

IN THE GAUHATI HIGH COURT
**(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL
PRADESH)**

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

CRP 17 (AP) 2017

**Jang Large Sized Multipurpose Cooperative
Society Ltd.,**

Jang, Tawang, Arunachal Pradesh

Represented by its Managing Director.

.....petitioner/defendant.

-VERSUS-

Shri K. K. Yangfo,

S/o Shri Radap Yangfo,

Resident of Bhalukpong Model Village,

PO & PS Bhalukpong, District West Kameng,

Arunachal Pradesh.

.....respondent/plaintiff.

By Advocates:

For the petitioner:

Mr. S. K. Singh,

For the respondent:

Ms. N. Danggen,

Mr. O. Duggong,

Mr. O. Perme,

Mr. T. Taggu,

:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : **08.01.2018.**

Date of Judgment : **08.01.2018.**

JUDGMENT & ORDER (ORAL)

Heard Mr. S. K. Singh, learned counsel appearing for the petitioner and Ms. N. Danggen, learned counsel appearing for the Respondent.

2. By preferring this revision, under Section 115 of the Code of Civil Procedure, the petitioner has prayed for setting aside and quash the impugned order, dated 27.03.2017, passed by the learned Civil Judge, Seppa, East Kameng district, Arunachal Pradesh in Misc Case No.05/2016, arising out of Money Suit No.04/2016 and/or to pass an order, rejecting the plaint filed in the aforesaid suit, which does not disclose any cause of action for instituting the suit, which is barred under the provisions of the Specific Relief Act, and/or further to allow opportunity to submit the written statement, in case the prayer of rejection of plaint is not accepted.

3. The case of the petitioner/defendant, namely, Jang Large Sized Multipurpose Co-operative Society Ltd., which is represented by its Managing Director, in brief, is that the respondent/plaintiff instituted the aforesaid money suit in the Court of learned Civil Judge, Seppa for recovery of Rs.1,53,39,674/- (Rupees One Crore Fifty Three Lakhs Thirty Nine Thousand Six Hundred & Seventy Four) Only and to pay a cost of Rs.50,000/- (Rupees Fifty Thousand) Only, towards the litigation cost. The petitioner/defendant society has contended that the respondent/plaintiff is its Power of Attorney holder and he has been depositing cheques in the account of the petitioner/defendant. From the amount he deposited, the petitioner/defendant No. 1 deducted 7%, defendant No. 2 deducted 3% and defendant No. 3 deducted 3% from every such bill amount of the respondent/plaintiff. From 16.06.2015 till 01.11.2016, the respondent/plaintiff deposited many cheques and the defendants having deducted at the aforesaid rates amounts from him and in this way a total amount of Rs.1,53,39,674/- was deducted. The respondent/plaintiff further averred that he made verbal representations not to make such deductions and also served with legal notice, but the same also failed to

evoke any result. The petitioner/defendant has contended that it was the then Managing Director namely, Phurpa Manpa, who has now been replaced by Sangey Phuntso, filed an application on 08.02.2017, under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint, for want of cause of action, being disclosed and on the other hand, the validity of the Powers of Attorneys, dated 07.07.2015 and 08.04.2016 expired on 31.03.2017 and as such, the respondent/plaintiff has no *locus standi* to claim whatsoever on the amount received against the said contractual works in the absence of any specific contract in that regard. However, the Court of learned Civil Judge at Seppa by the impugned order, dated 27.03.2017, passed in Money Suit No.04/2016 rejected the application on the grounds that the learned Civil Judge (Senior Division) at Seppa has the territorial jurisdiction to try the suit and that the cause of action, for the suit was disclosed elaborately at para 4 and para 5 of the plaint. The learned Civil Judge (Senior Division), Seppa fixed the suit on 26.05.2017 for filing of written statement.

4. Aggrieved, the petitioner/defendant Co-operative Society has assailed the above impugned order, dated 27.03.2017, on the grounds, *interalia*, that the learned Court below has ignored the settled principles of law and that the aforesaid Powers of Attorneys do not reveal any sort of right having been conferred to the holder of the Powers of Attorney (respondent/plaintiff), enabling him to assert such right in a legal proceeding, inasmuch as, a Power of Attorney holder, in the absence of any special contract, is bound to carry out the works assigned, without any objection, with no right to seek any amount through Court from his principal; that a plain reading of both the Powers of Attorneys as well as the averments made in the plaint do not disclose any cause of action for the suit; that the nature of the suit clearly discloses that the contract, if any, between the parties (plaintiff and defendant No .1) was determinable in nature and therefore, no relief, in such a suit, arising out of contract, can be enforced and that the learned Court below has failed to take into

account the fact that his Court has no territorial jurisdiction to try the suit and therefore, the plaint is liable to be rejected at the threshold.

5. In view of the above averments made by the petitioner/defendant, the issues that arise for decision, firstly whether there is cause of action for the suit and secondly, whether the Court of learned Civil Judge (Senior Division) at Seppa has the territorial jurisdiction to try the suit.

6. In the aforesaid impugned order, dated 27.03.2017, passed by the learned Civil Judge (Senior Division), Seppa it has been observed as follows (relevant portion)-

"Having carefully gone through the submission of Ld. Counsel for defendants No. 1, 2, 3 and 5 and also the submission of Ld. Counsel for the plaintiff, I am of the view that the cause of action has completely narrated at para 4 and para 5 of the plaint alleging that a total of 10% has been deducted from the deposited Cheque of plaintiff in favour of the defendant No. 1 and 5. The defendant No. 1 and 5 has admitted to deduct 7% of the deposited cheque as a commission. According to the plaintiff, the Defendant No. 2 and 3 are also having a share of 3% on 10% as such; the Defendant No. 2 and 3 are liable though they are not appearing in the record.

In the view above, I am of the view that the cause of action has properly alleged in the plaint. Therefore, the point raised by both the Ld. Counsel for Defendant No. 1 and 5 except Defendant No. 4 is rejected.

As regards to the territorial jurisdiction of this Court, I am of the view that as per the notification No.HC.VII-02/2013/6934/A of Hon'ble Gauhati High Court issued to seat a Mobile Court at Bomdila as a Chief Judicial Magistrate-cum-Civil Judge, Senior Division, this Court has got original jurisdiction to try the case. It is also appears that the plaintiff is a permanent resident of Bhalukpong within the District of West Kameng. As per Section 15 of CPC read with Section 16 of CPC, the Mobile Court of Civil Judge Sr. Division, Seppa at Bomdila is having proper jurisdiction to take up the case.

Therefore, the submission of Ld. Counsel for the defendant No. 1 and 5 is not tenable in eyes of law and same is rejected. The case shall be proceeded for filing of WS for next date.

Accordingly the Misc. Application No.05/16 is disposed of.

Next date is fixed on 26.05.2016 for W/S."

7. So far the first issue is concerned, i.e. the 'cause of action', it is pertinent to mention that the 'cause of action' means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment as prayed. The cause of action has no relation whatsoever to the defense that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. However, every such fact or circumstance which entitles the plaintiff to the relief claimed is a part of the 'cause of action', but the term does not include every piece of evidence which is necessary to prove such fact.

8. Mr. S. K. Singh, learned counsel appearing for the petitioner/defendant submits that a perusal of the Powers of Attorneys would go to show that the holder of the Powers of Attorney, i.e., the respondent/plaintiff, i.e. the agent, was not given any such legal right to sue the principal i.e. the petitioner/defendant for recovery of any amount. It is the duty of the agent to carry out the assigned duties, enumerated in the Powers of Attorneys. According to Mr. Singh, the right of withholding the entire payment received against any contractual works is vested on the petitioner/defendant. Mr. Singh further submits that besides having no cause of action being disclosed, the respondent/plaintiff has impleaded the defendants No. 2, 3 and 4 in the suit, knowing well that there is no link either directly or indirectly for their impleadment and on the other hand, the suit is barred under the provisions of the Specific Relief Act, as no such relief, as prayed for, is enforceable in law. Mr. Singh, learned counsel for the petitioner/defendant further submits that the learned Court

below ought to have returned the plaint at the threshold, as Court at Seppa does not have the territorial jurisdiction to adjudicate the disputes between the parties. Mr. Singh submits that the suit being vexatious and barred by law, the learned Court below ought to have rejected the plaint. In this regard, Mr. Singh has relied upon the decisions rendered by the Supreme Court in ***T. Arivandandam Vs. T. V. Satyapal & Anr.***, reported in ***(1977) 4 SCC 467***; in ***Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal***, reported in ***AIR 2017 SC 2653*** and by this Court in ***Rama Bhoumik (Dr.) Vs. Mitra Mukherjee***, reported in, ***2016 (4) GLT 303***.

9. Ms. N. Danggen, learned counsel for the respondent/plaintiff submits that the learned Court below has rightly passed the impugned order, holding that there is cause of action for the suit with reference to the reasons cited in para 4 & 5 of the plaint and furnished a copy of the High Court Notification Vide No.HC.VII-02/2013/6934/A, dated 12.08.2013, in support of the territorial jurisdiction of the Court at Seppa to try the suit.

10. In paragraph nos. 4 and 5 of the plaint, the respondent/plaintiff averred the cause of action as herein below quoted-

"4. That the plaintiff begs to state the cause of action has arose when the plaintiff deposited/credited his cheques in the account of the Jang Large Corporative Society since from on date 16.06.2015 to 30.11.2016 i.e. as on date. The defendant No. 1 is illegally deducting 7%, the defendant No. 2 is deducting 3% and the defendant No. 3 also deducting 3% from the every total amount of billing of the plaintiff without any reasonable ground. In this regards, the plaintiff has requested the defendants to deduct some reasonable % for used of their firm license, but the defendants keep adamant and reluctant the request of the plaintiff. As on date, the defendants are deducting the said work done % (Percentage) of the plaintiff by taking advantage of using their firm license of the registered society.

Whereas, in the Power of attorney (P.A.) no such condition were in between the defendants and plaintiff to agree for deduction. The all total deducting amounting is Rs.1,53,39,674/- (Rupees One Crore Fifty Three Lakhs Thirty Nine Thousand Six Hundred & Seventy Four) Only as on dates. Under such situation, the plaintiff has no other option left then to file this suit recovery against the defendants. Hence, this suit recovery files before this Hon'ble Court.

5. That the plaintiff begs to state that the with effect from the 16.06.2015 to till 01.11.2016, the various cheques have been deposited in the account of the defendants. Wherein, the 7% is deducting by the defendant No. 1 and 3% is deducting by the defendant No. 2 till 31.03.2016 and thereafter, from 01.04.16 to 30.11.2016, the defendant No. 1 is deducting 7% and 3% is deducting by the defendant No. 3. As such, all total 10% have deducted from every billing of plaintiff by the defendants. Hence, the defendants are deducting illegally and enjoyed the hard earn of the plaintiff. Thereby, causing irreparable damages and immense pecuniary loss to the plaintiff."

11. The respondent/plaintiff, however, contested the above cause of action averred by the petitioner/plaintiff, in para 3, 4 & 5 of the petition filed under Order VII Rule 11 of the Code of Civil Procedure as herein below extracted-

"3. That the plaint needs to be rejected since there is no cause of action for the suit. This defendant urges the Hon'ble Court to look into the contents of the two Powers of Attorney submitted by the plaintiff. A perusal whereof discloses that the society through this defendant executed the former Power of Attorney on 07/07/2015 authorizing, amongst others, execution of numerous contracts all dated 25th day of May, 2015 pertaining to supply of Potato Fresh, Onion Fresh, Vegetables Fresh, Fruit Fresh, Garlic, Eggs, Boiler alive and Whole wheat Bread. Through the Power of Attorney, three persons were appointed to carry out the contract

works. The attorneys appointed under the Power of Attorney were Sri J. P. Singh, Smt. Nyanio Yangfo and the plaintiff jointly. They were authorized to execute the contract works as well as to receive payment by cheque in favour of the answering defendant and the said power of attorney was valid up to 31st March, 2016. Subsequently on completion of the said contractual work, another almost similar Power of Attorney was again executed on 08th day of April 2016 by which the Society appointed Sri J. P. Singh, Smt. Nyanio Yangfo and the plaintiff jointly as the lawful attorney to execute some contractual works, namely, A.T. Note No.RPR/2016-17/62/ST-5,RPR/2016-17/61/ST5, RPR/2016-17/63/ST5 dated 22nd March, 2016, EC/CD/ALONG/2016-17/49/ST5, EC/CD/ALONG/2016-17/54/ST5, dated 28th March 2016, RPR/2016-17/73/ST5,RPR/2016-17/71/ST5,RPR/2016-7/72/ST5, dated 22nd March 2016, RPR/2016-17/68/ST5, RPR/2016-17/69/ST5, RPR/2016-17/70/ST5, dated 22nd March 2016, EC/CD/MENCHUKA/2016-17/48/ST5, dated 28th March 2016,RPR/2017-17/66/ST5, RPR/2016-17/64/ST5,RPR/2016-17/65/ST5, RPR/2016-17/67/St5, dated 22nd March 2016 and EC/CD/TUTING/2016-17/53/ST5, dated 28th March 2016 for supply of Potato Fresh, Onion Fresh, Vegetable Fresh, Fruit Fresh, Garlic, Eggs, Broiler alive and Whole wheat Bread. The said Power of Attorney is valid up to 31st March 2017. The plaintiff being the attorney of the society has been carrying out the said contractual works. It needs to mention herein that no separate agreement ever executed in between the society or between this answering defendant and plaintiff with regard to any payment to be made or if at all any payment was to be made, the rate at which the same was to be made. Both the Powers of Attorney are silent in that regard.

4. That it is reiterated that in the absence of any averment, the plaintiff has no right to speak about his entitlement to any percentage on the total

receivables or to make any sort of claim. An attorney holder in the absence of any special contract is bound to carry out the contract works without any objection with no right to seek any amount through Court from the principal. This answering defendant has every right to hold the entire payment received against said contractual works. It is the sole discretion of this answering defendant either to pay or not to pay out of such receivables to the plaintiff. The plaintiff has no locus standi to claim whatsoever on the amount received against the said contractual works in the absence of any specific contract with that regard.

5. That in the absence of any agreement between the plaintiff and answering defendant or with the society with to regard to payments to be made to the plaintiff, the suit becomes bad for lack of cause of action. A plain reading of both the power of attorney as well as the plaint no cause happens to appear for the filing of the suit. The plaintiff has no right to be enforced through the suit. Further, the plaint further fails to disclose the reasoning as to the reason for the inclusion of defendant No. 2 and 3 as party to the instant suit. There is no link either directly or indirectly for impleadment of defendant No. 2 & 3 in the plaint. The plaint is liable in the above circumstances to be rejected.”

12. Normally, the Courts should not be inclined to try an issue as a preliminary issue, if factual aspects are also involved. However, the learned Court below placing reliance on the petition of the petitioner/defendant under Order VII Rule 11 of the Code of Civil Procedure decided the aforesaid preliminary issues pertaining to cause of action and territorial jurisdiction vide the impugned order. The learned Court below has disposed of the aforesaid Misc case by passing the impugned order giving opportunity to the petitioner/defendant to file the written statement fixing date.

13. On scrutiny of the impugned order, dated 27.03.2017, and the reasons recorded in paragraphs 3, 4, 5 of the application under Order VII Rule 11 of the Code of Civil Procedure, filed by the petitioner/defendant and further, the cause of action cited by the respondent/plaintiff this Court finds, the learned Court below has rightly rejected the prayer of the petitioner/defendant on the issue of cause of action for reasons recorded therein as the suit is yet to go for trial for incomplete detail pleadings.

14. As held by the Supreme Court in Madanuri Sri Rama Chanda Murthy (supra); T. Arivandandam (supra); and this Court in Rama Bhoumik (Dr.), a plaint which is manifestly vexatious and meritless in the sense of not disclosing clear right to sue the Court in exercise of the provision enunciated in order VII Rule 11 of the Code of Civil Procedure may reject the plaint at any stage of the suit. A reading of the plaint of the suit, it appears that the respondent/plaintiff has narrated the facts in detail constituting the cause of action by bringing forward the whole case as to the matter of litigation or the question of rights involved in the suit for adjudication, which in the opinion of this Court do not appear to be vexatious and meritless. In Sahakari Khand Udyog Mandal Ltd. (supra), the Supreme Court illustrated the doctrine of 'unjust enrichment' as follows-

"31. Stated simply, "unjust enrichment" means retention of a benefit by a person that is unjust or inequitable. "Unjust enrichment" occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.

32. The doctrine of "unjust enrichment", therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of "unjust enrichment" arises where retention of a benefit is considered contrary to justice or against equity.

33. The Juristic basis of the obligation is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or the doctrine of restitution.

34. In the leading case of *Fibrosa V. Fairbairn* Lord Wright stated the principle thus:

"Any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution."

35. Lord Denning also stated in *Nelson V. Larholt*:

"It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases, where the Court orders restitution if the justice of the case so requires."

The above principle has been accepted in India. This Court in several cases has applied the doctrine of unjust enrichment."

15. In the backdrop of facts of the suit stated above, it is respectfully submitted that the benefits of the principle laid in the above 03(three) cases, namely, Madanuri Sri Rama Chanda Murthy (supra); T. Arivandandam (supra); and this Court in Rama Bhoumik (Dr.), cannot be extended to the petitioner/defendant, whereas the principle laid in the Sahakari Khand Udyog Mandal Ltd. (supra) can well be applied to the facts of the instant suit. Therefore, this Court finds that no illegality has been committed by the learned Court below while holding that there is cause of action for the suit in favour of the respondent/plaintiff.

16. So far the issue of territorial jurisdiction of the Court below to try the suit is concerned, the plaintiff/respondent averred that as the cause of action arose within the jurisdiction of the said Court, it has territorial jurisdiction to try the suit. The petitioner/defendant, however, pleaded that as no cause of action arose for the suit, the said Court has no territorial jurisdiction to try the suit.

17. The learned Court below answered this issue on territorial jurisdiction in the affirmative, in view of the High Court's Notification No.HC.VII-02/2013/6934/A, dated 12.08.2013, whereby direction has been issued to the said Court at Seppa to hold the Circuit Court at Bompdila, West Kameng District, Arunachal Pradesh and on the other hand, the respondent/plaintiff is a permanent resident of Bhalukpong, within the district of West Kameng, Arunachal Pradesh.

18. As affirmed above, there is cause of action for the suit which has to be proved by the respondent/plaintiff by evidence. The appropriate procedure to follow, in the backdrop of facts of the petition, certainly needs to be decided by giving opportunity to the parties to lead evidence, on this count, as the petition and the documents annexed thereto do not clearly reveal as to the place (s), where the cause of action actually arose. At present, the suit is pending at the stage for filing of the written statement and therefore, the issues are yet to be identified. Therefore, the above impugned order, so far it relates to the opinion on the issue of territorial jurisdiction of the learned Court below to try the suit, is set aside.

19. Consequently, **the revision is partly allowed** and remanded back with a direction to the learned Court below to decide the issue on territorial jurisdiction afresh along with other issues that may likely to arise from the pleadings, in due course of trial of the suit and to allow the petitioner/defendant to file the written statement.

20. Revision stands disposed of.

JUDGE

Cha Gang