Respondent, indicating that the parties were ad idem on the terms of the RPA. The version relied upon by the Respondent was identical to the version relied upon by the Appellant, except that the Respondent's version did not bear the execution of an authorized signatory of the Respondent. The Respondent argued that both parties bona fide believed and relied on the unamended version of the RPA. The Respondent voluntarily produced the modified RPA after a further search of its records when the Writ Petition was adjourned, indicating no willful suppression. The unamended and modified versions of the RPA were identical, except for a modification in the parties' description as to the place of execution, which was affected unilaterally by the Appellant, as evident from the fact that the modification was countersigned only by the Appellant's authorized signatory and did not bear the Respondent's signature. The Respondent contended that the modified RPA was amended unilaterally, as evident from the fact that the modification was countersigned only by the Appellant's authorized signatory, and therefore, the parties were governed by the terms outlined in the unamended version. The Respondent argued that the principle laid down in the Radha Sundar Dutta decision (regarding earlier clauses prevailing over later clauses in case of contradiction) did not apply, as there was no contradiction in the RPA. The Respondent relied on various Supreme Court decisions to argue that the cause of action means every fact necessary for the Plaintiff to prove to support its right to judgment, and the issue must be determined based on a collective reading of the whole pleading. The Respondent contended that even assuming the parties were bound by the modified version of the RPA, the DRT at Mumbai would have jurisdiction to entertain the O.A., as the repudiation of the insurance claim by ICICI Lombard, the issuance of a demand letter to the Appellant, and the receipt of payments from foreign buyers in the Respondent's Mumbai branch account, among other facts, constituted a part of the cause of action arising in Mumbai.

Court's Elaborate Opinions:

The DRAT observed that the cause of action is what determines the territorial jurisdiction of litigation, and every fact in litigation is important and must be collectively read from the pleadings. The primary reason for filing the O.A. before the DRT was the refusal by the insurance company, ICICI Lombard, to honor its obligation under the insurance policy issued in favor of the Appellant, with the Respondent subsequently added as a co-insured and designated as the lead insured. The financial transaction between the Appellant and Respondent was not an ordinary loan transaction, and the insurance policy was to secure the entire transaction as per the RPA. The Respondent paid 95% of the amount under the bills raised by the Appellant on foreign buyers, who agreed to make payment to the Respondent within 170 days from the respective dates of shipment. The Respondent alleged that the foreign buyers defaulted on payment, and consequently, the Respondent raised a claim with the insurance company, which was repudiated. The RPA provided the Respondent with the right to realize the amount from the Appellant in case of repudiation by the insurance company. The claim against the Appellant to pay the amount would arise only in consequence of the refusal by the insurance company to pay the amount. ICICI Lombard had rejected the Respondent's demand vide its letter dated 03.03.2011, and pursuant to the rejection, a demand letter was issued to the Appellant on 10.03.2012, calling upon it to reimburse the Respondent. The DRAT held that the repudiation of the insurance company to pay the amount to the Respondent was a part of the cause of action, as only upon the insurance company's failure to pay could the Respondent claim the amount from the Appellant as agreed in the RPA. The DRAT noted that all the purchase orders for goods placed by the associates were based in Mumbai, and the Appellant had acted through its branch office in Mumbai for those transactions. The goods were also dispatched from the Mumbai Port. The payments for goods dispatched from Mumbai were received in the Respondent's branch account in Mumbai. Even if the amended RPA indicating it was signed in Kolkata was accepted, the definition clause defined "Bank" as the Standard Chartered Bank acting through its branch at 90, Mahatma Gandhi Road, Fort, Mumbai 400001, or through any of its branches in India, including its successors and assigns. The term "Bank" throughout the RPA referred to the Respondent

in Mumbai. The DRAT held that the transactions of exporting goods, realizing money, insuring the transaction with ICICI Lombard, defaulting on payment, and the subsequent rejection of the insurance claim by the insurance company would all constitute a bundle of facts giving rise to a cause of action conferring territorial jurisdiction on the DRT at Mumbai. The DRAT found no reason to interfere with the DRT's findings concluding that the Respondent had rightly filed the O.A. in Mumbai, and the consequent production of the revised or amended RPA would not oust the jurisdiction of DRT-I, Mumbai.

Cases Cited:

Radha Sundar Dutta vs. Mohd. Jahadur Rahim & Ors AIR 1959 SC 24

Union of India and Ors vs. Adani Exports Ltd. and another (2002) 1 SCC 567

Oil and Natural Gas Commission vs. Utpal Kumar Basu (1994) 4 SCC 711

ABC Laminart (P) Ltd. & Anr. vs. AP Agencies, Salem (1989) 2 SCC 163

Om Prakash Srivastava vs. Union of India and Anr. (2006) 6 SCC 207

Navinchandra Majitha vs. State of Maharashtra and Ors. (2000) 7 SCC 640

Dashmesh Mechanical Works 2009 SCC OnLine 4384 (Delhi High Court)

Patel Roadways Ltd Bombay vs. Prasad Trading Company & Ors (1991) 4 SCC 270

M.K. Abraham & Co vs. State of Kerala & Ano. 2009 SCC OnLine SC 1250

Abdulla Ahmed vs. Animendra Kissen Mitter 1950 SCC OnLine SC 2

Godhra Electricity Co Ltd. Vs. State of Gujarat (1975) 1 SCC 199

Eastern Coalfields Ltd. & Ors vs. Kalyan Banerjee (2008) 3 SCC 456

Kusum Ingots & Alloys Ltd. vs. Union of India (2004) 6 SCC 254

Sections and Laws Referred:

Section 21 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDDB & FI Act) – Deposit of an amount of debt due on filing appeal.