

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.15/2002**

% **6th July, 2011**

STATE OF RAJASTHAN AND ANOTHER Appellants
Through: Mr. R.V. Sinha, Advocate with Mr. A.S.
Singh, Advocate.

VERSUS

M/S. JAIN TUBE COMPANY LIMITED Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 3.7.2001 which has decreed the suit of the respondent/plaintiff for a sum of Rs.1,00458.75 alongwith interest @ 18% per annum. One of the issues which was framed in the suit being issue No.1 pertained to the territorial jurisdiction of the Courts at Delhi. This issue has been dealt with by the trial Court in the following manner:

"Issue No.1

7. Defendants have disputed the territorial jurisdiction of this Court to entertain the present suit in view of clause 25 of the tender notice Ex.DW1/1 dated 24.4.93. Clause 25 of this tender notice reads as follows:

"25. All legal proceedings, if necessity arises to institute may by any of the parties (Government or contractor) shall have to be lodged in courts situated in Rajasthan and not elsewhere."

However, this clause cannot be invoked to oust the territorial jurisdiction of this court. Parties can enter into an agreement to confer jurisdiction in one of the court, if more than one court has the territorial jurisdiction to entertain the suit. In this case, the clause speaks of Rajasthan courts only. Therefore it is a vague clause. In the present case, part of cause of action did arise in Delhi. It is admitted by DW1 Shri Subhash Chander Saxena that agreement Ex.PW1/D1 was witnessed at Delhi by both the witnesses. He also admitted that this agreement Ex.PW1/D1 was forwarded by the plaintiff after execution at Delhi to the defendants under their letter dated 7.10.1993 which was received by the defendants at Jodhpur on 30.10.1994.

8. DW2 Shri Govind Ram Chaudhary in his statement on oath has deposed that stamp paper of agreement Ex.PW1/D1 was purchased at Delhi. He signed it as witness No.1. Thus, it is clear that a part of cause of action arose in favour of the plaintiff and against the defendant at Delhi where the agreement Ex.PW1/D1 was executed and signed by the witnesses to the document of both the parties. Ld. counsel for the defendant during the course of arguments conceded that this court has the territorial jurisdiction to entertain the present suit.

9. Hence, I conclude that this court has the territorial jurisdiction to entertain the present suit. The issue is decided accordingly."

2. Learned counsel for the appellants argued that the trial Court has clearly erred in deciding this issue by holding that the Courts at Delhi had territorial jurisdiction inasmuch as the clause clearly provides for

jurisdiction of the Courts in Rajasthan “and not elsewhere”. Reliance is placed upon the decisions of the Supreme Court in the cases of **A.B.C. Laminart Pvt. Ltd. and Anr. Vs. A. P. Agencies, Salem AIR 1989 SC 1239** and **R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd. (1993) 2 SCC 130** to argue that once there is an expression of “and not elsewhere” the exclusive jurisdiction will vest with the Courts at Rajasthan and not at Delhi. It is argued that tender was sent to the plaintiff from Jodhpur and accordingly contract is concluded at Jodhpur in view of the decision of the Supreme Court in the case of **Bhagwandas Goverdhandas Kedia Vs. M/s. Girdharilal Parshottamdas and Co. AIR 1966 SC 543**.

3. I find that the argument as raised by the learned counsel for the appellants has force. In view of the agreed clause 25, the Courts at Delhi would have no territorial jurisdiction. The suit therefore could not have been instituted at Delhi and had to be filed in the competent Courts at Jodhpur where the contract was concluded, and in fact where it was also performed. I may note that supply in terms of the supply order was to be made at store yard of the appellants at Jodhpur as per clause 1 of the acceptance of tender.

4. The issue which then arises is what should be done in a case like the present where complete evidence has been recorded and the trial Court in fact came to a finding although wrongly that the Courts at Delhi had jurisdiction. If I return the plaint in terms of the Order 7 Rule 10 of Code of Civil Procedure, 1908 (CPC), it would mean an entire de novo trial including

fresh pleadings and fresh evidence. The suit was instituted in the year 1996 and today we are in 2011. Fifteen valuable years have already been gone by and grave injustice would be caused if I direct return of the plaint. I feel that issue, in this case, can be resolved by invoking my jurisdiction under Section 22 of CPC which reads as under:-

“Section 22. Power to transfer suits which may be instituted in more than one Court.- Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.”

5. As per the aforesaid provision of Section 22 CPC, if a suit can be filed in one or more Courts having jurisdiction, then, the defendant on a suit having been filed in one Court, can apply for the suit to be transferred to another Court having jurisdiction. The appellants/defendants in the present case are taking up a case that the Courts in Jodhpur have jurisdiction and therefore it will be in the fitness of things that instead of return of the plaint under Order 7 Rule 10 CPC, the suit on the request of the appellants/defendants, in terms of Section 22 CPC be transferred as a whole to the competent Court at Jodhpur. I may note that the powers being exercised by me are in accordance with the amendment to Section 24 of CPC by Act 104 of 1976 whereby sub-section 5 was added to Section 24 empowering the transfer of a suit from the Court which did not have

jurisdiction to a Court which has jurisdiction. The object of this amendment is that the valuable time, money and energy of the parties in having conducted the litigation completely till the stage of final arguments should not be wasted once it is found that the Court does not have territorial jurisdiction.

6. Accordingly, while accepting the appeal, I exercise powers under Section 22 CPC and direct that suit, as a whole, be transferred to competent Court at Jodhpur. Let the complete file of the suit alongwith a copy of this judgment be sent by the Registry of this Court to the Court of the Principal District & Sessions Judge, Jodhpur so that the case can be marked by the Principal District & Sessions Judge, Jodhpur to an appropriate Court for disposal in accordance with law. I may once again clarify that the suit is being transferred for being taken up by the Competent Court for final arguments being heard and disposal thereafter in accordance with law. Since the appeal has been heard exparte, the competent Court at Jodhpur will issue notice to the respondent/plaintiff before hearing and disposing of the suit. Appellants or their authorized representative or Advocate to appear before the Principal District & Sessions Judge, Jodhpur on 6th September, 2011. Appeal is disposed of accordingly. The appellants had deposited the decretal amount in this Court at the time of admission of appeal. The Appellants will be entitled to the refund of monies subject to filing an undertaking in the Court that in case of suit being finally decreed (including

the stages of appeal) against it, it will make the necessary payment to the respondent/plaintiff without the necessity of having to file the execution proceedings. Appeal is disposed of accordingly.

JULY 06, 2011

Ne

VALMIKI J. MEHTA, J.