Dispute Filed on	:	13/03/2019
Dispute Registered on	:	13/03/2019
Dispute Returned on	:	24/06/2022

In the Court of Judge, Co-operative Court, Ahmednagar

(Presided over by Shri. B.S. Lakhote- Judge,)

Dispute No.109/2019

Ahmednagar Shahar Sahakari Bank Ltd.
Through Special Executive Officer
Shri. Javahar Hastimal Katariya
R/o. Sarvarth, Navipeth, Ahmednagar. **---- Disputant**

Vs.

1) N.I. Sales Corporation's Proprietor
Dhruv Shriram Deshmukh
Age : 27 year, Occ.: Business.
R/o. 375, Shanivarpeth,
Pune 411004 & Others. **---- Opponents**

ORDER BELOW EXHIBIT-10

1) The opponents filed the present application for dismissal of dispute on the ground that this Court has no jurisdiction. According to opponents that the dispute is file wrongly before dispute, since under the provision of law this Court does not have jurisdiction to try, entertain and decide it. As per provision of Section 16 (c), Section 20 r/w order 14 R (2) (a) of C.P.C. the place of residence/business/working for gain that of defendant shall determine the jurisdiction of Court and not the place of principal/Head office of the disputant.

2) The actual disbursement of amount, repayment, mortgage of immovable properties given as security are also at Pune and hence cause of action taken place of Pune. The properties in respect of which the disputant are seeking attachment before judgment and which are not secured are also situated at Pune and therefore the Co-operative court Pune shall have jurisdiction to decide the dispute. it is also clear from the pleading of the disputant that, the dispute stems from the Sinhgad road Branch Pune of the disputant bank and hence considering the fact and the circumstance, the cause of action taken place in Pune and therefore this court does not have jurisdiction to try and decide the dispute.

3) The disputant bank already initiated action against the opponents under the provision of SARFAESI Act and disputant elected to go against the opponents under the provision of SARFAESI Act by applying " *the doctrine of elective estoppel"* they are precluded from forum "Forum Hunting i.e. from coming to this court for same grievanace that too without exhausting the remedy. hence opponents, accordingly prayed for the relief.

4) The disputant filed reply and submitted that the application filed with motive to prolong the matter. The opponents in the application wrongly quoted the provision, the question of place of business and residence of the opponents has no concerned , the court has to see whether cause of action for filing the dispute arise.

5) The disputant specially stated that the bank is having its head office at Ahmednagar and all loan application received from the branch are scrutinized at Ahmednagar. The term and condition of the loan agreement fixed at Ahmednagar and after acceptance of the term and condition, they sanction letter issued to the opponents and acknowledge by the opponents at Ahmednagar and hence this court has jurisdiction to try and decide the dispute. The cause of action arosed at Ahmednagar. the cause of action arose ta Sinhagarh road Pune is incorrect.

6) The submission of the disputant that if the opponents are aggrived by the action of the disputant intiated under the securitization Act, the SARFAESI Forum is proper. under these circumstance, there is question of " doctrine elective esoppel" and hence prayed for rejection of the application.

7) In view of the rival pleading of the parties and submission of the respective counsels of the parties following point arise for my determination and my finding with reason as follows.

POINT	FINDING
1. Whether this court has jurisdiction to try and decide the dispute?	....Negative
2. what order?	..................................As per final order

REASONS

8) The opponents by this application objected the jurisdiction of this court on the ground that the all the documents executed at Pune and the parties are resident at Pune and the branch office of the disputant bank is at Pune and merely the head office is at Ahmednagar,this court has not jurisdiction to try and decide the dispute. The disputant on other side denied the contention of the opponents and stated that all loan application from the branch received to the head office at Ahmednagar and term and condition accepted at Ahmednagar.

9) In order to examined the correctness in the submission of the respective counsels, the averment in the plaint is the germane which needs to consider. It cleared from the application of the opponents that the opponents rised objection about the territorial jurdisction of this court. The present dispute is between bank and its member barrower and the bank filed dispute U/s 91 of MCS Act for recovery of loan. Acording the section 91 of the MCS Act,two condition required to fulfilled, firstly the subject matter of the dispute and secondly the parties to the dispute.

10) The counsel of the opponents submitted that, according to section 16(c) of CPC jurisdiction lies to the court in whose jurisdiction the property situated , the main branch of the disputant is at Ahmednagr and branch is at pune and the cause of action arosed at pune. The counsel for the

opponents also point out the O.14 Rule 2(2) of CPC and submitted that the suit is barred and further submitted that all transaction tookplace at Pune.

Per contra, the counsel for the disputant Shri. Deshpande submitted that the averment in the plaint is necessary to decide the jurisdiction, the main branch is at Ahmednagar and loan is sanction at Ahmednagar. The counsel of the disputant Shri. Deshpande also invite my attenation toward the section 20 (c) of the CPC and submitted that the partly cause of action arose at Ahmednagar and hence this court has jurisdiction to decide the dispute.

11) I have gone through the dispute it appears that the disputant bank is a main branch situated at Ahmednagar and the all the opponnets are resident of Pune. It is admitted fact that the properties which were mortgage to the disputant bank are situated at pune. Now let us see the legal provision quoted above by the opponnets. section 16(c) of CPC provides that **Suit to be instituted where subject matter situate-***subject to the pecuniary or other limitation prescribed by any law, suit-*

(a)......

(b).....

(c) for foreclosure, sale or redemption in case of a mortgage of or charge upon immovable property.

Accoring to cluase(c) the jurisdiction lies to the Court within which property is situated. The section16(c) applicable where subject matter situated, but the subject matter ate hand is for recovery of loan The dispute file by bank against borrower member. according to Section 91 of Maharashtra Cooperative Societies Act if any dispute arise betwwean parties mention is clause (a) to (e) of section 91 M.C.S.Act, in reference to the subject matter mention in section(1) of sectin 91 of MCS Act the dispute is required to referred to Co-operative Court and generally such type of dispute filed in the Court whithin whose jurisdiction society/bank situated and not in the Court whithin whose jurisdiction opponents resides. Hence though the properties of opponent are situated at Pune on this ground jurisdiction can be vested to Pune Court. Hence I am not agreed with the contention of opponent Counsel to this extennt.

12) The next contention about the applicability of section 20(c) of CPC as point out by the counsel Shri.Deshpande for the disputant. According to Shri Deshpande partly cause of action airse at Ahmednagar as some of the documents executed at Ahmednagar. The provision 20 (c)enable a plantiff to institute a suit where cause of action wholly or in part arise. The cause of action is a bundle of facts which is required to be proved to grant a relief to party who file suit.

13) In view of the provision 20(c) of CPC whether partly cause of action arise to the dispuatnt to file dispute at Ahmednagar. Firstly turned to examined the averment made in the dispute. The six line of para (1) of dispute starts with " **वादीच्या इतर शाखेपैकी एक शाखा नारायण पेठ, पुणे येथे आहे.**

सदर वाद हा नारायण पेठ, पुणे शाखे संदर्भात आहे. This pleadingof the disputant indicate that dispute is about loan transaction of Narayanpeth Branch Pune of disputant bank. The contention of the disputant that loan amount is sanction after accepting the term and condition of loan by the opponents and sanction letter issued to the opponents by the disputant bank. Now what are the documents executed by the opponents at Ahmednagar to say that partly cause of action arise to disputant .

14) The disputant filed documents on record loan application, sanction letter,Karj Rokha,promissory note,letter of continuity ,hypothication of deed, agreement, Jamin Rokha, Registred mortgage deed etc. All these documents are printed forms in the name of the disputant bank. The loan application indicate the name and seal of the branch office Narayanpeth Pune at the top of the application, it means it was given to the disputant branch Narayanpeth Pune. The other loan documents, on observation appears that the payment of stamp duty and there is seal of payment of such stamp duty on these documents at pune. The mortgage deed also executed at Pune. hence it cleared that the all the documnets are executed at Pune and only the disputant bank issued sanction letter to the opponents and it is regular practice of the bank, when there is branches of the bank at different places, the main branch used to issued sanction letter to the barrower, but the loan documents used to executed at the branch office. Henec merely issuance of sanction letter to the

opponents, it can not be said that partly cause of action arise to the disputant. The disputant in para(11) cause of action para narrated the fact as to how the cause of action arise to the dispuatnt to file the dispute which are "*प्रतिवादी यांनी वादी बँकेकडे प्रथमत: दि.०९/१०/२०१४ रोजी अहमदनगर येथे कर्ज अर्ज करुन रक्कम रु.६,७५,००,०००/- इतक्या कॅशक्रेडिट कर्ज रक्कमेची मागणी केली व वादी बँकेने सदर कर्ज मंजुर केले त्यावेळी घडले. प्रतिवादी क्र.१,२,४ व ५ यांनी दि.०२/११/२०१४ रोजी गहाणखत करुन दिले त्यावेळी घडले. सर्व प्रतिवादींनी सदर कर्जासाठी दि.०३/११/२०१४ रोजी कर्जासंबंधी कागदपत्र करुन दिले त्यावेळी घडले. प्रतिवादीं यांनी मुदतीत ज्या अटी व शर्तीवर कर्ज मंजुर केले होते त्या अटी व शर्तीचे पालन केले नाही त्यावेळी घडले. दि.२९/०३/२०१६ रोजी वादी बँकेच्या हक्कात नुतनीकरणासंबंधी कागदपत्र करुन दिली त्यावेळी घडले. प्रतिवादी क्र.१ यांनी कर्जाच्या अटी व शर्तीनुसार स्टॉक स्टेटमेंट दिले नाही. म्हणून वादी बँकेने दि.१२/१०/२०१६, दि.१५/०२/२०१७, दि.०३/०७/२०१७ रोजी पत्राने कळवून स्टॉकस्टेटमेंटची मागणी केली त्यावेळी घडले आणि त्यानंतर दि.०९/१०/२०१८ व दि.२५/१०/२०१८ रोजी रजिस्टर पोस्टाने नोटीसा पाठवून रक्कमेची मागणी केली त्यावेळी घडले.*

If the above averment seen and examined in the context of the above reason, all dacuments are executed at Pune ,further it appears from the notices filed on record and referred in this para(11) of dispute, that said notices issued by the Narayanpeth Branch Pune to the opponnetsand the said notice the Narayanpeth branch specifically mention that opponnet no.1 applied for loan to the bank that is Narayanpeth branch Pune. When the notices are issued by the naraynpeth Brnach and the documents are executed at Pune, then how it can be said that partly cause of action arise to the disputant at Ahmednagar.hence in light of above reasons the section 20(c) of CPC is not applicable.

15) The counsel of opponents place reliance on Navinchandra N. Majithia Vs.state of Maharatsra (2000)7 Supreme court cases 640. The fact and circumstances in this case and fact in the matter at hand differen hence with due respect is not applicable. The counsel also relied on Mumbai international Airport authority of India Vs. Golden Chariot Airport 2010(10) supreme court cases 422 on the point of doctrine of " *elective estoppel*". The contention of the opponents counselthat dispuatnt bank attched the mortgage properties of the opponents situated at Pune under SARFAESI Act , hence disputant can not availed remedy under section 91 of MCS Act. I am not agreed with the contention of the opponents counsel for the reasons that the disputant bank cerditor has right to attached and sale the mortgage properties secured for the debt and according to section 37 of the SARFAESI Act the remedy to the creditor is additional , hence the doctirne of elective estoppel is not applicable and with due respect said ruling is not applicable.

The next ruling on whcih the opponnets relied is (1991) 4 supreme court cases 270 Patel Roadways Ltd. Bombay Vs.Prasad Trading company and Patel Roadways Ltd. Bombay Vs. tropical Agro. systems Pvt. Ltd. Their lordship held that *suit has to be filed only in the court within whose jurisdiction has subordinate office and not in court within whose jurisdiction it has principal office*. In the matter at hand the dispute filed at principal office of the dispuatnt bank.The ruling is applicable.

16) The disputant counsel Shri Deshpande place relienace on AIR 2002 SC 2402 M/s Shriram city union Finance corporation Ltd. Vs Rama Mishra, *Their Lordship held- civil court- jurisdiction of agreement affecting jurisdiction of court- Not Invalid- it is open for the parties to choose any one of the two competent court to decide their dispute, Once parties bound themself as such, It is not open for them to choose a different jurisdiction.*

In the above matter the parties by way of agreement decide to filed dispute, ifany arise at Culcutta. However in the matter at hand there is no such fact. hence with due respect is not applicable.

Shri Deshpande also place reliance on AIR (2016) Bom.217Managraph India Ltd. Mumbai Vs. Simarq Technologies Ltd. Kolhapur. In this matter plaintiff sued under trade mark Act 1999 or copy right Act 1957- Held *suit can always filed in court having jurisdiction over place where he lives or carries business and if plaintiff is company where company has principal office of regisrted office- plaintiff also has choice to file suit where defedent resdies or work for gain or where cause of action arose- plaintiff has choice to bring suit under 20 of CPC.*

In the matter at hand the disputant bank has principal office/ main branch at Ahmednagar and hence file dispute. but I have held above that cause of action arosed at Pune and the opponents are residing at Pune and branch of the disputant is at Pune, hence competent court at Pune has jurisdiction. there is not no choice to the dispuatnt bank. hence with respect this ruling is not helpful to teh dispuatnt.

It ids also place reliance on AIR 1989 SC 1239, ABC Laminart Pvt. Ltd. and another Vs.A.P. Agencies Salem. In this case there was contract to vest the jurisdiction of court. Hon'ble court held- *it is not against the public policy- more that one court having jurisdiction and contract to vest jurisdiction in one of them-*

In the matter there no such agreement between the disputant and the opponents. The section 91 of the MCS Act only provides the jurisdiction of the court. hence with due respect same is not applicable. The counsel of the disputant lastly relied on 2010 (4) AIR Bom. 664 MalikarjunTransport Vs.Babasaheb Ambedkar Sah. Karkhana Ltd. In this case there was contract at Aurangabad for transport of molasses from karkhana to Aurangabad, suit file at Aurangabad, Plaint returned for presentation at Osmanabad hence Their lordship held suit filed at Aurngabad can not be faulted. In the matter at hand fact is different, the opponents and the disputant branch at Pune made transaction at Pune, opponents are resident at Pune and cause of action also arise at Pune hence with respect is not applicable.

17) Considering the averment in the dispute and the documents produce on record, I have no hesitation to accept the contention of the opponents and held that this court has not jurisdiction to try the dispute and only co-operative court Pune has jurisdiction to decide the dispute. The section and order of CPC mention above under which the application filed is not provide to returned the dispute and under order 7 rule 10 of CPC the dispute needs to returned to the disputant for the presentation to proper court at Pune.

In light of above reasons I proceed to pass following order.

ORDER

1) The application is hereby allowed.

2) The dispute is hereby returned to the disputant for presentation before Co-operative court Pune.

3) The disputant shall present dispute before Co-operative court, Pune within the period of one month from the date of this order.

4) No order as cost.

Place : Ahmednagar
Date : 24/06/2022

(B.S.Lakhote)
Judge,
Co-operative Court,
Ahmednagar