IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 485 of 2007

Reserved on: 24.3.2026

Date of Decision: 7.5.2026

Sunita Shandil ...Appellant

Versus

DAV College Committee & anr. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***Yes.***

For the Appellant : Mr Ajay Kumar, Senior Advocate, with Mr Rohit, Advocate.

For the Respondents : None.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 13.8.2007, passed by learned District Judge (Forests), Shimla, HP, (learned Appellate Court), vide which the judgment and decree dated 22.11.2004, passed by learned Civil Judge (Senior Division), Shimla, HP (learned Trial Court) were set aside. *(The parties shall hereinafter be referred to in the same*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court for the recovery of ₹1,03,293/- along with interest at the rate of 9% per annum. It was asserted that the plaintiff was working as a Principal in DAV Centenary Public School, Rajgarh, District Sirmour, HP. She got the school affiliated with CBSE. She was a member of the Local Management Committee (LMC) of DAV Centenary Public School, Rajgarh. The Local Management Committee resolved on 4.6.1998 to request the plaintiff to advance a loan of ₹67,067/- to the school, which would be returned in easy instalments before April, 1999. The plaintiff deposited a sum of ₹67,067/- in the savings bank account of the school on 4.6.1998. The defendants failed to pay the amount to the plaintiff. She served a notice upon the defendants, but in vain. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by filing a written statement taking preliminary objection regarding lack of maintainability,

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cause of action and jurisdiction, the suit having not been properly valued for Court fees and jurisdiction, the plaintiff being estopped from filing the present suit by her act and conduct, and the suit being barred by limitation. The contents of the plaint were admitted to the extent that the plaintiff was working as a Principal in DAV Centenary Public School, Rajgarh. It was specifically denied that the Local Management Committee had requested the plaintiff to advance a loan which was to be repaid in monthly instalments. It was asserted that the plaintiff had concocted a false story to extract money from the defendants. Hence, it was prayed that the suit be dismissed.

4. No replication was filed.

5. Learned Trial Court framed the following issues on 22.12.2001:-

1. Whether plaintiff is entitled to recover the suit amount as alleged? OPP.
2. Whether this suit is not maintainable as alleged? OPD.
3. Whether this suit is time-barred? OPD.
4. Whether this Court has no jurisdiction? OPD.
5. Whether the plaintiff is estopped from filing this suit by her act and conduct? OPD.
6. Whether the plaintiff has no cause of action? OPD.
7. Relief.

6. The parties were called upon to produce the evidence, and the plaintiff examined Ved Prakash (PW1), Vijay (PW2) and herself (PW3). The defendants examined HC Sarkaik (DW1).

7. The learned Trial Court held that the statement of account (Ex.PW2/A to Ex.PW2/F) shows that an amount of ₹67,067/- was deposited by the plaintiff in the account of defendant No.2. The defendants failed to explain the deposit, and the plaintiff's version was to be accepted as correct, that the amount was deposited as a loan. There is no evidence of the repayment of the loan. The office of the defendant is located at Shimla, and the Courts at Shimla had territorial jurisdiction to hear and entertain the present suit. Hence, the learned Trial Court answered Issue No.1 in the affirmative, Issue Nos. 2 to 6 in the negative and decreed the suit.

8. Being aggrieved by the judgment and the decree passed by the learned Trial Court, the defendants filed an appeal, which was decided by the learned District Judge (Forests), Shimla (learned Appellate Court). Learned Appellate Court held that the plaintiff had relied upon the carbon copy of the resolution, which did not mention any amount, and was not

sufficient to prove the plaintiff's case. The loan was advanced at Rajgarh and was to be repaid at Rajgarh. The Courts at Shimla did not have the jurisdiction merely because a branch office of the school is located at Shimla. Learned Trial Court erred in decreeing the suit. Hence, the appeal filed by the defendants was allowed, and the judgment and decree passed by the learned Trial Court were set aside.

9. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the plaintiff has filed the present appeal, which was admitted on the following substantial questions of law on 4.3.2008: -

1. Whether the findings of learned First Appellate Court with respect to the point of territorial jurisdiction are a result of complete misreading of pleadings, evidence and the law as applicable to the facts of the case and particularly documents Ex.PW1/A and Ex.PW2/A to Ex.PW2/F and as such palpably erroneous and illegal, and if so to what effect?
2. Whether the First Appellate Court failed to formulate proper points for determination, which has affected its judgment and resulted into a miscarriage of justice to the appellant?
3. Whether the learned First Appellate Court below has grossly misrepresented and misappreciated the evidence and the law as applicable to the facts of the case, and if so, to what effect?

10. I have heard Mr Ajay Kumar, learned Senior Advocate, assisted by Mr Rohit, learned counsel for the appellant/plaintiff. None appeared on behalf of the respondents on 28.2.2026 and 24.3.2026, hence none could be heard on their behalf.

11. Mr. Ajay Kumar, learned Senior Advocate for the appellant/plaintiff, submitted that the learned Appellate Court erred in reversing the well-reasoned judgment passed by the learned Trial Court. Learned Appellate Court relied upon the carbon copy of the resolution, but failed to notice the statement of account. The principle that the debtor follows the creditor applies in civil law; the creditor was residing at Shimla, and the Courts at Shimla had territorial jurisdiction to hear and entertain the present suit. Learned Appellate Court erred in holding that the Courts at Shimla had no jurisdiction. Hence, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court be set aside.

12. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No.1:

13. Learned Appellate Court held that the loan was advanced at Rajgarh and the Courts at Shimla had no jurisdiction. This conclusion ignored the principle that the debtor must seek the creditor. It was laid down by the Full Bench of the Madras High Court in ***Employees' State Insurance Corporation v. M. Haji Md. Ismail Sahib, 1959 SCC OnLine Mad 123,*** that where no place is specified, the common law principle that the debtor must seek the creditor will apply. It was observed:

> "The general common law rule is that where no place of payment is specified, either expressly or by implication, the debtor must seek the creditor. ***Mahalaxmi Bank Ltd.*** **v.** ***Chotanagpur, J. and C Assn.A.I.R. 1955 Cal. 413*****,*** ***Gopiram*** **v.** ***Shankarrao 1950 Madh. B. 72. Ramachandra Tajmal*** **v.** ***Mahanlal*** **A.I.R. 1930 Nag. 207,** ***Gokul Das*** **v.** ***Nathu A.I.R. 1926 All. 477*****,** ***Drexal*** **v.** ***Drexal (1916) 1 Ch. 251*****,** ***Megraj*** **v.** ***Johnson A.I.R. 1915 Nag. 65. Yar Mahomed Khan*** **v.** ***Amiruddin 20 I.C. 683. Raman Chettiar*** **v.** ***Gopalachari 31 Mad. 223*****,** ***Motilal*** **v.** ***Surajmal 30 Bom. 167*****,** ***Buttappa*** **v.** ***Virabhadrappa 7 Bom. L.R. 993*****,** ***Ball*** **v.** ***Antwerp London and Brazil Lines (1891) 1 Q.B. 103****.*
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> It is laid down by Littleton J that the obligor of a bond, conditioned for the payment of money on a particular day, is bound to seek the obligee, if he be in England, and on the set day to tender him the money. Otherwise, he shall forfeit the bond: ***Cranley*** **v.** ***Hillery (1813) 105 E.R. 327****.* The common law rule is a reasonable rule, and it is in conformity with justice and equity because it recognises the obligation of the debtor to pay his debt, and that obligation can only be discharged by the debtor going to

his creditor and repaying the amount, and the common law rule imposes this obligation only when there is no express contract to the contrary: ***Bherumal* v. *Sakhavatmal* *A.I.R. 1956 Bom. 111***. The principle is that when a man agrees to do any particular thing, he must do all that is necessary. If it is to pay money to A, on a particular day, he must seek A; ***Seward* v. *Palmer (1815) 129 E.R. 390***. S. 49 of the Indian Contract Act does not preclude the application of the rule of English Common Law that the debtor must seek out his creditor and pay his debt where the creditor happens to reside, unless there is an arrangement to the contrary: ***M. Ramalinga Iyer* v. *T.K. Jayalakshmi, AIR 1941 Mad. 695*, *K.S.P.L.A. Annamalai Chetti* v. *Daw HninA.I.R. 1936 Rang. 251*, *Muhammad Esuff Rowther* v. *Hattem and Co. A.I.R. 1934 Mad. 581***."

14. A similar view was taken in ***S.P. Consolidated Engineering Co. (P) Ltd. v. Union of India*, *1965 SCC OnLine Cal 46: AIR 1966 Cal 259***, wherein it was observed at page 263:

> "**15.** It is next contended that, in any event, the money is payable at Calcutta, within the jurisdiction of this Court. It is the plaintiff's case that no place of payment is indicated in the contract either expressly or by implication. Therefore, the rule will apply that it is the duty of the debtor to find out the creditor and make payment at the creditor's place of business, which, in the instant case, is at 10-A, Vivekananda Avenue, within the jurisdiction of this Court. I hold in favour of the plaintiff that the registered office of the plaintiff is at 10-A, Vivekananda Avenue, within the jurisdiction of this Court, even though the plaintiff had a branch office at Bilaspur during the continuance of the work and till the work under the contract was completed. It seems to me that the Railway Administration knew that the registered office of the plaintiff is at Calcutta, if the rule above referred to applies to the instant case, and it is held that no place of

payment is expressly or impliedly provided in the contract, then money must be held to be payable at Calcutta, within the jurisdiction of this court. Direct authority in support of this argument is the decision of the Appeal Court in the case of ***State of Punjab v. A.K. Raha (Engineers) Ltd., AIR 1964 Cal 418***. In the cited case, the contractor instituted a suit against the State of Punjab on a contract exactly similar to the contract in the instant case. After the works had been completed and the contractor had wound up its office at the work site, which was outside the jurisdiction of the Court, a dispute arose in respect to the contractor's claim in the Final Bill. The State of Punjab, having repudiated its liability, a suit was filed in this court. The jurisdiction of this court was challenged on the ground that no part of the cause of action arose within the jurisdiction of this Court. The plaintiff contended that the State of Punjab was under an obligation to pay the contractor's debt at Calcutta, where the plaintiff had its place of business, and hence a part of the cause of action arose within the jurisdiction of this Court. The obligation to pay at the plaintiff's place of business was contended to be founded on twofold grounds. There being no place of payment expressly indicated in the contract, the contractor's due was payable, by necessary implication, at the contractor's place of business, on the facts of the case. Alternatively, the general rule will apply to the effect that where no place of payment is specified in the contract, either expressly or impliedly, the debtor must seek the creditor and pay at the creditor's place. The obligation to pay the debt involves the obligation to find the creditor and to pay him at the place where he is when the money is payable. Bachawat, J., who delivered the judgment of the Appeal Court, upheld both the contentions. He found that by necessary implication the debt was payable at the plaintiff's place of business. He further held that if by necessary implication the debt was not payable at the plaintiff's place of business, the above rule will apply, and the money was payable at the plaintiff's place of business.

A number of decisions, both of English Courts and of Indian Courts, were cited in support by learned Counsel appealing for either party. Mr Sen, learned counsel appealing for the Government, vigorously contested this proposition and cited a number of authorities against the applicability of the rule. The decisions relied on are both English and Indian. It is contended that the rule is outmoded and was applicable only in a society where there were no big corporations, Banking Corporations or Government carrying on business in a big way. In modern society, big corporations and Governments carrying on business in a big way invariably have a pay office from where payments are made to creditors. If so, then even if the contract does not expressly indicate the place of payment, the Court may very well hold that by necessary implication the place of payment is the place where the Bank, Corporation or Government has its pay Office and not the place where the creditor resides or carries on business. If the Court can determine impliedly, though not expressly, that the debt was payable at the debtor's place, then the rule ex hypothesi has no application. The rule is inapplicable not because it is outmoded but because the condition of its applicability does not exist. The rule is only applicable when the place of payment is not stated expressly or by implication in the contract, and when the Court can find out from facts proved that the debt was payable at the debtor's place, there is no scope or occasion to apply the rule. The rule is also held to be inapplicable in case the creditor is not within the realm. In such cases, the Court will construe a negative intention. I consider the rule to be universal in its application based, as it is, on justice and equity. It is emphatically not a technical rule of English law, wrongly made applicable to India. It is a beneficent rule, inflexible and of universal application. It is not correct to consider this rule to be nothing more than a presumption, rebuttable by contrary evidence. If there is other evidence to indicate the place where the parties intended that the debt was payable, then the Court will hold that such place

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of payment has been indicated in the contract itself, though not expressly, but by implication. It is only when the Court is unable to do so that the occasion arises for applying this rule. I am, therefore, unable, with respect to agree with the reasoning given in some of the Punjab decisions cited by Mr. Sen including the Full Bench decision of the Punjab High Court in the case of ***Firm Hiralal Girdhari Lal v. Baijnath Hardia Khatri, AIR 1960 Punj 450 (FB)*** I note that in the Punjab case none of the Calcutta cases on the point has been cited and considered. In my judgment, once the Court finds that no place of payment is expressly stated in the contract nor is it possible to find such place of payment indicated in the contract by necessary implication, on the relevant evidence on record, the Court must apply the rule, as a rule of justice, equity and good conscience. There is no scope for the application of the rule in cases where the Court can find, on construction, a positive or a negative intention as to the place of payment—positive intention to pay not at the creditor's place, as for example where the debtor-bank or company, to the knowledge of all, pays its debt to the creditors at its place of business or negative intention when the creditor resides outside the realm. In the last case, the Court will hold that by necessary implication there was no obligation for the debtor to find out the creditor outside the realm and in consequence the debt is payable not at the creditor's residence or place of business but at the debtor's. We must keep in mind that the question becomes important for the purpose of determining the jurisdiction of the Court, and for such purpose, the residence or place of business of a foreign creditor is irrelevant. In any event, it is too late in the day to contend in this court that the rule does not apply. There are decisions binding on this Court, and it is not open to me to hold otherwise."

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15. Andhra Pradesh High Court also took a similar view in ***Mariamunnisa Begum v. Noor Mohammad Saheb*, *1963 SCC OnLine AP 181: (1965) 2 ALT 16*** and observed at page 27:

> "**20.** The learned Counsel for the respondent has relied upon a Division Bench ruling of the Madras High Court in ***Ramalinga Iyar v. Jayalakskmi. [(1941) I M.L.J. 784: AIR 1941 Mad 695.]*** This decision does not at all indicate that the English common law doctrine that a debtor should follow his creditor and pay him does not apply to India. If anything, the judgment of Leach, C.J., indicates the contrary view. But the common law doctrine was not applied in ***Ramalinga Iyer v. Jsyalakshmi [(1941) I M.L.J. 784: AIR 1941 Mad 695***.] because, as a matter of inference and interpretation of the contract and the circumstances of that case, it was clear that the debtor was to deliver the articles at a particular place different from where the suit was laid. It is well established that the rule that the debtor should seek out the creditor so as to pay him will apply only where the contract does not specify the place of performance or such a place cannot be implied from the terms of the contract or the circumstances of the case. If the contract specifies that the debt is to be repaid or the goods are to be re-delivered at a particular place, then the rule that the debtor should seek the creditor cannot be invoked. So also if, by implication, a certain place for repayment or re-delivery can be predicated, the common law rule cannot come into operation. Therefore, in ***Ramalinga Iyer v. Jayalakahmi [(1941) I M.L.J. 784: AIR 1941 Mad 695.]*** their Lordships held that the goods were to be re-delivered at a particular place as a matter of necessary implication arising from the circumstances of the case, and consequently the rule that the debtor should seek out the creditor was not applied. It follows that ***Ramalinga Iyer v. Jayalakshmi [(1941) I M.L.J. 784: AIR 1941 Mad 695.]*** is not an authority for the proposition that the common law rule does not apply to this country or does not apply

to a case like the present where the place for the return of the jewels was not specified nor could it be inferred as a matter of necessary implication from the circumstances of the case. In such a case, the common law rule that the debtor should seek out the creditor will apply.

21. ***Halsbury, in volume VII, Page 1956***, stated the position as follows:

> "Where no place for performance is specified either expressly or by implication, from the nature and terms of the contract and the surrounding circumstances, and the act is one which requires the presence of both parties for completion, the general rule is that the promissor must seek out the promisee and perform the contract wherever he may happen to be. This rule applies not only to contracts for the payment of money but to all promises for the performance of which the concurrence of the promisee is necessary."

22. The English rule has been thus stated by Bowen, L.J., in ***The Eider. [(1893) P. 119 (C.A.).]***

> "The general rule is that where no place of payment is specified either expressly or by implication, the debtor must seek his creditor. In ***Haldane v. Jaknson (1853) 8 EX. 689)***, it was held that a covenant for payment of rent when no particular place of payment is mentioned is analogous to a covenant to pay a sum of money in gross on a day certain, in which case it is incumbent on the covenator to seek out the person to be paid and pay or tender him the money. In the judgment in that case, the conclusion to the same effect, arrived at on the authorities by Parke B. in *Poele* v. *Tumdridge* (1837) 2 M. & W. 223, is relied upon. Most of the cases are collected in *Fessard* v. *Mugnier* (1865) 18 C.B.N.S. 286)."

23. A Division Bench of the Calcutta High Court has dealt at length with the applicability of the common law doctrine that a debtor should find his creditor and pay him, in ***Jagadish Chandra Sikdar v. Smt. Santimoyee Choudhuir [AIR 1961 Cal 321]***. This decision has also

> reviewed the relevant case law on the subject. The several authorities discussed there show that this rule is applicable to this country also, although it cannot be invoked in the case of negotiable instruments.
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> **24.** I have no doubt that in the instant case, the defendant is in the position of a debtor and the plaintiff in the position of a creditor. Therefore, the defendant, who had been specifically called upon by the plaintiff, was bound to deliver to her the hiba jewels or pay their price at the place where she resided. The learned Counsel for the respondent-defendant has conceded that so far as the suit relates to Mahar, the Bapatla Court has jurisdiction. I fail to see why, on principle, that Court should not have jurisdiction in respect of the claim for jewels also. I therefore differ from the view of the trial Court and hold that the Court of the Subordinate Judge, Bapatla, had jurisdiction to try the suit in respect of the hiba jewels also.

16. Delhi High Court also took a similar view in ***L.N. Gupta v. Tara Mani, 1983 SCC OnLine Del 155*** and observed:

> "**5.** In England, in a situation of this kind, one of the basic rules has been that the creditor should seek the debtor, worked out in practice, it means that the debtor should make payment at the place where, at the relevant time, the creditor lives, carries on business or works for gains, as the case may be. Mr Gopal Narain, for the respondent, urged that this rule is as well applicable to the case under consideration.
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> **6.** In 1481, in his Estates and Tenures, Sir Thomas Littleton observed: "the feoffor is bound to seek the feoffee, if he be then in any other place within the realm of England". According to Sheppard's Touchstone, "when an obligation is to pay a sum of money, do any like transitory thing to the obligee on a day certain, but no place is set down, it must be done to the person of the obligee wheresoever he be, and for this purpose, the

obligor must at his peril seek out the obligee if he be *intra qua-tuor maria (infra regnum Angliae)* but if he be not within the kingdom, he is not bound to seek him, and yet the condition is not broken. And if the thing to be done be either local, i.e. such a thing as must be done in or at a place certain, as the making of a feo:7ment of land, payment of rent or the like, in this case the thing must be done at that very place and a tender of doing it in that place is a sufficient performance of the condition." The simple reason for this is that the obligee has contracted to do so: ***Haldane v. Johnson, (1853) 8 Exch. 689***. In 1844, in ***Walton v. Mascall, (1841) 13 M. & W. 452***, Parker B. said: "A request for payment of a debt is quite immaterial, unless the parties to the contract have stipulated that it shall be made; if they have not, the law requires no notice or request but the debtor is bound to find out the creditor and pay him the debt when due." "It behoveth him that made that obligation to seek him to whom the obligation is made, if he be in England.": ***Fessard v. Mugaier (1865) 18 C.B. (N.S.) 286***. In ***Robey & Co. v. The Snaefell Mining Co. Ltd., (1888) 20 QBD 152***, there was no definite agreement as to where the money was to be paid. Stephen J. observed that, since the debtors had to pay for the goods, it was their duty to send or bring the money to the creditors. This, in practice, would impose little inconvenience on the defendant. In ***Thorn v. City Rice Mills (1889) 40 Ch.D. 357***, there were two places named. It was held that it was for the person to whom payment is to be made to fix the place at which he will be paid. Until he has selected the place at which he will be paid, there can be no default. In ***Thompson v. Palmer (1893) 2 QBD 80***, there was no express provision as to the place of payment. Lopes L.J. said that we must draw the best inference we can from the terms of the contract and, to some extent, from the surrounding circumstances. The reasonable inference in the case was that the payment was to be made in a place where the plaintiff carried on business, and he would probably be and could give a discharge for the money or where he would have an agent who could. He rejected the

suggestion that the payment might be tendered at any place and that the plaintiff would be bound to take it if so tendered. In ***The Eider (1893) CA 119***, there was no place specified in the contract for payment. What then is the ordinary rule? Lord Esher M R. answered that the debtor must follow his creditor, and must pay where the creditor is. Bowen L.J. answered that the general rule is that where no place of payment is specified either expressly or by implication, the debtor must seek his creditor. "If no certain place be appointed in the contract for performance, and it requires the presence of the promisee, it must, in general, be made or tendered to him, wherever he may be; subject to the condition in some cases of his appointing a proper place.": Leake on Contracts (1921 ed.). These are the dimensions of the rule.

7. Despite ***Soniram Jeet Mull v. R.D. Tata and Company Ltd., AIR 1 27 PC. 156***, a controversy has been carried on whether this principle is applicable in India. The contract in that case did not say where the money was to be paid. The Privy Council observed that the implication was indisputable that they were to be paid at the place where the respondent's firm was. Such inference can justly be drawn from the terms of the contract itself or from the necessities of the case, involving in the obligation to pay the creditor, the further obligation of rinding the creditor so as to pay him. A Full Bench decision in ***Firm Hira Lal Girdhari Lal v. Baij Nath Hardial Khatri, AIR 1960 Punjab 450***, came to hold that in order to find whether the money was agreed exoressly or impliedly to be paid within its territorial jurisdiction, the court is entitled to take into consideration the contract, its attending circumstances, the creditor's ordinary place of residence or business and the course of dealings between the parties including all the other factors relevant in a given case, but it cannot assume jurisdiction solely on the basis of the English common law rule that where there is no express agreement that payment is to be made at a particular place, a debtor must seek his creditor as that rule is not

applicable in India, as a matter of law, to determine the forum where the suit is to be instituted. ***Manohar Oil Mills v. Bhawamdin AIR 1971 All. 326***, and ***Ram Subramaniam v. Ranga Rathan, 1978 Ker. L.T. 906***, have found that to the cases in which Section 49 of the Contract Act does not apply, the common law doctrine applies 'not as a rule of law but as a rule of evidence'. I am in respectful agreement with the statement, but partly. What is a rule of evidence, if it is not a rule of law? 1, therefore, agree that the common law rule should be invoked in such cases not merely as a rule to help locate the forum but as a part of the law relating to contractual obligations where the statute is silent on the matter. Avadh Behari J. has, therefore, with his usual caution, concluded that we cannot totally exclude the application of this rule from our law: ***National Building Contraction Corporation Ltd. v. The Vydsa Bank Ltd., ILR. 1981, 1 Delhi 623***. In ***State of Punjab v. A.K. Raha (Engineers) Ltd., AIR 1964 Cal. 418***, it was observed:

> "Where no place of payment is specified in the contract either expressly or impliedly, the debtor must seek the creditor; the obligation to pay the debt involves the obligation to find the creditor and to pay him at the place where he is when the money is payable."

8. The position of law could not have been stated more categorically than it was in ***S.P. Consolidated Engineering Co. (P) Ltd. v. Union of India, AIR 1966 Cal. 259***. The learned Judge said:

> "The English Common Law Rule that 'a debtor must seek the creditor' is universal in its application, since it is founded on justice and equity. It is surely not a technical rule of English law, wrongly made applicable to India. It is a beneficial rule, inflexible and is of universal application. The rule cannot be said to be nothing more than a presumption rebuttable by contrary evidence. When there is evidence to indicate the

> place where the parties to a contract intended that the debt was payable, then the court will hold that such place of payment has been indicated in the contract itself, though not expressly, but by implication. The occasion for applying the rule, as a rule of justice, equity and good conscience, would arise only when the court finds that no place of payment is expressly stated in the contract nor is it possible to find such place of payment indicated in the contract by necessary implication, on the relevant evidence on record."

9. Following ***Bharumal v. Sekhawatmal, AIR 1956 Bom. 111***, it was held in ***Shobasingh and Sons v. Saurashtra Iron Foundary and Steel Works (Pvt.) Ltd. AIR 1968 Guj. 276***, that the common law rule that the debtor should find the creditor and pay the debts where the creditor resides, applied in India in fit cases. I am in respectful agreement with this reiteration.

10. But a further question still survives whether the rule is applicable to promissory notes. Can a payee file a suit in the place where he lives, carries on business or works for gain, for recovery of money payable on demand but without specifying the place of payment? ***Jivatlal Purtapshi v. Lalbhai Fulchand Shah, AIR (29) 1942 Bom. 251***, laid down that Section 49 of the Contract Act, 1872 and the common law rule that the creditor must seek out his creditor in order to pay him, did not apply to negotiable instruments. The moneys due under the promissory note, being payable on demand; the natural inference was that the money was payable at the place where the demand was communicated to and received by the debtor. In that case, the demand for payment was made from Bombay by notice addressed to the debtor at Ahmedabad. No reply was sent to that notice by the debtor. It was held that the money was payable at Ahmedabad, and the court at Bombay had no jurisdiction. As per ***Sew Baran Saw v. Ram Charitra Dubey, AIR 1929 Cal.***

> ***306***, where the creditor recited in the assignment that the money due on the promissory note assigned should be paid at the place where the assignee resides, it cannot give the assignee a right to sue on the promissory note in the court of that place. In ***Manek Devji v. Rathanbai w/o Khetu Devji, AIR (37) 1950 Kutch 66***, the plaintiff brought a suit in the Kutch court on a promissory note executed in Bombay by the defendant, who was a resident of Bombay. There was a recital in the pronote that the amount was payable anywhere. It was held that the Kutch court had no territorial jurisdiction to entertain the suit. ***Sailum Eshwarayya v. Thakur Devi Singh, AIR 1953 Hyd. 289***, laid down that the common law rule does not apply to promissory notes. ***J.N Sahni v. The State of Madhya Bharat, AIR 1954 M.B. 184***, said that it does not apply to a promissory note payable on demand and which is not payable at a specified place. On the other hand, in ***Md Ishaq Khan v. Muhamad Islam Ullah Khan, AIR 1951 Lah. 481***, the plaintiff had executed a promissory note in U.P. but had delivered the promissory note at Delhi to the payee, who was a widow, living in Delhi, and she made demands upon the defendant from Delhi, and it was held that the Delhi court had jurisdiction to entertain the claim.

17. In the present case, the plaintiff was residing at Shimla, and the defendants were bound to pay money to her at Shimla; hence, the Courts at Shimla had the jurisdiction, and the learned Appellate Court erred in holding that the Courts at Shimla had no jurisdiction to hear and entertain the present suit. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No.2:

18. The learned Appellate Court had framed a point for determination whether the impugned judgment and decree dated 27.11.2004 was legally sustainable. This point did not affect the outcome of the appeal. Hence, this substantial question of law is answered accordingly

Substantial Question of Law No.3:

19. The learned Appellate Court heavily relied upon the carbon copy of the resolution (Ex.PW1/A) to hold that its original was not proved on record. Learned Appellate Court failed to notice the statement of account (Ex.PW2/A to Ex.PW2/B) in which a deposit of ₹67,067/- was shown to have been made vide cheque No.0832620. This amount was deposited by transfer voucher (Ex.PW2/E). The cheque 0832620 (Ex.PW2/F) was issued in the name of the Principal, DAV Centenary Public School, Rajgarh, by the plaintiff. HC Sarkaik (DW1) admitted in his cross-examination that DAV Centenary Public School, Rajgarh, maintained an account in H.P. State Co-operative Bank, Rajgarh, but he could not say that the amount was transferred from the plaintiff's account to the account of the school. It was

rightly held by the learned Trial Court that the defendants did not explain the deposit of the cheque; the plaintiff's version was to be accepted as correct that she had deposited the amount in the defendants account as a loan. The defendants could not have retained the loan taken from the plaintiff, and were bound to return it. Therefore, the learned Trial Court had rightly decreed the suit, and the learned Appellate Court erred in dismissing the suit by relying upon the carbon copy of the resolution. Hence, the judgment passed by the learned Appellate Court failed to consider the material evidence on record, which vitiated the judgment rendered by it. Therefore, the substantial question of law is answered accordingly.

Final order:

20. In view of the above, the present appeal is allowed, and the judgment and decree passed by the learned Appellate Court are ordered to be set aside, whereas the judgment and decree passed by the learned Trial Court are ordered to be restored.

21. Pending application(s), if any, also stand(s) disposed of.

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22. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

7th May, 2026
(Chander)