

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

% *Date of Judgment: 20.04.2011*

+ **RSA No. 3/2007 & CM No. 202/2007 (for stay)**

M/S SRODEEP POLYMERS LTD. Appellant
Through: Mr. K.S. Negi, Advocate.

Versus

M/S SCJ MASTER BATCHES Respondent
Through: Mr. Pankaj Chaudhary, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 31.08.2006 which had endorsed the finding of the trial judge dated 20.10.2005 whereby the suit filed by the plaintiff namely M/s SCJ Master Batches (under Order 37 of the Code of Civil Procedure) seeking recovery of Rs. 1,14,995/- had been decreed along with the interest at 9% per annum.

2. The plaintiff had filed the aforementioned suit under Order 37 of the Code. His claim was based upon three invoices. The details of the three invoices are given hereunder:-

<i>S.No.</i>	<i>Bill No.</i>	<i>Date</i>	<i>Amount (in Rs.)</i>
1.	323	18.02.2003	18,980/-
2.	383	31.03.2003	27,679/-
3.	99	28.05.2003	44,521/-

3. The defendant had purchased plastic dana worth Rs. 91.180/-
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in terms of the aforementioned bills; defendant failed to make the payment; along with the principal, defendant was also liable to pay interest. In the plaint, it was pointed out that the part payment of Rs. 15,799/- had been made with a promise to pay the balance sum of Rs. 15,381/- ; however, the same not having been paid the suit was accordingly filed.

4. After service of summons, an application for leave to defend had been filed by the defendant. He had raised various objections including that of jurisdiction. Para 4 (b) of the application stated that the courts does not have jurisdiction; the cause of action had arisen at Solan (HP) from where the goods were supplied and were delivered at Noida (UP); payments were released in part by the defendant from Noida office. This application for leave to defend had been dismissed vide order dated 20.10.2005. Court was of the view that the claim of the plaintiff was founded on the aforementioned three bills; defendant had not paid the balance amounts due from him; the registered office of the company was at Delhi; defendant had to make the payments of the aforementioned material at Delhi; part of cause of action had arisen at Delhi; Delhi courts had jurisdiction. Plea of the defendant was rejected. This was endorsed in first appeal.

5. This is a second appeal. It had been admitted and on 13.10.2009, the following substantial question of law was formulated:-

“Whether the term ‘subject to HP jurisdiction’ contained in the invoices (3) oust the jurisdiction of civil court at Delhi to entertain the suit?”

6. The three invoices have also been perused. At the bottom of the page no. 33, the following finds mention:- ***“Subject to HP***

Jurisdiction”

These bills show that the goods have been supplied from the Solan office. It has vehemently been urged that the jurisdiction of the Delhi Courts was ousted in terms of the aforementioned clause; no cause of action had arisen at Delhi. Learned counsel for the appellant had placed reliance upon the judgments reported in AIR 2004 SC 2154 New Moga Transport Company Vs. United India Insurance Co. Ltd. & Others and AIR 2004 SC 2432 M/s. Hanil Era Textiles Ltd. Vs. M/s. Puromatic Filters (P) Ltd. Reliance has also been placed another judgment of this court reported in 2005 VIII AD (Delhi) Apparel Export Promotion Council Vs. Sh. Prabhati Patni, Proprietor Comfort Furnishers & Anr. as also upon 2006 (82) DRJ 474 (DB) Caprihans India Limited Vs. R.T. Packaging Limited. It has been pointed out that the parties had agreed that the courts at HP alone would have the jurisdiction. Delhi court could not have entertained the suit.

7. Arguments have been countered. It has been pointed out that the bills do not have any exclusivity clause. Part of the cause of action had, in fact, arisen at Delhi. Attention has been drawn to the bank statements (page 27 of the list of documents filed by the appellant) wherein the bank of the plaintiff is State Bank of Rajasthan, Greater Kailash. It is pointed out that the payments had to be released by the defendant from his Bank of Rajasthan which is at Greater Kailash, New- Delhi; the letter head of the company (page 88 of the paper book) also shows that the company has its registered office as also its sales office at Delhi. This is also an admitted position.

8. Record shows that the part of cause of action had, in fact,

arisen at Delhi. This has been specifically averred in the plaint itself wherein it is stated that the registered office is at Delhi; payments had to be received at Delhi. The clause relied upon by the learned counsel for the appellant as depicted in the aforementioned three bills is not a complete ouster clause; it does not say that the courts of HP will alone have jurisdiction. This is nowhere deciphered from the said documents. Even the entire body of the application for leave to defend, it has not been averred by the appellant/defendant that the HP court alone has jurisdiction. In this application the defense raised was that the Delhi Courts would not have jurisdiction but it had nowhere been stated that the court at HP would alone have the exclusive jurisdiction.

9. The judgments relied upon by the appellant are distinct and do not advance his case. The first judgment of New Moga Transport Company (supra) clearly stipulated that the court at place 'U' would only have the jurisdiction; in the second judgment of M/s. Hanil Era Textiles Ltd (supra), although the words "alone" "only" or "exclusively" do not find mention but having regard to the facts of the said case wherein the purchase order was made at Bombay; it was accepted by the branch office at Bombay; advance payment was made at Bombay; the final payment was made at Bombay, it was held that Bombay court alone would have jurisdiction. This is not so in the instant case. The judgment of Apparel Export Promotion Council (Supra) states that where two or more courts have jurisdiction because part of cause of action may have arisen therewithin, parties may contract to exclude jurisdiction and elect to restrict it to one or more of the courts. This principle is also inapplicable. The judgment of Caprihans

India Limited (supra) was a contract where from a reading of the plaint, it was clear that the courts at Faridabad alone would have the jurisdiction. All this is missing in the instant case. Plaint in the present case has clearly averred that the cause of action has arisen at Delhi as the registered office of the company is at Delhi; the orders were accepted at Delhi; payments were to be made at Delhi; part payments had, in fact, been made at Delhi; jurisdiction of the Delhi courts was rightly held to be not excluded.

10. Under Section 20 of the Code of Civil Procedure, the court gets jurisdiction if the defendant resides or carries for business or personally works for gain within the local limits or jurisdiction or the cause of action arises, wholly or in part within such local limits. In the present case, the defendant had their registered office as also their sales office at Delhi. As has been held by the Supreme Court in AIR 1989 SC 1239 A.B.C. Laminart Pvt. Ltd. Vs. A.P. Agencies that as regards construction of an ouster clause when words like 'alone', 'only', 'exclusive' and the like have been used there may be no difficulty; even without such words in appropriate cases the maxim 'expressio unius est exclusio alterius'- expression of one is the exclusion of another-may be applied; it would depend upon the facts of each case. In view of the averments made in the plaint as also the admitted fact that the registered office and sales office of the defendant company is in Delhi; part payments of the transaction had also been made by the defendant from his Delhi Bank, it cannot be said that the jurisdiction of the Delhi courts is excluded.

11. Substantial question of law is answered in favour of the plaintiff/respondent and against the appellant/defendant. There is

no merit in the appeal. Appeal as also the pending application is dismissed.

(INDERMEET KAUR)
JUDGE

APRIL 20, 2011
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