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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 2555/2010

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Judgment Delivered on: 16.02.2012

M/S SKOL BREVERIES LTD Plaintiff

Through Mr.G.L.Rawal, Sr.Advocate
with Mr.Kuljit Rawal.

Versus

M/S J.D WINES & ORS Defendant

Through Mr.A.M.Tripathi, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

I.A.3679/2011 (O 7 R 9)

1. This is an application filed on behalf of defendants 2 to 7 and 9 under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that this court has no territorial jurisdiction to try and entertain the present suit in view of the exclusion clause printed on the invoice, as per which the High Court of Haryana (Only) will have jurisdiction. It is also submitted that the suit has not been filed by a duly authorized person as the agreement between the plaintiff and M/s.Mahalaxmi Traders has come to an end and thus Sh.Ashok Chawla, who has instituted the present suit, is not competent and authorized to file the present suit. The necessary facts to be noticed in this case are:-
2. The plaintiff has filed the present suit for recovery of Rs.3,64,98,598/- (Rupees Three crore sixty four lakhs ninety eight thousand five hundred

ninety eight only) with respect to beer supplied at the request of the defendant.

3. Mr.G.L.Rawal, learned Senior Counsel, appearing for the plaintiff has pointed out that out of the aforesaid amount, Rs.1,00,00,000/- (Rupees One crore only) stands paid by the defendants pursuant to the orders passed by the courts at Punjab & Haryana in an application filed by the defendants 6 to 9 for grant of anticipatory bail.
4. It is submitted by the counsel for the defendants, applicants that the unit of Skol Breveries Limited is situated at G.T.Road, Murthal, Sonipat (Haryana); the goods were supplied from this unit to the godown of the defendants which is situated at Gurgaon, and, thus no part of cause of action has arisen within the jurisdiction of this court, besides the exclusive clause contained in the invoice. Learned counsel for the applicants has placed strong reliance on the invoice filed by the defendants. According to clause 14 of the invoice “any dispute in connection with the above shall be subject to the jurisdiction of High Court of Haryana (only)”. Counsel for the defendants relying on the aforesaid clause, submits that the present plaint be returned to the plaintiff, as this court does not have territorial jurisdiction to try and entertain the present suit.
5. Mr.Tripathi also submits that it is trite law that in case the cause of action arises in more than one court, parties can confer jurisdiction on either of the courts, where the cause of action has arisen, and such a clause would be perfectly legal, valid and binding on the parties.
6. Mr.Rawal, learned Senior Counsel appearing for the non-applicants has laboured hard to submit that a bare reading of the plaint would show that this court has territorial jurisdiction to try and entertain the present suit, as part of cause of action has arisen within the territorial jurisdiction of this court. It is submitted that in para 7 of the plaint it has been asserted that

the defendants had approached the plaintiff through its del credere agent Sh.Ashok Chawla at X-18A, Okhla Industrial Area, Phase-II, New Delhi and requested the plaintiff through Mahalaxmi and Mr.Ashok Chawla as agent for supply of beer to be sold by them in about 69-70 outlets in the district of Gurgaon (Haryana). As per the plaint, discussion took place and terms and conditions were settled at Okhla, New Delhi when the plaintiff agreed to supply the various brands of beer to the defendants. It has also been averred in the plaint that proper and requisite bills were prepared and handed over to the defendants at Delhi for the supply of goods. All levies were to be deposited in the account of defendants. Payment were to be made at Delhi. Para 21 of the plaint reads as under:-

“Negotiations for supply of the goods and the terms thereto took place at X-18, Okhla Industrial Area, New Delhi. After negotiations concluded agreement was arrived between the parties for supply and prices etc was also concluded over the said office at New Delhi. Persuasion was made for further supply in July, 2009 were also made at New Delhi (sic) at the said office. All Post Dated Cheques were handed over at the said office with the promises that those would be encashed on the first presentation. Part payment was also received at the said office at New Delhi. Suit amount is payable at New Delhi. Permit as was issued from the concerned authorities for supply of subject consignments were handed over to Del credere agent on which supply was being made from time to time at New Delhi at the said office, TDS certificate i.e. deduction of tax at source were also being delivered to plaintiff at the said office at New Delhi. Cause of action had also accrued at New Delhi. Promises were also being made to make the balance payment at New Delhi. Hence, this Hon’ble Court has jurisdiction to try the present suit.”

7. Mr.Rawal also contends that the dishonesty of the defendants is writ large on the face of the record in view of the fact that the defendants have not disputed the supply of goods either in their written statement or during the course of admission/denial of documents as almost all invoices evidencing supply of beer stand admitted.
8. Counsel for the defendants, on the other hand, submits that the defendants have not admitted all the invoices but have admitted the receipt of beer.
9. Another leg of argument of Mr.Rawal is that clause 14 of the agreement sought to be relied upon by the defendant, is null and void as High Court of Haryana (sic) would not have pecuniary jurisdiction to try this matter in view of the fact that the High Court does not have original jurisdiction and accordingly clause 14 cannot be relied upon by the defendants. It is submitted that the said clause has to be read the way it has been drafted and the intent and purpose of the same would only be that dispute that can be settled by the High Court within the jurisdiction of Haryana. In this case, it is contended that the clause sought to be relied upon by the defendant is ambiguous and unclear as to which district of Haryana would be the appropriate court of jurisdiction with regard to the dispute pertaining to the present suit.
10. In support of his submission that while considering an application under Order 7 Rule 11 CPC, the Court must only look into the averments made in the plaint, learned counsel for the plaintiff has relied upon *Steel Authority of India Limited and Others vs. Rameshwar Dass Bishan Dayal and Another* reported in 1995 IV AD (Delhi) 633 which reads as under:-

“9. It is well settled that while considering the application under Order 7 Rule 11 CPC, the Court is not required to take into consideration the defence set up by the defendant in his written statement. The question whether the plaint discloses any cause of action is to be decided by looking at the averments contained in the plaint itself and not the defence set up in the written statement. As is noticed above, the plaintiff/first respondent is claiming damages on the ground of alleged mala fides of the appellants in not opening part II of tenders resulting in loss to the former.

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10. For the purpose of an application under Order 7 Rule 11 CPC what has to be seen is whether or not a meaningful reading of the plaint discloses a cause of action. While considering the application, the strength or weakness of the case of the plaintiff is not to be seen.

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11. In support of his argument that when a court has no jurisdiction at all in a matter, the parties cannot with consent confer jurisdiction. Mr.Rawal has placed reliance on **Shaw Wallace & Co. Ltd. Vs. M.P. Beer Products Pvt. Ltd.** 149 (2008) DLT 391.
12. Mr.Rawal, has also relied upon **Govil Automobiles vs. Hindustan Petroleum Corpn. Ltd. & Anr.** 163 (2009) DLT 70 and more particularly paragraph 3, which reads as under:

“Under the Arbitration Act, the parties are at liberty to select a judge of their choice viz. the Arbitrator. They also have liberty to have venue of arbitration of their choice. However, they cannot, by consent create jurisdiction of a Court which otherwise would not have

jurisdiction. Although, if more than one Court have jurisdiction in natural course, by consent they can restrict themselves to the jurisdiction of one of those several courts. In the present case, the entire cause of action took place at Agra. Petrol Pump, the subject matter of dispute, is at Agra. It was specifically agreed by the parties that only the Courts at Agra would have jurisdiction. I consider that this appeal cannot be filed before Delhi Court merely on the ground that the Arbitrator was sitting in Delhi and holding hearings in Delhi. The location of Arbitrator cannot be a cause or reason for deciding jurisdiction of the Court.”

13. On the other hand, counsel for the applicant has relied upon the judgment in **M/s.Hanil Era Textiles Limited vs. M/s.Puromatic Filters (P) Limited** SLP (Civil) No.5552 of 2002. Relevant paragraphs 7, 8, 9 of the said decision are reproduced hereinbelow:-

“7.

But where two Courts or more have under the Code of Civil Procedure jurisdiction to try a suit or a proceeding, an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. It was also held that such an agreement does not contravene Section 28 of the Contract Act.

8. The same question was examined in considerable detail in A.B.C.Laminart Pvt. Ltd. V A.P.Agencies AIR 1989 SC 1239 (headnote D) and it was held as under:-

“When the Court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the ousting expression or clause properly. Often the stipulation is that the contract shall be deemed to have been made at a particular

place. This would provide the connecting factor for jurisdiction to the Courts of that place in the matter of any dispute on or arising out of that contract. It would not, however, ipso facto take away jurisdiction of other Courts. Where 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 exclusion 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 is exclude all other from its operation may be such cases be inferred. It has, therefore, to be properly construed." This view has been reiterated in *Angile Insulations v Davy Ashmore India Ltd.* 1995 (4) SCC 153.

9. Clause 17 says – any legal proceedings arising out of the order shall be subject to the jurisdiction of the Courts in Mumbai. The clause is no doubt not qualified by the words like "alone", "only" or "exclusively".

Therefore, what is to be seen is whether in the facts and circumstances of the present case, it can be inferred that the jurisdiction of all other Courts except Courts in Mumbai is excluded. Having regard to the fact that the

order was placed by the defendant at Bombay, the said order was accepted by the branch office of the plaintiff at Bombay, the advance payment was made by the defendant at Bombay, and as per the plaintiffs' case the final payment was to be made at Bombay, there was a clear intention to confine the jurisdiction of the Courts in Bombay to the exclusion of all other Courts."

14. Counsel for the plaintiff has also relied upon the decision in **Harshad Chaman Lal Modi vs. D.L.F. Universal Limited and Another** reported in AIR 2005 S.C. 4446 which reads as under:

"18. In our opinion, the submission of the learned counsel for the appellant that the parties had agreed that Delhi Court alone had jurisdiction in the matters arising out of the transaction has also no force. Such a provision, in our opinion, would apply to those cases where two or more courts have jurisdiction to entertain a suit and the parties have agreed to submit to the jurisdiction of one court."

15. I have heard counsel for the parties and also carefully perused the plaint and the invoices which contain the clause pertaining to jurisdiction. The basic facts are not in dispute that the defendants approached the plaintiff through its del credere agent for supply of beer. Beer was supplied by the plaintiff from its unit at Sonipat (Haryana) to the godown of the defendant at Haryana. A reading of the plaint would show that the negotiations took place in Delhi and the payments were also made at Delhi. It is not open for this court, at this stage, to look into the written statement which has been filed by the defendants and as to whether this assertion of the plaintiff has been admitted or denied, as it is settled law that at the time of considering an application under Order 7 Rule 11 CPC the court must look into the plaint alone. However, it is also not disputed very fairly by Mr.Rawal

that part of cause of action has also arisen within the jurisdiction of courts at Haryana. Thus, there is no quarrel to the proposition laid down by the decision sought to be relied upon by the counsel for the parties that in case two courts have jurisdiction, it is open for the parties to choose any one court for deciding their disputes. In the present case, according to the terms, the courts at Haryana have been conferred the jurisdiction to decide the disputes between the parties. Therefore, the short point which arises for consideration before this court is as to whether clause 14 (jurisdiction clause) is vague or cannot be given effect to and thus is null and void.

16. Admittedly, Punjab & Haryana High Court does not have original jurisdiction and to that extent the submission made by Mr.Rawal is correct. However, what is to be considered is whether this clause is to be given a narrow interpretation or the court must satisfy itself with regard to the aim and intent of the parties. Having regard to the fact that the unit of the plaintiff is situated in Haryana; the registered office of the partnership is at Haryana; the goods were supplied from Haryana to the godown of the defendants which is also in Haryana, merely because the clause is unhappily worded or not drafted by a legally trained person, it cannot be said that clause 14 is null and void. Since Punjab & Haryana High Court does not have original jurisdiction, the only logical consequence would be that the appropriate court of jurisdiction at Punjab & Haryana would try and entertain this matter.
17. Mr.Rawal also submits that in case the High Court would have no jurisdiction then the Court at Chandigarh would be the alternate court. As no part of cause of action has arisen in Chandigarh, I am unable to

agree with the submission of Mr.Rawal in view of the fact that there is only one High Court in Haryana i.e Punjab & Haryana High Court and the jurisdiction would be of the appropriate court in Haryana and not in Chandigarh.

18. In the case of *M/s.Hanil Era Textiles Limited (supra)*, the jurisdiction clause did not use the words “alone only” or “exclusively”. Even in the said case, the Apex Court while relying upon *A.B.C. Laminart Pvt. Ltd. & Anr. Vs. A.P. Agencies, Salem*, AIR (1989) SC 1239, was of the view that the courts must look at the aim and intent of the parties upon reading of the clause. It was held as under:

“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 exclusion 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 is exclude all other from its operation may be such cases be inferred. It has, therefore, to be properly construed.” This view has been reiterated in *Angile Insulations v Davy Ashmore India Ltd.* 1995 (4) SCC 153.”

19. The judgments sought to be relied upon by Mr.Rawal are not applicable to the facts of the present case.
20. In the present case, in view of clause 14, where courts at Haryana have been given exclusive jurisdiction and having regard to the fact that substantial cause of action has arisen at Haryana, present plaint be returned to the plaintiff to enable plaintiff to file the same in the appropriate court of jurisdiction, within one month of return of the plaint by the Registry of this court.

21. All other objections taken in this application are kept open. Consequently, this application along with other pending applications and the suit stand disposed of in above terms.

G.S.SISTANI, J

FEBRUARY 16, 2012

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