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

% *Date of Decision: January 22, 2014*

+ **RFA(OS) 24/2014**

M/S. STORE ONE RETAIL INDIA LTD.
(FORMERLY KNOWN AS INDIA BULLS
RETAIL SERVICES LTD.

..... Appellant

Represented by: Mr.Chetan Sharma, Sr.Advocate with
Mr.Arn timer Kumar and Mr.Karan
Luthra, Advocate

versus

M/S. TTK PRESTIGE LTD.

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J. (Oral)

CM No.1322-23/2014

Allowed subject to just exceptions.

RFA (OS) No.24/2014 & CM No.1321/2014

1. For the reasons stated in the application since appellant had sought review before the learned Single Judge of the impugned judgment and decree dated April 08, 2013 which was dismissed on January 10, 2014, we condone 243 days' delay in filing the appeal.

2. Vide impugned judgment and decree dated April 08, 2013 IA No.4674/2012 filed by the appellant under Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908 has been dismissed and suit under Order

XXXVII filed by the respondent has been decreed in sum of ₹20,52,551.78 (Rupees Twenty Lacs Fifty Two Thousand Five Hundred Fifty One and Seven Eight Paisa only) together with interest @ 10% per annum on the sum of ₹14,77,761.81 (Rupees Fourteen Lacs Seventy Seven Thousand Seven Hundred Sixty One and Eighty One Paisa only) from when suit was instituted till date of payment.

3. Review sought has been dismissed by the learned Single Judge vide order dated January 10, 2014, and we find that R.P.No.5/2014 was filed with a delay of 212 days.

4. Order dated April 08, 2013 dismissing IA No.4674/2012 would reveal that the appellant did not deny the averment in the plaint that the plaintiff had supplied goods as per invoices, being seven in number, referred to in the plaint with copy filed. But had claimed that there was a short supply and some goods were defective. The order would record that counsel for the appellant conceded that neither was there any particulars in the pleading nor was any document filed that after the goods were received in a packed condition as per the invoices the appellant wrote to the plaintiff that the goods were short supplied or within a reasonable time of receipt of the goods intimated rejection of part thereof. Thus, said defence has been read as a moon shine by the learned Single Judge.

5. The only other issue discussed is whether Court at Delhi had territorial jurisdiction to entertain the plaint.

6. As per the plaint the plaintiff manufactures a range of home and kitchen appliances and has a regional branch at Delhi. The defendant which has its office at 36, DLF, Industrial Area, Kirti Nagar, New Delhi approached plaintiff for supply of goods manufactured by the plaintiff and

as per request of the defendant delivered goods at the place directed and raised seven invoices annexures B-1 to B-7. The consignments were delivered at Ludhiana, Jaipur, Ahmedabad, Pune and Delhi. It was averred that part payments were received and balance due was ₹14,77,761.81 (Rupees Fourteen Lacs Seventy Seven Thousand Seven Hundred Sixty One and Eighty One Paisa only) and with pre-suit interest the amount due when plaint was instituted was ₹20,52,551.78 (Rupees Twenty Lacs Fifty Two Thousand Five Hundred Fifty One and Seven Eight Paisa only).

7. In the application seeking leave to defend said averments were not questioned. In the application seeking leave to defend no plea has been urged that Court at Delhi does not have the necessary territorial jurisdiction.

8. But, the impugned judgment and decree dated April 08, 2013 would reveal that the jurisdiction of the Court at Delhi was questioned urging that the invoices recorded that the Court at the respective place where goods were delivered would have jurisdiction to entertain the claim. To wit, for the goods delivered at Jaipur, the invoice recorded : '*in case of dispute Jaipur Court will have jurisdiction.*' Likewise invoices pertaining to Pune, Ahmedabad, Ludhiana and Delhi had same clause printed with name of city changing.

9. The learned Single Judge has referred to the law declared by the Supreme Court in the decision reported as (2004) 4 SCC 671 Hanil Era Textiles LTd. Vs. Puromatic Filters Pvt. Ltd. to reason that only where the jurisdiction ouster clauses used words such as '*alone*', '*only*', '*exclusive*' and the like could it be held that jurisdiction of other Courts which law recognized would be ousted and vested in only one Court.

10. Now, a plea of jurisdiction needs to be urged at the first instance,

which pertaining to a summary suit instituted under Order XXXVII of the Code of Civil Procedure must be when application seeking leave to defend is filed. It is trite that of the three jurisdictions recognized by civil law, subject matter jurisdiction cannot be waved but the other two jurisdictions i.e. pecuniary and territorial can be waved because the two do not relate to the inherent jurisdiction of the Court.

11. Be that as it may, since parties debated before the learned Single Judge on the issue of jurisdiction with reference to the alleged jurisdiction ouster clause in the seven invoices, we deal with the argument.

12. It is true that the invoices have a clause : '*in case of dispute Jaipur Court will have jurisdiction*'; with the only difference being the change in the name of the city where the goods were delivered. But we find that in the instant case the plea in the plaint is that an agreement took place at Delhi requiring plaintiff to supply goods to the defendant at such places where the defendant wanted. In other words, in the facts of the instant case we would not be wrong to state that the agreement was to supply the goods for which purchase orders would be raised or oral communication sent for goods to be delivered and in respect of the delivery made an invoice would be raised. The agreement at Delhi would thus be the mother agreement and the invoices would simply be akin to a bill raised and if acknowledged evidencing a written acknowledgment of the amount payable under the bill. The so-called jurisdiction clause would be redundant.

13. The alternative reasoning could be that since under an oral contract goods were to be delivered as demanded at different places, the clause in question was not intended to be vesting sole jurisdiction only in the respective Court in the territorial jurisdiction whereof the city was where the

goods were delivered.

14. As regards the order passed on review, we need not quibble with the reasoning of the learned Judge that law declared in the decision reported as (2013) 9 SCC 32 *Swastik Gases Pvt. Ltd. Vs. IOC Ltd.* was prospective, a reasoning which may be wrong for the reason if an earlier view taken by a Court is reverse on an interpretation of law, being declaratory of the law, the latter decision would be required to be read as expounding the law since it was legislated.

15. But, in the instant case no statute was interpreted, much less any law declared. The decisions pertaining to interpreting an ouster jurisdiction clause in a contract cannot be treated as declaratory of the law. The decisions would be persuasive in nature and guiding the Court as to how Courts should approach the issue while reading clauses in a contract.

16. For our reasons recorded hereinabove that there was a mother contract between the parties pursuant thereto goods were delivered at different cities and invoices raised, the clause in question cannot be read as a jurisdiction ouster clause, we dismiss the appeal in limine but without any orders as to costs.

CM No.1320/2014

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

JANUARY 22, 2014

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