

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

+ **C.R.P. 139/2014 & CM 15107/2014 (stay)**

% Reserved on: 20th March, 2015
Decided on: 15th April, 2015

M/S OK PLAY INDIA LIMITED Petitioner
Through: Mr. Anirudh Wadhwa, Advocate.

versus

PRADEEP TAYAL Respondent
Through: Mr. Satender Verma, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Aggrieved by the order dated 22nd May, 2014 whereby the application of the Petitioner/Defendant under Order 7 Rule 11 CPC was dismissed, the Petitioner prefers the present petition.
2. A suit for recovery of Rs.1,10,760/- with future and pendente-lite interest was filed by Pradeep Tayal against the petitioner (in short M/S OK Play”) stating that Pradeep Tayal was running a firm manufacturing and supplying t-shirts, sportswear and caps. M/s OK Play, a Private Limited company placed a Purchase Order No.POOK06001346 dated 29th December, 2006 for supply of T-shirts and jeans pants. After negotiations between the parties, the price was finalized and against the purchase order 300 T-shirts and 322 Jeans pants were supplied to M/S OK Play on 27th July, 2007 in complete quantity and perfect quality along with the retail cash bill dated 27th January, 2007 for Rs.2,54,800/-. M/S OK Play returned back 109 jeans and two T-shirts for alteration. On checking, no defect was found in the jeans and T-shirts, thus Pradeep Tayal required M/S OK Play to lift the said

jeans and T-shirts however, it refused to do so. M/S OK Play paid a sum of Rs.50,000/- in advance and Rs.11,084/- vide cheque on 9th May, 2007 leaving the balance of Rs.1,10,760/- legally enforceable liability against the manufacturing and supply of jeans and T-shirt. Despite emails sent by Pradeep Tayal, M/S OK Play did not send the money. A meeting was held on 11th June, 2007 wherein Mr.Rajan Handa on behalf of M/S OK Play agreed to make the payments.

3. In the plaint it was stated that the jurisdiction to adjudicate the suit vests in the Delhi Courts as M/S OK Play resides and work for gain within the territorial jurisdiction of the Delhi Court. With the plaint Pradeep Tayal filed documents. The Purchase Order dated 29th December, 2006 mentioned the words ‘subject to Mewat Jurisdiction’ whereas the retail cash bill mentioned ‘All disputes subject to Delhi Jurisdiction only’.

4. Learned counsel for M/S OK Play states that on issuing the purchase order offer of Pradeep Tayal was accepted and the agreement between the parties concluded. As per the purchase order the jurisdiction vested in the Mewat Courts and the retail cash bill of Pradeep Tayal noting that “all disputes were subject to Delhi jurisdiction only” was frivolous.

5. Section 4 of the Indian Contract Act, 1872 provides that communication of an acceptance is complete as against a proposer when it is put in the course of transmission to him so as to be out of the power of the acceptor and as against the acceptor, when it comes to the knowledge of the proposer.

6. In A.B.C. Laminart Pvt. Ltd. & Anr. Vs. A.P. Agencies, Salem, (1989) 2 SCC 163 the Supreme Court held-

“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.”

7. In the plaint, Pradeep Tayal stated that M/S OK Play placed a purchase order dated 29th December, 2006 for supply of T-shirts and jeans pants. Thereafter, a protracted negotiation was held between the defendant’s representative and the plaintiff’s representative and the price was finalized. Against the purchase order, 300 T-shirts and 322 jeans pants were supplied to M/S OK Play on 27th January, 2007 in perfect quality and quantity along with retail cash bill dated 27th January, 2007 for Rs.2,54,800/-. The purchase order sent by M/S OK Play contained the clause “subject to Mewat Jurisdiction”. In the present case, it is thus apparent that after the purchase order was placed, protracted negotiations were held only with regard to the price which was finalized. Thus on the price being finalized, a concluded contract came into force. Pradeep Tayal by the retail cash bill which was a printed proforma noting “All disputes subject to Delhi Jurisdiction only” could not have altered the terms of the contract unilaterally. Thus though both the Courts i.e. at Mewat and Delhi have the jurisdiction to try the suit,

however, by a valid agreement parties subjected themselves to the jurisdiction of competent court at Mewat ousting the jurisdiction of the Court at Delhi.

8. This Court has already taken a similar view in Wollaque Ventilation & Conditioning Pvt. Ltd. Vs. Sterling Tools Ltd. 177 (2011) DLT 731 and held-

“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.”

9. Consequently, the impugned order is set aside. The application of the petitioner/defendant is treated as one under Order VII Rule 10 CPC and the suit is directed to be returned to the plaintiff to be filed before the Court of competent jurisdiction at Mewat.

10. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

APRIL 15, 2015
‘vn’