

## JURISDICTION AND PLACE OF SUING

“Where there is a right, there is a remedy” is a common saying that is used to address a person’s grievance. When a person’s right is violated or curtailed, he may take recourse to legal proceedings to seek remedy or relief by way of compensation, damages etc. However, such an approach ought to only be before the appropriate Forum or Court, and such judicial Forum or Court should encompass an authority or power to deal with such matters and to pass appropriate orders. Jurisdiction is a broader concept and it purely depends on the nature of the suit and the relief sought.

There are also several statutes and legislations which limits the jurisdiction to specific Courts and Tribunals irrespective of the one discussed below. For example, under the Insolvency and Bankruptcy Code, 2016 an Application is preferred before the National Company Law Tribunal, and, under the Recovery of Debts and Bankruptcy Act, 1993 a claim is preferred before the Debt Recovery Tribunal. However, in all other civil cases, jurisdiction is based on the provisions set out in the Code of Civil Procedure, 1908.

As per the Code of Civil Procedure, 1908, several factors have to be taken into consideration to determine the appropriate jurisdiction for initiation of legal proceedings. These factors for instituting civil cases are discussed below:

### **What is Jurisdiction?**

Jurisdiction means the power or authority of the Court or Tribunal to decide on a matter that is litigated before it. In a simple sense, the jurisdiction ascertains the power of the Court or Tribunal to determine the cause of action and to decide on a case.

### **How to ascertain the Jurisdiction?**

Jurisdiction can be ascertained by the following considerations. It may be noted that these considerations are not in the alternative, but to be considered as applicable:

#### **1. Pecuniary Jurisdiction<sup>1</sup>**

Any suit must be instituted in a Court of lowest grade competent to try it. The word pecuniary deals with money or value of the suit. Generally, it is determined by the valuation of the suit made by the plaintiff at the time of institution of the suit. If the Court finds the valuation overvalued or undervalued, then the Court by itself evaluates the suit and directs the party to approach the appropriate forum/court.

#### **2. Territorial Jurisdiction<sup>2</sup>**

A suit is instituted in the appropriate forum/court when considering where the movable or immovable property is situated, or where part cause of action arises:

---

<sup>1</sup> Section 15, Code of Civil Procedure, 1908

<sup>2</sup> Section 16 – Section 20, Code of Civil Procedure, 1908

### ➤ Suits relating to Moveable Property

In such a type of suit, and one which is for compensation for wrong done to a person or regarding a moveable property, the suit may be instituted either where the wrong is committed, or where one or several defendants voluntarily resides and personally works. A typical example of this is a blatant breach of contract or commercial transaction between the parties with regard to moveable property.

### ➤ Suits relating to Immovable Property

Ideally, the suits relating to wrongful losses to immovable property can be instituted in the court within the local limits of whose jurisdiction such immovable property is situated. Alternatively, it may also be instituted where the defendant (or any of the Defendants) voluntarily resides and carries on business and personally works for gain.

### ➤ Other suits Where Cause of Action Arises

Cause of action refers to facts or combination of facts that gives the person a legal right to seek judicial redress or relief against another person. In the case of **A.B.C. Laminart Pvt. Ltd. & Another v A.P. Agencies, Salem<sup>3</sup>**, the concept of cause of action is explained as a bundle of facts which was taken with the law applicable to them gives the plaintiff a fight to relief against the defendant.

For instance, there may be commercial transactions where the contract was carried out in different places. The Supreme Court, in the case cited, explains that 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 place / places where the breach occurred.

### Jurisdiction of a particular court, when mutually agreed by the parties

It is often seen, that commercial contracts contain a jurisdiction clause, where the parties mutually agree to institute any dispute, before a Court of a particular jurisdiction, thereby ousting any other competent Court to adjudicate the matter. The Supreme Court case in ABC Laminart emphasizes that such clauses will be legally valid, only if part cause of action (of the contract) has arisen in the mutually agreed jurisdiction. In essence, even if the parties mutually agree to a jurisdiction, the Court will not be competent to adjudicate the matter if part cause of action has not arisen in such a place.

### Jurisdiction as set out in invoices

Certain times, jurisdiction is mentioned on the overleaf or at the bottom of the invoices, nestled under the words "Terms and Conditions". The top Court, in various judgments, have analyzed the binding nature of such a term, and have opined that it depends on the circumstances in which the same is issued to the other party. Essentially, an invoice is only a proof of supply or provision of goods / services. In order to determine the binding nature

<sup>3</sup> 1989 (2) SCC 163

of a jurisdiction clause contained in the Terms and Conditions, the party enforcing such a term needs to establish:

- i. that the parties were *ad idem* in respect of all the terms (i.e., the parties explicitly consent to all the terms in the invoice), and also,
- ii. that part cause of action arose in the jurisdiction mentioned in the invoice.

### **3. Jurisdiction as to subject matter**

The litigant may institute a suit at any court within whose local jurisdiction the subject matter of the suit is allotted. The said court should also be competent and empowered to try such suits which consists of different subject matters, like suits for testamentary succession, divorce proceedings, motor vehicle accident compensation *etc.* In such case, the litigant ought to approach such appropriate court for seeking the remedy depending upon the subject matter.

### **Conclusion**

If a particular Court does not possess adequate jurisdiction, taking into consideration the above factors, then the Court will be considered as lacking jurisdiction and any adjudication by such a Court would amount to irregular exercise of jurisdiction. Subsequently, the decision drawn by such Court lacking jurisdiction would be considered as void or voidable depending upon the circumstances of each case.

*Disclaimer: This Newsletter has been prepared for general information of our client and is based on our interpretation of law as it stands today. The same shall not be construed as a legal opinion on the subject matter. We recommend obtaining appropriate legal advice before taking any action pursuant to this note.*