LAXMAN PRASAD

v.

PRODIGY ELECTRONICS LTD. AND ANR.

DECEMBER 10, 2007

[C.K. THAKKER AND ALTAMAS KABIR, JJ.]

Code of Civil Procedure, 1908: s.20(c), Or. 7, rr. 10 and 11 – Territorial jurisdiction – Agreement stipulating that terms/ conditions contained therein to be interpreted in accordance with laws of Hongkong – Breach of agreement – Suit filed in Delhi – Maintainability of – Held: Applicability of law is distinct and different from cause of action – Since part of cause of action arose in Delhi, suit filed in Delhi is maintainable– Application of defendant under Or. 7 rr. 10 and 11 rightly rejected by High Court.

Cost – Imposed by court – On defendant for filing application to delay progress of suit – Interference with – Held: Not called for.

Words and phrases: 'Cause of action' – Meaning of.

The plaintiff company-respondent No.1 was incorporated under the laws of Hongkong and engaged in the business of trading PCB product under the name and style of 'Prodigy Electronics'. The defendant-appellant joined plaintiff company for marketing PCB products. In September, 2004, an employment contract was entered into between the defendant and the plaintiff company. The terms of employment contract stipulated that on resignation or termination, the employee would not engage himself in a similar or competitive business for two years nor would he contact or solicit any customer or the supplier with whom the plaintiff company conducted business during the employment and that the defendant would maintain confidentiality. Clause 18 of the agreement declared that terms and conditions of the agreement would be interpreted in accordance with the laws of Hongkong.

A **The defendant tendered his resignation and his employment came to an end in December, 2004. The plaintiff company found that the defendant contacted potential customers of the company and informed them that he was representing plaintiff company. The defendant also participated in the Trade Fair in Delhi in**
B **2005 and used the goodwill and the trade name of the plaintiff company.**

The plaintiff company filed a suit in Delhi High Court for permanent and mandatory injunction against the defendant as
C **also for damages. It also filed an application for interim injunction restraining the defendant from using the trade name 'Prodigy'.**

The defendant filed written statement and also an application under Or. 7 rr. 10 and 11 CPC praying for rejection/ return of the plaint for presentation to proper Court on the
D **ground that the plaint disclosed no cause of action and that clause 18 of the agreement granted exclusive jurisdiction to Courts in Hongkong and on that ground also Delhi Court had no jurisdiction in the matter. The High Court dismissed the application and also imposed cost of Rs. 4000/-, holding that the**
E **agreement did not take away jurisdiction of the court and the application was filed only to delay the progress of the suit. Defendant challenged the said order by filing the present appeal.**

Dismissing the appeal, the Court

F **HELD: 1. No case has been made out by the defendant-appellant from which it can be said that Delhi Court had no jurisdiction. [Para 13] [21-B]**

2.1. 'Cause of action' and 'applicability of law' are two
G **distinct, different and independent things and one cannot be confused with the other. The expression 'cause of action' has not been defined in the Code of Civil Procedure, 1908. It is, however, settled law that every suit pre-supposes the existence of a cause of action. If there is no cause of action, the plaint has**

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to be rejected under o.7 r.11 CPC. Cause of action means a right to sue. It consists of material facts which are imperative for the plaintiff to allege and prove to succeed in the suit. Under s.20(c) CPC, a suit would lie in a court within the local limits of whose jurisdiction the cause of action has arisen, wholly or partly. S. 20 has been designed to secure that justice must be brought as near as possible to every man's hearthstone and that the defendant should not be put to the trouble and expense of travelling long distances in order to defend himself.

[Paras 15, 20, 21] [22-A, B, C, 23-H, 24-A]

2.2. The argument of the defendant that the agreement was executed in Hong Kong and hence suit could have been instituted only in that country is not well founded. It is no doubt true that the suit could have been instituted in Hong Kong as well. That, however, does not take away the jurisdiction of Delhi Court where a part of cause of action has arisen. The defendant committed breach of terms and conditions of agreement during the Trade Fair in February, 2005 held in Pragati Maidan, Delhi. It was, therefore, open to the plaintiff Company to institute a suit in a competent Court within the jurisdiction of Delhi. So far as applicability of law is concerned, obviously as and when the suit will come up for hearing, the Court will interpret the clause and take an appropriate decision in accordance with law. It has, however, nothing to do with the local limits of the jurisdiction of the Court. [Paras 22, 31] [24-B, C, D, E, 27-B, C]

British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries & Ors. **(1990) 3 SCC 481 – held inapplicable.**

British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries & Ors. **(1990) 3 SCC 481;** *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies* **(1989)2 SCC 163;** *National Thermal Power Corporation v. Singer Company & Ors.* **(1992) 3 SCC 551;** *Technip S.A. v. S.M.S. Holding (P) Ltd. & Ors.* **(2005) 5 SCC 465 – referred to.**

A **3. So far as imposition of costs is concerned, *normally* it is in the discretion of the Court. When the Court, in the light of the facts before it, was satisfied that the defendant wanted to delay the proceedings and ordered him to pay costs of Rs.4,000/-, it would not be appropriate to interfere with that part of the** B **order. [Para 32] [27-E, F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5751 of 2007

From the final Judgment/Order dated 26.04.2006 of the High C Court of Delhi at New Delhi in I.A. No. 9562 of 2005 in Civil Suit (OS) No. 819 of 2005.

Manoj Swarup, Ajay Kumar and Arun Kumar Beriwal for the Appellant.

D Nikhil Nayyar, Ankit Singhal and TVSR Sreyaj for the Respondents.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted.

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2. The present appeal is directed against the judgment and order passed by the High Court of Delhi on April 26, 2006 in I.A. No. 9562 of 2005 in Civil Suit (QS) No. 819 of 2005. By the said order, the High Court dismissed an application filed by the appellant herein under F Order VII, Rules 10 and 11 of the Code of Civil Procedure, 1908 (hereafter referred to as 'the Code').

3. Shortly stated the facts are that 'Prodigy Electronics Ltd.'-plaintiff (respondent No.1 herein) ('the Company' for short) was formed and incorporated under the laws of Hong Kong and is engaged in the G business of trading electronic goods under the name and style 'Prodigy Electronics', Hong Kong. The main area of business of the Company is Printed Circuit Board (PCB). The business carried on by the Company involves keen understanding of the requirements of the customers in order that the products may be manufactured to the

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specific needs of the customers and they may be made available at competitive prices. The Company is, therefore, required to take care of the consumer-complaints, if any. It also involves a reach into the market identifying the potential consumers of the products which involves substantial investment of time, effort and finance. According to the Company, it has developed solid reputation in India under the trade name and trade mark 'Prodigy Electronics' in the field of electronics generally and PCBs particularly.

4. According to the plaintiff-Company, on July 22, 2002, the defendant (appellant herein) joined Prodigy Electronics in India as a representative for marketing PCB products of the Company in India. An employment contract was entered into on October 2, 2003 between the defendant-employee and the plaintiff-Company. Under the said contract, the defendant was given full-time employment in the Company at Hong Kong in the capacity of 'International Business Development Manager'. He was given job profile of conducting all business of the Company in India. Subsequently, at the request of the defendant who put forward personal reasons, he was relocated to India and a new employment agreement dated September 13, 2004 was signed by the parties. It was agreed that the job location of the appellant would be India. The defendant's tenure in India started from October 1, 2004. The Company was to bear all expenditure, including travel-expenses of the defendant. According to the Company, however, after relocation to India in October, 2004, the defendant tendered his resignation by e-mail on the ground of personal problems. It was also stated that he would decide his next course of action later on. Though the Company gave assurance to the defendant to support in his personal problems, the defendant did not withdraw the resignation and thus his employment came to be terminated on December 20, 2004. According to the Company, the defendant sent another e-mail on December 20, 2004 giving assurance to the Company that though he would continue to be involved in marketing of PCB products, he would be associating himself with manufacturers other than the customers and suppliers of the Company.

A 5. It is the allegation of the Company that the defendant contacted potential customers of the Company and informed them that he was representing 'Prodigy'. He also submitted quotes for PCB products. It was also the case of the Company that the defendant participated in the Trade Fair in Delhi (Componex/Electronic India, 2005) which B was held between February 1, 2005 to February 4, 2005 at Pragati Maidan, New Delhi. In the said Trade Fair, the defendant used the goodwill and passed on the trade name of the plaintiff-Company. In the course of inquiries about the data generated about PCB customers, the organizers of the Trade Fair informed the Company that Multi C Circuit Board (CHINA) Ltd., Hong Kong had participated in the fair and information could be obtained from them. It was averred that the Company was shocked to receive the said information since Multi Circuit Board (CHINA) Ltd. was the manufacturer from whom the Company used to source its products for its Indian customers. The D further inquiry by the Company revealed that the said Multi Circuit Board (CHINA) Ltd. had a representative in India and he was none else but the defendant who operated under the name and style of "Prodigy Circuit Boards". On being contacted, Multi Circuit Board (CHINA) Ltd. also confirmed that it had executed a contract with the E defendant. It also came to the notice of the Company that the defendant had registered a deceptively similar domain name '*www.prodigycircuits.com*' as far back as on October 5, 2004 while he was still in the employment of the Company. The Company was thus convinced that the defendant had not resigned on account of F personal reasons or family problems but he wanted to misuse confidential information which he had received from the Company and he wanted to take undue advantage in spite of the agreement entered into with the Company. The Company also discovered that the defendant had incorporated a Company under the name and style of 'Canton G Treasure Corporation Ltd.' on July 16, 2004 when he was stationed in Hong Kong and was still serving with the Company. Thus, obvious breach of employment contract was committed by the appellant.

6. In view of the above facts and breach of contract by the H defendant, the plaintiff-Company on May 28, 2005, filed a suit being

Civil Suit (OS) No. 819 of 2005 in the High Court of Delhi at New Delhi (Original Jurisdiction) for permanent and mandatory injunction against the defendant as also for damages by ordering rendition of accounts. Alongwith the plaint, the Company filed an application under Order XXXIX, Rules 1 and 2 read with Section 151 of the Code for interim injunction restraining the defendant from using the name 'Prodigy', 'Prodigy Circuit' or any other identical or deceptively similar name or from passing off any such identical or deceptively similar trade mark or trade name.

7. Notice was issued to defendant. He filed his written statement on November 10, 2005. The defendant also filed an application under Order VII, Rules 10 and 11 of the Code praying for rejection/return of plaint for presentation to proper Court. It was contended by the defendant that the plaint disclosed no cause of action and was liable to be rejected. It was further stated that no requisite Court fee had been paid within the time granted by the Court and on that ground also, the plaint deserved to be rejected. It was also asserted that there was an agreement between the plaintiff-Company and the defendant by which exclusive jurisdiction was granted to Courts in Hong Kong and jurisdiction of all other Courts had been ousted and on that ground also Delhi Court had no jurisdiction in the matter.

8. The High Court, as observed earlier, considered the application of the defendant and by the impugned order, dismissed it holding that the agreement did not take away jurisdiction of the Court as contended by the defendant and the application had been filed only with a view to delay the progress of the suit which was liable to be dismissed and it was accordingly dismissed with costs of Rs.4,000/-.

9. The appellant-defendant has challenged the said order by filing the present appeal. On August 7, 2006, notice was issued by this Court and in the meantime further proceedings in the suit were stayed.

10. We have heard learned counsel for the parties.

11. The learned counsel for the appellant contended that the High Court was wholly wrong in holding that Courts in India could

A entertain a Civil Suit and the application filed by the defendant-appellant was liable to be rejected. According to the learned counsel, the agreement entered into between the parties made it expressly clear that the law applicable, in case of dispute between the parties would be law of Hong Kong Special Administrative Region and, hence, Indian B Courts have no jurisdiction to entertain, deal with and decide such question. It was also submitted by the learned counsel that in the light of the agreement between the parties, only remedy available to the plaintiff-Company was to take appropriate proceedings in accordance with law in a competent Court in Hong Kong and no Indian Court C could have jurisdiction inasmuch as jurisdiction of all Courts in India is barred by necessary implication. The counsel also contended that the High Court committed an error in holding that Delhi High Court had jurisdiction as the defendant was residing in Delhi. In the plaint itself, the plaintiff gave the address of the defendant of Ghaziabad D which is not in Delhi but in Uttar Pradesh (U.P.). The counsel also made grievance that the High Court was not right in observing that the defendant wanted to delay the proceedings and was not justified in imposing costs of Rs.4,000/-. It was, therefore, submitted that the appeal deserves to be allowed by setting aside the order passed by E the High Court.

12. The learned counsel for the respondent-Company, on the other hand, supported the order passed by the High Court. He submitted that the only thing which was relevant in the agreement was as to F applicability of laws. As per settled legal position, a suit could be instituted in Delhi as part of cause of action had arisen within the territorial jurisdiction of that Court. The High Court was right in observing that applicability of law had nothing to do with situs of a suit and since the defendant had used the trade mark/trade name of the G plaintiff in Delhi in Trade Fair, it was open to the plaintiff Company to institute a suit in Delhi. It was submitted that it is really surprising that though Hong Kong based Company institutes a suit in Delhi where the defendant had used the trade mark/trade name, where he resides and thus it is much more convenient to him to defend the suit, yet he H objects to the proceedings which clearly goes to show that the only

intention on the part of the defendant is to delay the proceedings. The High Court was, therefore, right in dismissing the application and in ordering payment of costs by him. It was, therefore, submitted that the appeal deserves to be dismissed.

13. Having heard the learned counsel for the parties, in our opinion, no case has been made out by the appellant from which it can be said that Delhi Court had no jurisdiction. Both the learned counsel referred to the agreement dated September 13, 2004 entered into between the parties. Clause 10 of the agreement relates to "Resignation and Termination of Service". In accordance with the said clause, the appellant herein left the plaintiff-Company. Clause 10 stipulates that in the event of resignation or termination for any reason, the employee would not engage himself in a similar or competitive business for a period of two years, nor he would contact or solicit any customer or supplier with whom the employer conducted business during the employment. Clause 14 provides for 'Conflict of Interest'. Clause 15 deals with 'Confidentiality'. It recites that upon accepting employment with Prodigy, the defendant would maintain confidentiality which would mean that he would not disclose any 'Prodigy confidential information' either during or after his employment to anyone outside the Company, nor would use it for personal benefit. Clause 18 is material for the purpose of controversy and may be reproduced:

> *18. The terms and conditions as stipulated above shall be interpreted in accordance to the laws of the Hong Kong Special Administrative Region.*
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> (emphasis supplied)

14. It is this Clause (Clause 18), which requires interpretation. According to the appellant, since the terms and conditions in the agreement have to be interpreted in accordance with the laws of Hong Kong, no Court in any country other than a Court in Hong Kong shall have jurisdiction to entertain a suit, petition, application or any other proceeding. The submission of the respondent-Company, on the other hand, is that what is agreed upon is not territorial jurisdiction of a Court but applicability of laws. Clause 18 deals with the second

A eventuality and declares that terms and conditions of the agreement would be interpreted in accordance with the laws of Hong Kong.

15. We find considerable force in the submission of the learned counsel for the respondent Company. In our view, 'cause of action' B and 'applicability of law' are two distinct, different and independent things and one cannot be confused with the other. The expression 'cause of action' has not been defined in the Code. It is however settled law that every suit presupposes the existence of a cause of action. If there is no cause of action, the plaint has to be rejected [Rule C 11(a) of Order VII). Stated simply, 'cause of action' means a right to sue. It consists of material facts which are imperative for the plaintiff to allege and prove to succeed in the suit. The classic definition of the expression ('cause of action') is found in the observations of Lord Brett in *Cooke v. Gill,* (1873) 8 CP 107 : 42 LJ CP 98.

D 16. His Lordship stated;

"Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court".

E 17. In *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies,* (1989) 2 SCC 163, this Court said;

"A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to F *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 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 can* G *possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which* H *if not proved would give the defendant a right to immediate*

judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff". A

(emphasis supplied)

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18. Now, Sections 16 to 20 of the Code deal with territorial jurisdiction of a Court (place of suing). Whereas Sections 16 to 18 relate to immovable property, suits for compensation for wrongs to persons or movables have been dealt with under Section 19. Section 20 of the Code is a residuary provision and covers all cases not falling under Sections 16 to 19. C

19. The relevant part of Section 20 reads thus;

20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction— D

(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* E

(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 or business, or personally work for gain, as aforesaid, acquiesce in such institution; or* F G

(c) ***the cause of action, wholly or in part, arises.***

..... (emphasis supplied)

20. Bare reading of Clause (c) leaves no room for doubt that a suit would lie in a court within the local limits of whose jurisdiction the H

A cause of action has arisen, wholly or partly.

21. Section 20 has been designed to secure that justice might be brought as near as possible to every man's hearthstone and that the defendant should not be put to the trouble and expense of traveling B long distances in order to defend himself.

22. According to the plaintiff-Company, a suit instituted on the Original Side of the High Court of Delhi is maintainable since a part of cause of action had accrued within the territorial jurisdiction of Delhi Court (breach of agreement by defendant). The argument of the C defendant that the agreement was executed in Hong Kong and hence suit could have been instituted only in that country is, in our opinion, not well founded. It is no doubt true that the suit could have been instituted in Hong Kong as well. That, however, does not take away the jurisdiction of Delhi Court where a part of cause of action has D arisen. In the plaint, it was specifically alleged by the plaintiff Company that the defendant committed breach of terms and conditions of agreement during the Trade Fair in February, 2005 held in Pragati Maidan, Delhi. It was, therefore, open to the plaintiff Company to institute a suit in a competent Court within the jurisdiction of Delhi and E that is how the suit is filed in the High Court on its Original Side. In our considered opinion, therefore, the contention of the appellant-defendant that the agreement was executed in a foreign country or the defendant was a resident of Ghaziabad (Uttar Pradesh) cannot take away, exclude or oust the jurisdiction of Delhi Court in view of the F averment made in the plaint that a part of cause of action had arisen within the local limits of Delhi.

23. It was submitted by the learned counsel for the appellant that once there is an agreement as to choice of Court or forum, the parties G are bound by it. For the said proposition, our attention has been invited to several decisions rendered by this Court. We do not intend to burden our judgment on that point as the law is well settled and the learned counsel for the respondent-Company has not disputed the proposition. What was contended was that Clause 18 does not take H away the jurisdiction of a competent Court and the agreement did not

exclude territorial jurisdiction of any Court. A

24. Learned counsel for the appellant relied on a decision of this Court in *British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries & Ors.,* (1990) 3 SCC 481. In that case, the plaintiff purchased from the defendant-Company raw cashew nuts which were shipped in a vessel chartered by the Company incorporated in England. Clause 3 of the Bill of Lading dealt with jurisdiction of the Court. The said clause read as under: B

> 3. JURISDICTION: The contract evidenced by this bill of lading shall be governed by English law and disputes determined in England or, at the option of the Carrier, at the port of destination according to English law to the exclusion of the jurisdiction of the Courts of any other country. C

25. Though the above clause made it clear that the dispute should be determined in England, this Court held that the objection as to territorial jurisdiction had been waived by the defendant. So far as the law is concerned, it was held that proper law to govern the contract was English law. D

26. The learned counsel for the appellant submitted that the ratio laid down in *British India Steam Navigation Co.* applies to the case on hand and the High Court of Delhi committed an error of law in not upholding the objection of the defendant that Indian Court had no jurisdiction to deal with the matter. E

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27. We are unable to agree. Clause 3, as extracted hereinabove, clearly provided that the contract would be governed by English law. The High Court was, therefore, right in observing that the case is not relevant so far as the question raised in the present matter.

28. The counsel also referred to *National Thermal Power Corporation v. Singer Company & Ors.,* (1992) 3 SCC 551. The parties in that case by an agreement had chosen the jurisdiction of one Court to the exclusion of the other. Likewise, they also agreed as to the applicability of law. In the light of the fact situation, the Court held G

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A that the parties are bound by such Agreement and it has to approach a Court in consonance with the agreement. This judgment also does not help the appellant in the instant case.

29. Our attention was also invited to *Technip S.A. v. S.M.S. Holding (P) Ltd. & Ors.*, (2005) 5 SCC 465. Even that case also B does not help the appellant. What was held there was as to the law applicable to the dispute and not the territorial jurisdiction of the Court. On the contrary, para 23 of the said decision goes to show that territorial jurisdiction of the Court and applicability of law are two C different things and even if a matter is decided in the country other than the country where the agreement has been executed, the law which would apply would be the law agreed by the parties.

30. The Court stated;

D *"23. The relationship of Technip to Coflexip whether one of control or not is really a question of their status. The applicable law would therefore be the law of their domicil, namely, French law. Having determined their status according to French Law, the next question as to their obligation under* E *the Indian Law vis a vis SEAMEC would have to be governed exclusively by Indian law (in this case the Act and the Regulations). SATs error lay in not differentiating between the two issues of status and the obligation by reason of the status and in seeking to cover both under a single system of* F *law".*

(emphasis supplied)

31. In the case on hand, we have referred to the relevant clauses of the agreement. Clause 18 provides for applicability of law and it specifically declares that the terms and conditions of the agreement G shall be interpreted in accordance with 'the laws of Hong Kong Special Administrative Region'. That, in our judgment, does not mean that a suit can be instituted only in Hong Kong and not in any other country. Territorial jurisdiction of a Court, when the plaintiff intends to invoke jurisdiction of any Court in India, has to be ascertained on the basis

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of the principles laid down in the Code of Civil Procedure. Since a part of 'cause of action' has arisen within the local limits of Delhi as averred in the plaint by the plaintiff Company, the question has to be considered on the basis of such averment. Since it is alleged that the appellant-defendant had committed breach of agreement by using trade mark/trade name in Trade Fair, 2005 in Delhi, a part of cause of action has arisen in Delhi. The plaintiff-Company, in the circumstances, could have filed a suit in Delhi. So far as applicability of law is concerned, obviously as and when the suit will come up for hearing, the Court will interpret the clause and take an appropriate decision in accordance with law. It has, however, nothing to do with the local limits of the jurisdiction of the Court. The High Court, in our opinion, was right in rejecting the application and in overruling preliminary objection. Since *prima facie* the plaint disclosed a cause of action as also territorial jurisdiction of the Court, the High Court rightly rejected both the contentions and no error was committed by it in not rejecting plaint, nor returning it for presentation to proper Court. 'Applicability of Hong Kong Law', 'entering into an agreement in Hong Kong' or 'defendant residing in Ghaziabad (Uttar Pradesh)' or any of them does not take away the jurisdiction of Delhi Court since a 'cause of action' at least in part, can be said to have arisen in Delhi. We, therefore, see no substance in the contention of the defendant- appellant.

32. So far as imposition of costs is concerned, ***normally*** it is in the discretion of the Court. When the Court, in the light of the facts before it, satisfied that the defendant wanted to delay the proceedings and ordered him to pay costs of Rs.4,000/-, it would not be appropriate to interfere with that part of the order.

33. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstance of the case, there shall be no order as to costs.

D.G. Appeal Dismissed