

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

+ **FAO.No.301/2010**

% *Reserved on:09.02.2011*
Decided on: 18.02.2011

WOLLAQUE VENTILATION & CONDITIONING PVT LTD. Appellant

Through: Mr. Ravinder Kumar Sharma, Adv.

Versus

STERLING TOOLS LTD Respondent

Through: Mr. D.S. Chadha, Adv.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

: **MOOL CHAND GARG, J.**

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1. This appeal arises out of an order passed by the learned ADJ on 15.07.2010 whereby the learned ADJ has allowed an application filed by respondent under Order VII Rule 10 CPC and has directed return of the plaint with a further direction to present the same in the Court of competent jurisdiction i.e. Faridabad within 4 weeks.

2. In their aforesaid application it was submitted on behalf of the respondent that in view of the exclusionary provision in the purchase order on the basis of which the appellant had supplied the goods to the respondent, Delhi Court could not have entertained the suit filed by the appellant. It was only Faridabad Court which could have decided the lis between the parties and, therefore, the suit could have been filed by the appellant only at Faridabad.

3. In this case, the respondent entered into an agreement with the appellant for purchase of goods worth ₹14,47,140.59/-. The goods were supplied on the basis of purchase order placed by the respondent upon the appellant which contains a clause that disputes will be subject to jurisdiction of Faridabad courts only. Out of the aforesaid amount

respondent made payment of ₹10,71,374/-. However, the balance amount remained payable. The appellant then filed a suit for recovery at Delhi which has been returned with a direction to the appellant to file the same in the Court of competent jurisdiction i.e. at Faridabad.

4. According to the appellant, the work order was placed by the respondent with the appellant at Delhi. The respondent has its registered office at Delhi. Moreover, as per the terms and conditions printed on their invoices, it has been clearly mentioned that the Courts at Delhi would have a jurisdiction to entertain and try this dispute whereas according to the respondent, the clause which governs the conditions of supply is Clause No.14 printed on the reverse of the purchase order which confers the exclusive jurisdiction over the disputes between the parties at Faridabad.

5. Clause No.-14 of the purchase order which stipulated certain conditions on its reverse, that is:

“Performance against this purchase order shall be considered due in Faridabad for place of jurisdiction and Courts at Faridabad shall have exclusive jurisdiction over all disputes which may arise.”

6. Taking note of the aforesaid conditions mentioned on the reverse of the purchase order, the learned ADJ has accepted the case of the respondent and has passed the following order:

“7. Given the facts of this case, what emerges is that the defendant had placed a purchase order which on the face of it also stated that “supplies will be as per terms and conditions printed overleaf”. The reverse of this purchase order stipulated the other terms and conditions including that on jurisdiction, making it very clear that the dispute shall be referred to the exclusive jurisdiction of the courts at Faridabad. As the purchase order mentions that conditions are printed overleaf, the attention of the addressee has definitely been drawn to it. It would have been open to the plaintiff not to transact if such terms and conditions did not suit them. They chose to supply goods. No doubt their invoice also contained the clause of submission of disputes of Delhi Courts but it does not exclude the jurisdiction of the other courts. The conditions printed on the invoice is not accompanied by the words “exclusive”, “alone or only”

8. Under such circumstances, the terms and conditions of the purchase order would prevail. The supply of goods under the purchase order clearly held a choice of forum for

adjudicating disputes by one Court to the exclusion of the others.”

7. Assailing the aforesaid judgment, the appellant has relied upon a judgment of this Court reported in *M/s. Baldev Steel Ltd. Vs. M/s The Empire Dyeing and Manufacturing Co. Ltd. and Anr. AIR 2001 Delhi 391* wherein it has been observed:

“11. On a perusal of the correspondence, as proved on record, it is seen that defendant No.3 i.e. M/s. Garlick Engineering, division of defendant No.1, submitted its quotation on 25.4.1975, from the Delhi office. Defendant No.1 had a branch office in Delhi. Negotiations and discussions took place in Delhi. The order dated 12.6.1973 was placed by the plaintiff on the defendants in Delhi. The said order had also been accepted by defendant No.3 having its office at Delhi from Delhi. The payments to the defendants were made at Delhi. From the foregoing, it would be seen that the cause of action for suit had arisen in Delhi. Merely, because one of the standard printed terms of the quotation, mentioned, subject to "Bombay Jurisdiction", it cannot exclude the Delhi Jurisdiction. It was not an exclusionary clause. As noticed earlier, the entire negotiations, placement of order and further correspondence was through the defendants' office at Delhi. Keeping in mind the Explanation to Section 20(c) CPC, as also interpreted by the Apex Court in *M/s. Patel Roadways Limited Vs. M/s. Prasad Trading Company: [1991] 3 SCR 391*, it is clear that the Courts at Delhi would have jurisdiction being a place where the defendant Corporation was having its divisional or subordinate office and the place where the cause of action arose. Issue No.13 is decided in favor of the plaintiff and against the defendants. It is held that the Courts at Delhi have the jurisdiction to try and entertain the suit.”

8. Another judgment relied upon by the appellant is a judgment delivered by Kerala High Court in the case of *United India Insurance Co. Ltd. Vs. Associated Transport Corporation Pvt. Ltd. & Anr. AIR 1988 Kerala 36* wherein it has been held that:

“4. An almost identical case came up for consideration in *Economic Transport Organisation v. United India Insurance Co. Ltd., 1986 Ker LT 220*. In that case also a way bill or receipt contained printed inscription of words "subject to Calcutta jurisdiction only". The question arose whether these printed words constitute an agreement to oust the jurisdiction of all Courts other than the Calcutta Court and whether the exclusion would be valid. After referring to practically all the decisions of this Court and some decisions

of other High Courts as also decision of the Supreme Court in *Hakam Singh v. Gammon*: AIR 1971 SC 740, the Court observed :

"17. When there is choice of forum, it is certainly open to the parties to agree on an exclusive forum for settlement of disputes. But such an agreement must be clearly spelled out either by express words or by necessary implication. Ouster of jurisdiction of Courts cannot be lightly assumed or presumed. If there is such a concluded agreement, it will certainly operate as estoppel against the parties to the contract. If it is merely a unilateral affirmation or statement made by one of the parties, as long as it is not shown that the statement has been accepted by the other party as a term or condition of the agreement, it cannot be held that there is an agreement to confer exclusive jurisdiction on any Court. Particular caution is necessary in regard to such a clause contained in a printed form, as in this case. Where the printed form is signed by both the parties or where a form printed by one party is signed by the other party and forwarded by the latter to the former and the printed form contains clear words conferring exclusive jurisdiction on a Court at any particular place or ousting jurisdiction of the Court at any other place, it may not be difficult to hold that the parties have agreed on such a term. Even in such cases, Courts must remember that, people often sign order forms containing a good deal of printed matter without caring to read what is printed. It cannot always be said that everything which is printed may be deemed to form part of the contract. Where a form printed by one party is signed only by third party and delivered to the other party, without anything more it will be difficult for the Court to hold that there has been consensus ad idem in regard to the particular clause. Of course, if there is some other material to indicate acceptance or consent of the party who received the printed form, then the Court is free to infer that the clause formed part of the agreement.

18. If it can be held that the printed clause in the consignment note in this case formed part of the agreement, there is clearly ouster of jurisdiction of Courts at Calicut. The form was got printed by the transport undertaking. It was signed by an employee of the undertaking. It was not signed by the consignor, second plaintiff. It was merely delivered to the consignor. Contract was entered into not by correspondence. It was a case of a single transaction covered by a single bill. The words themselves are printed in small letters at the very bottom of the way bill. There is no other material before the Court to show that this printed material was brought to the notice of the second plaintiff or that the second plaintiff had accepted the same. In these circumstances, I hold that this particular clause did not form part of the agreement between the parties. Parties did not

agree to oust the jurisdiction of the Court at Calicut or to vest exclusive jurisdiction in Courts at Calcutta."

5. We are in respectful agreement with the view expressed in the above decision. Ext. B1 series in this case also contain printed words "subject to Bombay jurisdiction alone"; Apart from the existence of these printed words, respondent has no case that there was a meeting of minds between the consignor and the carrier and there was a specific agreement in that behalf. The consignment was delivered to the carrier, the carrier took custody of the goods and thereafter issued the receipt or consignment note which contained the printed words. The note was signed only by an employee of the respondent. No doubt, they were handed over to the consignor. But there was nothing to indicate that there was an agreement between the parties to confer exclusive jurisdiction to Bombay Court. These printed words by themselves and without anything more would not be sufficient to constitute an agreement to oust the jurisdiction of all Courts other than the Court specified. In these circumstances, we set aside the finding of the Court below that it had no jurisdiction to entertain the suit. We find that the Court below had answered all the issues either in favour of one party or the other. The parties have no right of appeal against those findings in as much as the plaint itself was returned. In these circumstances, we deem it expedient to direct the Court below to re-try all the issues and dispose of the suit afresh. Learned counsel for the respondent pointed out that the Court below had held that the appellant was incompetent to sue. This issue also will be retried along with the other issues."

9. On the strength of the aforesaid judgment, it has been submitted that since the respondents have their office in Delhi and the goods have been supplied by the appellant from Delhi, pursuant to the purchase orders placed upon the appellants in Delhi, Delhi courts have jurisdiction to try the disputes between the parties. It is also submitted that merely because, on the back of the purchase order there is a mention regarding jurisdiction of Faridabad court to decide the disputes between the parties, it should not be treated as an admission on behalf of the appellant also to agree for exclusionary jurisdiction only of Faridabad Courts.

10. On the other hand, the respondents have relied upon number of judgments delivered by the Supreme Court holding that forum selection clause/ouster clause restricting adjudication to one of the courts having

jurisdiction is valid. The judgment relied upon by the respondents are as follows:

- i) *Rajasthan State Electricity Board Vs. Universal Petrol Chemicals Ltd.*(2009) 3 SCC 107
- ii) *Globe Transport Corporation Vs. Triveni Engineering Works & Anr.* 1984 PLR (86) 259
- iii) *New Moga Transport Company Vs. United India Insurance Co. Ltd. & Ors.* AIR 2004 SCC 2154

11. In the case of Rajasthan State Electricity Board (Supra), it has been observed as under:

“20. There is no dispute with regard to the fact that the parties entered into various agreements which are referred to above. The said agreements admittedly also contained forum selection clauses between the parties whereby and whereunder the parties agreed that the said contracts and agreements, in relation to any dispute or difference would be subject to the jurisdiction of courts at Jaipur in Rajasthan. Therefore, the issues which we are required to address here is whether the ouster clause in the agreement between the parties will also be applicable in ascertaining the competent court for making an application for reference under Section 20 of the Act. As per Section 41(1) of the act the provisions of the Code of Civil Procedure, 1908, (for short "the Code") shall apply to all proceedings before the Court, and to all appeals, under the Act.

21. Section 20 of the Code, which is with respect to the jurisdiction of courts for institution of suit, reads as under:

“20. Other suits to be instituted where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-

- (a) the defendant, or each 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; 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 in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

Explanation.-A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

22. There are number of decisions of this Court wherein it was held that where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therein, if the parties to the contract agree to vest jurisdiction in one such court to try the dispute which might arise as between themselves, such agreement would be valid and binding.

23. In *A.B.C. Laminart (P) Ltd. v. A.P. Agencies*: [1989]2SCR1, this Court stated thus;

21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the 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. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed.”

12. Similarly, in the case of *New Moga Transport Company Vs. United India Insurance Co. Ltd. & Ors*(*supra*), it has been observed as under:

“10. On a plain reading of the Explanation to Section [20](#) CPC it is clear that Explanation consists of two parts, (i) before the word "or" appearing between the words "office in India" and the word "in respect of" and the other thereafter. The Explanation applies to a defendant which is a Corporation which term would include even a company. The first part of the Explanation applies only to such Corporation which has its sole or principal office at a particular place. In that event, the Court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes

care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression "at such place" appearing in the Explanation and the word "or" which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate office which alone have the jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

13. In *Globe Transport Corporation Vs. Triveni Engineering Works & Anr.*(*Supra*) it has been observed as under:-

“3. It is now settled law that it is not competent to the parties by agreement to invest a court with jurisdiction which it does not otherwise possess but if there are more than one forums where a suit can be filed, it is open to the parties to select a particular forum and exclude the other forums in regard to claims which one party may have against the other under a contract. Clause 17 of the Contract of Carriage could therefore, validly confer exclusive jurisdiction on the Court in Jaipur City only if it could be shown that the Court in Jaipur City would have jurisdiction to entertain the suit filed by the respondents against the appellant. It is true and there we agree With the respondents that part of the cause of action in the present case arose in the City of Jaipur, and therefore, the jurisdiction of the Court in Jaipur City could not be invoked on the ground that the cause of action or a part thereof has arisen in Jaipur. But the Jurisdiction of a court whether under Section 19 or Section 20 of the CPC can also be invoked on the ground that the defendant resides or carries on business or personally works for gain within the jurisdiction of the court and here it could not be disputed that the appellant does carry on business in the City of Jaipur and if that be so, there can be no doubt that the Court in Jaipur City would have jurisdiction to entertain the suit filed by the respondents against the appellant. In that event, Clause 17 of the Contract of Carriage conferring ex- elusive jurisdiction on the Court in Jaipur City and excluding the jurisdiction of other courts would be valid and effective.”

14. It is submitted on behalf of the respondent that once the parties agree to exclude the jurisdiction of other courts and agree to confine the jurisdiction only of one Court having jurisdiction to decide the dispute, that agreement between the parties becomes binding and the parties have to abide by such an agreement. It is submitted that in this case, once the appellant agreed to supply the goods and supplied the goods in

terms of the purchase order which has a clause regarding exclusive jurisdiction then the appellant cannot take a different view in to the matter.

15. A perusal of the purchase order shows that the dealings between the parties had started pursuant to purchase order placed by the respondent upon the appellant from Faridabad which on the back of it has following conditions:

“14. Jurisdiction

Performance against this purchase order shall be considered due in Faridabad for place of jurisdiction and Courts at Faridabad shall have exclusive jurisdiction over all disputes which may arise.”

16. On the top of it, it is written as *“This order is subject to following Terms and Conditions”*.

17. It would also be relevant to take note of the conditions written on the front of the purchase order in the form of Important Note and which reads as under:

- **Supplies will be as per terms & conditions printed overleaf.**
- Duplicate Transporter copy of Invoice meant for modvat should accompany the supplies, wherever applicable. In absence of same your payment is likely to be delayed/deducted by an equivalent amount of excise duty.
- State our P.O. No. & Delivery schedule No. on all bills and correspondence.
- LST/CST Regn. No.1201338 Dated 28/08/80
- TIN No.06461201338

18. A reading of the aforesaid three conditions together leaves no room for doubt that the purchase order placed by the respondent was subject to the conditions that the disputes, if any would be subject to Faridabad jurisdiction and that the order placed was subject to terms and conditions which include the issue of jurisdiction also.

19. No doubt, the copies of the bills raised by the appellants also contain a jurisdiction clause by stating *“All disputes are subject to Delhi Jurisdiction”*. However, this condition is again subject to the acceptance of the purchase order. Therefore once, the appellant agreed to supply

the goods in terms of the purchase order placed by the respondent which provides that jurisdiction in case of dispute would be that of the Faridabad Courts only, mere mention of the term '*subject to Delhi jurisdiction*' in their invoices will not annul the terms and conditions contained in the purchase order which is the basis of accepting the purchase order by the appellant.

20. In any event when both Delhi and Faridabad courts are competent, the appellant who agreed to supply the goods to the respondent after accepting the terms and conditions of the purchase order which excludes the jurisdiction of Delhi Court, cannot have any grievance. Thus, the observation made by the learned ADJ in having accepted the application moved by the respondent under Order VII Rule 10 CPC does not suffer from any infirmity. The said order is, therefore, maintained.

21. Accordingly, the appeal is dismissed with no order as to costs. TCR be sent back forthwith along with a copy of this order.

MOOL CHAND GARG,J

FEBRUARY 18, 2010

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