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# PLACE OF SUING- AN ANALYSIS OF THE CIVIL JURISDICTION OF COURTS

## A Meaning of Cause of Action and Jurisdiction of Court-Layman Language:

- 1 Cause of action in common legal parlance is the existence of those facts which gives a party a right to seek judicial remedy against another.
- 2 For e.g. A and B enter into a contract. B may commit a breach of contract. A may say that he has a cause of action for breach of contract because the B broke a promise.
- 3 Jurisdiction is the authority by which a Court has to decide matters that are litigated before it, or to take cognizance of matters presented in a formal way for its decision.
- 4 For e.g. parties decide in their contract that Courts in Delhi shall have the jurisdiction to hear the matter in case any dispute arises.

## B Jurisdiction of Court under the Code of Civil Procedure, 1908(for short “CPC”):

- 1 Section 9 of the CPC lays down that all courts in India shall have jurisdiction to try the suits of civil nature, except for the suits whose cognizance is expressly or impliedly barred by the CPC.
- 2 The CPC lays down two types of jurisdiction; the pecuniary jurisdiction and the territorial jurisdiction based on which courts shall entertain the case.
- 3 Section 6 of the code states that except where expressly laid down in the code, no court can exercise pecuniary jurisdiction over the suits the amount or value of the subject matter, exceeds the pecuniary limits of its ordinary jurisdiction.
- 4 The territorial jurisdiction is provided under sections 16, 17, 18, 19 and 20 of CPC.
- 5 It refers to the place within whose jurisdiction the courts are entitled to try the case against the defendant.
- 6 Section 16 deals with the place of suing of suit where the subject matter of the suit is situated.
- 7 Section 17 deals with the place of suing of suits relating to immovable property.
- 8 Section 18 deals with place of suing where the jurisdiction of the courts is uncertain in suit relating to immovable property.

- 9 Section 19 deals with the place of suing of suits relating to compensation for the wrongs done to persons or movable property.
- 10 Section 20 of the CPC is an important section for the suits relating to commercial contracts as all the commercial cases are dealt under this section.
- 11 As per section 20 of the CPC, if the suits are not of the nature described under section 16, 17, 18 or 19, the suit shall be instituted where the defendant resides or cause of action arises.
- 12 Section 20 of the CPC further lays down that a suit may be instituted either at the place where the defendant ordinarily resides or carries on business or where any part of the cause of action arises.
- 13 Section 20 makes it clear that more than one Court can have the jurisdiction to try a suit
- 14 There may also be situations where the cause of action arises in multiple places over which different courts have jurisdiction.
- 15 Every such suit shall be instituted in a court within the local limits of whose jurisdiction:
  - a The defendant, or each of the defendant 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
  - 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 is such a case either the leave of the court is given, or the defendant who do not reside, or carry on business, or personally work for gain as aforesaid, acquire in such institution; or
  - c The cause of action, wholly or in part arises.

## C Cause of Action under CPC:

- 1 Cause of Action means a bundle of material facts which it is necessary for the plaintiff to prove in order to get relief in the suit.
- 2 But it does not comprise every piece of evidence



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which is necessary to produce in order to prove such material facts.

<sup>3</sup> Section 20(3) of CPC provides that a suit shall be instituted where the cause of action, wholly or in part arises.

<sup>4</sup> The Indian Contract Act, 1872 (for short “**Contract Act**”) does not deal with questions of procedure as CPC does.

<sup>5</sup> But, where the suit falls under section 20 (c) of the CPC and the question for determination is to find out the place where the contract has taken place either in whole or in part, the determination of the question should be decided in the light of principles governing the Contract Act.

#### **D Judicial Interpretation with regard to Cause of Action and Jurisdiction of Court under CPC:**

<sup>1</sup> In the case of *Mohanakumaran Nair v. VijayaKumaran Nair*, AIR 2008 SC 213, the Supreme Court held that:

<sup>a</sup> Section 20 of the CPC embodies, that the question in regard to the jurisdiction is required to be determined with reference to the date on which the suits is filed and entertained and not with reference to a future date.

<sup>b</sup> The material date to invoke territorial jurisdiction under section 20 of the CPC is the one of the institutions of the suit and not the subsequent change of residence.

<sup>c</sup> Change of residence subsequent to decision of the court would not confer territorial jurisdiction in the court which it did not have.

<sup>2</sup> In *A.B.C Laminart v. A.P. Agencies*, AIR 1989 SC 1239 the Hon’ble Supreme Court of India tried to explain what kind of actions would constitute ‘cause of action’ in contractual disputes. The Court held:

<sup>a</sup> In a suit for damages for breach of contract, the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred.

<sup>b</sup> The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made.

<sup>c</sup> The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated.

<sup>d</sup> The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have (been) performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else

<sup>e</sup> In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract.

<sup>f</sup> In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears.

#### **E Judicial Interpretation of Exclusive Jurisdiction Clauses in a Contract**

<sup>1</sup> In drafting dispute resolution clauses in commercial contracts, parties contemplate, inter alia, the most convenient and affordable forums to resolve their disputes.

<sup>2</sup> However, a question they are faced with is the extent of autonomy they can exercise in choosing an appropriate forum.

<sup>3</sup> In order to avoid the hassle of litigating in a forum which is inconvenient or time-consuming, parties often mutually agree to litigate their disputes before a specific court. Such clauses are drafted taking into account the common economic and geographic convenience of the parties.

<sup>4</sup> In the case of *Hakim Singh vs. Gammon India Ltd.* (1971)1SCC 286 the Court held that:

<sup>a</sup> Where two Courts have territorial jurisdiction to try the dispute between the parties and the parties have agreed that dispute should be tried by only one of them, the court mentioned in the agreement shall have jurisdiction.

<sup>5</sup> In the case of *M/s Swastik Gases Pvt. Ltd v. Indian Oil Corporation Limited* (2013) 9 SCC 32, the Supreme Court provided much-needed clarity by stating that:

<sup>a</sup> The absence of words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” is neither decisive nor does it make any material difference in deciding the jurisdiction of a court.

<sup>b</sup> The three-judge bench held that the very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute.

<sup>c</sup> It was observed that where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, that an inference may be drawn that parties intended to exclude all other courts.

<sup>6</sup> In the case of *Shridhar Vyapar v. Gammon India* GA 44 of 2018, the Calcutta High Court held:

<sup>a</sup> Parties can be bound to an agreement containing a clause conferring exclusive jurisdiction on certain courts, if by their conduct subsequent to such selection, it can be shown that the parties intended to give effect to the contract.

<sup>b</sup> The exception being where despite such a clause and a consensus to act by it, the cause of action arose wholly in another jurisdiction and second, it would be oppressive to drag the parties to their chosen forum having regard to other factors.

#### **F Conclusion:**

<sup>1</sup> The CPC does not contain any special category of provisions dealing exclusive with the jurisdictional disputes arising out of commercial contract cases.

<sup>2</sup> In general, all the commercial disputes are dealt by section 20 (c) of the CPC

<sup>3</sup> To avoid the hassle of litigating in a forum which is inconvenient or time-consuming, parties often mutually agree to litigate their disputes before a specific court.

<sup>4</sup> These decisions of the Supreme Court are a welcome clarity on the issue that often arises with the parties to a contract approaching Courts whose jurisdiction has been ousted by the terms of the exclusive jurisdiction clause in the agreement.