



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.825 OF 2025**

Vivaan Solar Private Ltd.

A company registered under the
Companies Act, 1956 and having
registered office at 1, Bansal Office,
Nehru Colony, Thatipur, Gwalior
- 474 011, Madhya Pradesh

... Petitioner

versus

Larsen and Toubro Limited

A company incorporated under the
Indian Companies Act, 1956 and
having its registered office at L&T House,
N M Marg, Ballard Estate, Mumbai – 400 001

Also at,

Larsen and Toubro Limited,
Electrical and Automation Campus,
A – 600, TTC Industrial Area,
Shil-Mahape Road, Navi
Mumbai – 400 710.

... Respondent

Mr. Rahul Kalangiwale with Mr. Anish Khandekar, Ms. Uroosa Shaikh i/by
Vanguard Law Group, for Petitioner.

Mr. Zal T. Andhyarujina, Senior Advocate with Mr. Shrey Sancheti, Mr.
Durgaprasad Sabnis, Mr. Hiten Lala, Mr. Sanjeev Kumar, Mr. Anshul Sehgal
(through VC) for Respondent.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 22 JANUARY 2025

PRONOUNCED ON : 16 APRIL 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned
Counsel for the parties, heard finally.

2. The Petitioner – Defendant takes exception to an order 18 April 2024 passed by the learned District Judge, Belapur, on an application (Exhibit 15) in Commercial Suit No.18 of 2023, whereby the application preferred by the Defendant to dismiss the commercial Suit for having been instituted in a Court which has no jurisdiction, came to be rejected.

3. Background facts leading to this Petition can be stated, in brief, as under :

3.1 The Respondent – Plaintiff is a major technology, engineering, construction, manufacturing and financial services conglomerate with global operations. The Petitioner – Defendant is a private limited company. The Defendant has its registered Office at Gwalior – Madhya Pradesh. The Defendant is engaged in the business of, inter alia, renewable energy and development of power plants.

3.2 The Plaintiff had offered sales and services in the field of solar energy with its range of central inverters for the solar projects of the Defendant. After the exchange of correspondence and series of meetings, Defendant placed a purchase order on 25 November 2015 on the Plaintiff for the supply of seven solar power generating systems / inverters for an aggregate price of Rs.1,65,00,000/- on the Control and Automation Business Unit of the Plaintiff at Navi Mumbai. Delivery of the inverters in accordance with the purchase order was to be made at the Defendant's plant at Bishanpur Kundli, Lakshar

Road, Haridwar.

3.3 Under the terms of the contract, the Plaintiff was to furnish Performance Guarantee in the event of a mass failure; where the inverters failed to produce power as per specifications due to manufacturing defect within one year from the date of commission and the Plaintiff failed to rectify the defect within the stipulated period. The Plaintiff, thus, furnished Performance Bank Guarantee dated 17 March 2016 in favour of Defendant for a sum of Rs.1,65,00,000/-. The Performance Bank Guarantee was issued by Kotak Mahindra Bank, New Delhi Branch.

3.4 Asserting that the Defendant coerced the Plaintiff to continue the performance bank guarantee beyond the initially agreed period, and, eventually, in the month of June 2019, the Defendant wrongfully invoked the bank guarantee, the Plaintiff instituted the suit seeking a decree in the sum of Rs.1,74,90,000/- along with interest thereon. It was, inter alia, averred that the Defendant had illegally and fraudulently invoked the performance bank guarantee in gross violation of the terms and conditions of the purchase order.

3.5 The Defendant appeared and filed an application purportedly under Section 20 read with Section 151 of the Code of Civil Procedure, 1908 seeking dismissal of the suit as the Commercial Court at Belapur, where the suit was instituted, had no jurisdiction to entertain, try and decide the said suit. It was contended, inter alia, that the registered office of the Defendant was at

Gwalior, Madhya Pradesh. The Defendant had accepted the offer of the Plaintiff at Gwalior, M.P. and, thus, the contract was concluded at Gwalior. The performane bank guarantee, for the alleged unlawful encashment of which the suit has been instituted, was issued by Kotak Mahindra Bank, at New Delhi. Even otherwise, no part of cause of action arose within the local limits of the jurisdiction of the Commercial Court at Belapur. Therefore, the Commercial Court at Belapur lacked jurisdictional competence.

3.6 The application was resisted by the Plaintiff. It was the stand of the Plaintiff that a substantial part of the cause of action arose within the territorial limits of the jurisdiction of the Commercial Court at Belapur. Thus, the case was covered by clause (c) of Section 20 of the Code, 1908. An endeavour was made to demonstrate, by reference to the facts which transpired since the issue of purchase order by the Defendant to the Plaintiff, that substantial and material cause of action had arisen within the territorial limits of the Commercial Court at Belapur.

3.7 The learned District Judge, Belapur, was persuaded to reject the application opining, inter alia, that though the bank guarantee was issued by the Bank at New Delhi, a part of the cause of action has arisen within the local limits of the jurisdiction of the Commercial Court at Belapur, as the purchase order was received by the Plaintiff at Mahape, Navi Mumbai. Thus, following the decision of the Supreme Court in the case of Bhagwandas Goverdhandas

Kedia V/s. Girdharilal Parshottamdas and Co. and Ors.¹, the learned District Judge found that the Commercial Court at Belapur had the jurisdictional competence.

3.8 Being aggrieved, the Defendant has invoked the writ jurisdiction.

4. I have heard Mr. Kalangiwale, learned Counsel for the Petitioner, and Mr. Zal Andhyarujina, the learned Senior Advocate for the Respondent, at some length. Learned Counsel took the the Court through the pleadings and documents on record.

5. Mr. Kalangiwale, learned Counsel for the Petitioner, submitted that, the learned District Judge did not properly appreciate the aspect of jurisdiction of the Court. The fact that the purchase order was received by the Plaintiff at Mahape, Navi Mumbai, was of no assistance in determining the jurisdiction of the Court to entertain, try and decide the suit. Indisputably, neither the Defendant resides, nor carries on business within the local limits of the jurisdiction of the Commercial Court at Belapur. Nor the goods were delivered at Navi Mumbai. In this view of the matter, to confer the jurisdiction on the courts at Navi Mumbai, it was incumbent upon the Plaintiff to demonstrate that a part of the cause of action arose within the local limits of the jurisdiction of the Commercial Court at Navi Mumbai. There is no material to sustain a finding that a part of the cause of action arose within the

1 AIR 1966 SC 543

local limits of the Commercial Court at Navi Mumbai.

6. The learned District Judge, according to Mr. Kalangiware, completely misconstrued the judgment in the case of Bhagwandas Goverdhandas Kedia (supra). Placing reliance on the Division Bench judgment of this Court in the case of the Baroda Oil Cakes Traders V/s. Purushottam Narayandas Bagulia and Anr.² and a decision of the Supreme Court in the case of A.B.C. Laminart Pvt. Ltd. and Anr. V/s. A.P.Agencies, Salem³, learned Counsel urged that the legal position is well neigh settled that the Court at the place from where the offer originates or where the acceptance is received, does not have the jurisdictional competence. Therefore, the impugned order deserves to be quashed and set aside.

7. Per contra, Mr. Andhyarujina, learned Senior Advocate for the Respondent, supported the impugned order. It was submitted that the material on record unmistakably indicates that some part of cause of action arose within the local limits of the commercial Court at Belapur. Incontrovertibly, the office of the Plaintiff is situated at Mahape, Navi Mumbai, on which the Defendant had placed the purchase order. Mr. Andhyarujina took the Court through the purchase order to draw home the point that the said purchase order was received by a mode which renders the place where the purchase order was received as the place of conclusion of contract. Mr.

² AIR 1954 Bom 491

³ (1989) 2 SCC 163

Andhyarujina would urge that the decision in the case of Bhagwandas Goverdhandas Kedia (supra), governed the facts of the case. Thus, the trial Court correctly placed reliance on the said decision.

8. In addition, Mr. Andhyarujina placed reliance on the judgment of a learned Single Judge of this Court in the case of Quadricon Pvt. Ltd. V/s. Shri Bajrang Alloys Ltd.⁴, wherein with reference to the decision of the Supreme Court in the case of Bhagwandas Goverdhandas Kedia (supra), it was enunciated that communication by fax is similar to communication by telex. Communication by fax is also instantaneous and is in fact through, by means of a telephone connection. The Supreme Court has accepted that in the case of communication by telex the normal rule would apply and the contract would be completed only when the acceptance is received by the offerer. Accordingly, in case of communication by fax also the normal rule would apply and the contract would be completed only when the acceptance is received by the offerer.

9. The aforesaid pronouncement, according to Mr. Andhyarujina, is on all four with the facts of the case. Thus, the Petition is devoid of any substance.

10. The aforesaid submissions now fall for consideration.

11. At the outset, it may be appropriate to note few uncontroverted facts which bear upon the determination of the controversy at hand. It is

4 2008(3) Mh.L.J. 407

incontravertible that the Defendant neither actually and voluntarily resides or carries on business within the local limits of the jurisdiction of the Court at Belapur. The Registered Office of the Defendant is at Gwalior, M.P.. On the own showing of the Plaintiff, the Defendant has its branch offices at Haridwar and New Delhi. Thus, the Explanation to Section 20 of the Code is also not attracted. The inverters were not supplied within the local limits of the jurisdiction of the Balapur Court. Thus, the jurisdictional competence of the Court at Belapur is required to be ascertained on the touchstone of clause (c) of Section 20 of the Code, 1908, namely, whether the cause of action, wholly or in part has arisen within the limits of the jurisdiction of the Belapur Court.

12. The Plaintiff asserts that a part of the cause of action arose at Navi Mumbai, as the purchase order was placed by the Defendant on the Plaintiff at its Automation Campus, Navi Mumbai; the inverters were supplied from Navi Mumbai and the demand seeking recovery of the amount of the bank guarantee which was allegedly unlawfully encashed was addressed to the Defendant from Navi Mumbai and the alleged false and frivolous reply of the Defendant to the said notice was received at the Plaintiff's Navi Mumbai Office. Whether any of the aforesaid facts furnish a cause of action to the Court at Belapur, is the moot question.

13. The cause of action is a bundle of facts which gives the Plaintiff a right to relief against the Defendant. It connotes every fact, which if traversed, it

would be necessary for the Plaintiff to prove in order to support his right to a judgment of the Court. A distinction is, however, drawn between the material facts and the incidental facts. It is the material facts which form a cause of action. Likewise, evidence of a fact is not to be confused with the fact itself. The term 'cause of action' comprises in its fold every fact which is necessary to be proved, to support the judgment; howsoever small fraction of the whole (cause of action) it may form. When the question as to whether the cause of action has arisen at a particular place, crops up for consideration in relation to disputes arising out of a contract between the parties, the principles contained in the Contract Act, are required to be kept in view.

14. A profitable reference in this context can be made to a decision of the Supreme Court in the case of A.B.C. Laminart Pvt. Ltd. and Anr. V/s. A.P.Agencies, Salem (supra), wherein the Supreme Court expounded the principles which govern the determination of a cause of action for a suit for damages for breach of contract. The observations in para 15 are material, and, hence, extracted below :

“15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was

made is part of the Law of Contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.” (emphasis supplied)

15. In the case of Bhagwandas Goverdhandas Kedia (supra), on which reliance was placed by the Plaintiff, the facts were thus : The Plaintiffs were operating from Ahmedabad, Gujarat. Defendant was based at Khamgaon, Maharashtra. The Plaintiffs claimed that the Defendant had offered to sell cotton seed cake to the Plaintiffs. The said offer was accepted by the Plaintiffs at Ahmedabad. The Defendant was bound to supply the goods at Ahmedabad. The Defendant was to receive payment through the bank at Ahmedabad.

16. In the wake of challenge to its jurisdiction, the City Civil Court at Ahmedabad held that, since contract was made by conversation on telephone, the place where the acceptance of offer is intimated to the offerer is the place where the contract was made and, therefore, the Civil Court at Ahmedabad had jurisdiction to try the suit.

17. In the said case, a submission was sought to be canvassed on behalf of the Plaintiffs that making of an offer is a part of the cause of action in a suit for damages for breach of contract, and the suit would lie to the Court within the jurisdiction of which the offerer has made the offer which on acceptance has resulted into a contract. Alternatively, it was contended that the intimation of acceptance of the offer being essential to the formation of a contract, the contract takes place where such intimation is received by the offeror.

18. The Supreme Court repelled the first contention. It was in terms enunciated that making of an offer at a place which has been accepted elsewhere does not form part of the cause of action in a suit for damages for breach of contract. Ordinarily, it is the acceptance of offer and intimation of that acceptance which result in a contract. The Supreme Court observed, inter alia, as under :

“4. Making of an offer at a place which has been accepted elsewhere does not form part of the cause of action in a suit for damages for breach of contract. Ordinarily it is the acceptance of offer and intimation of

that acceptance which result in a contract. By intimating an offer, when the parties are not in the presence of each other, the offeror is deemed to be making the offer continuously till the offer reaches the offeree. The offeror thereby merely intimates his intention to enter into a contract on the terms of the offer. The offeror cannot impose upon the offeree an obligation to accept, nor proclaim that silence of the offeree shall be deemed consent. A contract being the result of an offer made by one party and acceptance of that very offer by the other, acceptance of the offer and intimation of acceptance by some external manifestation which the law regards as sufficient is necessary.

5. By a long and uniform course of decisions the rule is well- settled that mere making of an offer does not form part of the cause of action for damages for breach of contract which has resulted from acceptance of the offer: see Baroda Oil Cakes Traders V/s. Purshottam Narayandas Bagulia and Anr. (supra). The view to the contrary expressed by a single Judge of the Madras High Court in Sepulchre Brothers V/s. Sait Khushal Das Jagjivan Das Mehta⁵ cannot be accepted as correct."

.....

8. Acceptance and intimation of acceptance of offer are there- fore both necessary to result in a binding contract. In the case of a contract which consists of mutual promises, the offeror must receive intimation that the offeree has accepted his offer and has signified his willingness to perform his promise. When parties are in the presence of each other, the method of communication will, depend upon the nature of the offer and the circumstances in which it is made. When an offer is orally made,

5 ILR (1942) Mad 243

acceptance may be expected to be made by an oral reply, but even a nod or other act which indubitably intimates acceptance may suffice. If the offeror receives no such intimation. even if the offeree has resolved to accept the offer, a contract may not result. But on this rule is engrafted an exception based on grounds of convenience which has the merit not of logic or principle in support, but of long acceptance by judicial decisions. If the parties are not in the presence of each other, and the offeror has not prescribed a mode of communication of acceptance, insistence upon communication of acceptance of the offer by the offeree would be found to be inconvenient, when the contract is made by letters sent by post. In Adams v. Lindsell⁶, it was ruled as early as in 1818 by the Court of King's Bench in England that the contract was complete as soon as it was put into transmission. In Adams's case(supra), the defendants wrote a letter to the plaintiff offering to sell a quantity of wool and requiring an answer by post. The plaintiff accepted the offer and posted a letter of acceptance, which was delivered to the defendants nearly a week after they had made their offer. The defendants however sold the goods to a third party, after the letter of acceptance was posted but before it was received by the defendants. The defendants were held liable in damages. The Court in that case is reported to have observed that "if the defendants were not bound by their offer when accepted by the plaintiffs till the answer was received, they the plaintiffs ought not to be bound till after they had received the notification that the defendants had received their answer and assented to it. And so it might go on *ad infinitum*. The rule Adam's case (supra), was approved by the House of Lords in Dunlop

6 IB & Aid 681

and others v. Vincent Higgins and others⁷. The rule was based on commercial expediency, or what Cheshire calls "empirical grounds". It makes a large inroad upon the concept of consensus, "a meeting of minds" which is the basis of formation of a contract. It would be futile however to enter upon an academic discussion, whether the exception is justifiable in strict theory, and acceptable in principle. The exception has long been recognised in the United Kingdom and in other countries where the law of contracts is based on the common law of England. Authorities in India also exhibit a fairly uniform trend that in case of negotiations by post the contract is complete when acceptance of the offer is put into a course of transmission to the offeror : see *Baroda Oil Cakes Traders* (supra), and cases cited therein. A similar rule has been adopted when the offer and acceptance are by telegrams. The exception to the general rule requiring intimation of acceptance may be summarised as follows. When by agreement, course of conduct, or usage of trade, acceptance by post or telegram is authorised, the bargain is struck and the contract is complete-when the acceptance is put into a course of transmission by the offeree by posting a letter or dispatching a telegram."

(emphasis supplied)

19. Following the decision of the Court of Appeal in *Entores Ltd. V/s. Miles Far East Corporation*⁸, the Supreme Court enunciated that the trial Court was right in the view which it has taken that a part of the cause of action arose within the jurisdiction of the City Civil Court, Ahmedabad, where acceptance

⁷ 1 HLC 381

⁸ (1955) 2 QB 327

was communicated by telephone to the Plaintiffs.

20. It would be contextually relevant to note the judgment of the Division Bench of this Court in the case of the Baroda Oil Cakes Traders (supra), which was approved by the Supreme Court in the case of Bhagwandas Goverdhandas Kedia (supra). In the said case, the Plaintiff who was based at Baroda offered to purchase goods from Defendant who was based at Kanpur. The Defendant having accepted the offer by wire (despatch from Kanpur to Baroda), failed to supply the goods. The Plaintiff instituted the suit for damages at Baroda.

21. In the backdrop of these facts, while determining whether the cause of action for such a suit has arisen at Baroda, the Division Bench observed that it would be difficult to hold that a part of the contract has taken place at Baroda merely because the proposal was sent from Baroda. Under Section 4, the communication of an acceptance is complete as against the proposer when it is put in the course of transmission to him, so as to be out of the power of the acceptor. That necessarily means that as soon as the acceptance is posted or sent by telegram as in the present case, the acceptance is complete against the proposer, and so far as he is concerned the contract is concluded. In other words, the communication of the acceptance to the proposer cannot be said to be such an integral part of the completion of the contract as to constitute a part of the cause of action in a

suit on the said contract. Therefore, it would be difficult to accede to the argument that because the proposal was sent from Baroda and the acceptance was received at Baroda by the proposer a part of the contract has been made in Baroda itself.

22. Mr. Andhyarujina, learned Senior Advocate for the Plaintiff would submit that the decision in the case of the Baroda Oil Cakes Traders (supra), deals with a normal situation where the offer is accepted by letters or telegram. Where the parties are, in a sense, present before each other and the offer is accepted on a telephone or telex, as was the case in Bhagwandas Goverdhandas Kedia (supra), the place at which the acceptance of offer was indicated on telephone also gives rise to a part of the cause of action. Therefore, in the facts of the cast at hand, receipt of communication of acceptance of the offer made by the Plaintiff at Mahape, Navi Mumbai, furnishes cause of action to the Court at Navi Mumbai.

23. On a careful consideration of the material on record and the manner in which the learned District Judge approached the controversy, I am afraid to accede to the submission of Mr. Andhyarujina, unreservedly. From the perusal of the impugned order, it becomes abundantly clear that the fact that the purchase order was issued on the Plaintiff at its Mahape Office, Navi Mumbai, and, thus, received by the Plaintiff, principally weighed with the learned District Judge. It is trite that the acceptance of the offer is complete

the moment it is made by the acceptor so as to be out of the power of the acceptor. Thus, the acceptance of the offer so as to conclude the contract was at the place of the Defendant.

24. Whether the case would be covered by the decision of the Supreme Court in the case of Bhagwandas Goverdhandas Kedia (supra), on account of communication of the acceptance, would depend on the proof of the mode of the communication of the acceptance of offer by the Defendant i.e. the mode in which the purchase order was placed by the Defendant. The averments in the plaint and the documents annexed thereto do not equip the Court to form a definitive opinion. Firstly, the purchase order (Exhibit D) does not explicitly indicate the mode of its communication. Secondly, in the plaint, there is no specific averment as regards the issue and receipt of the purchase order. In paragraph 5 of the plaint, it is averred that the Defendant has raised the purchase order on the Control and Automation Business Unit at Navi Mumbai. In paragraph 36 which professes to incorporate the cause of action also, it is simply averred that the Defendant issued the purchase order on the Plaintiff at its Automation Campus, Navi Mumbai.

25. This Court is also required to keep in view the fact that the impugned order has been passed by the commercial Court. In view of the provisions contained in Section 8 of the Commercial Courts Act, 2015, there is a bar against entertaining the revision against an interlocutory order. Section 8 of

the Act, 2015 reads as under :

“8. Bar against revision application or petition against an interlocutory order. - Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.”

26. The Parliament has, thus, mandated that no civil revision application or petition shall be entertained against the interlocutory order of Commercial Court. The Parliament has taken care to provide that an interlocutory order on the issue of jurisdiction also cannot be made the subject matter of challenge and any challenge to such order shall be raised only in an appeal against the decree of Commercial Court. Having regard to the legislative object and the intent of the legislature in barring the remedy of revision, which is otherwise available to a party in civil proceedings, the exercise of writ jurisdiction under Article 227 of the Constitution of India, though not ousted, yet needs to be informed by the limited nature of the said jurisdiction, lest the legislative object of proscribing revision would be defeated if the legality, propriety and correctness of every order passed by the Commercial Court is examined in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

27. In this view of the matter, I am of the considered view that the issue requires afresh consideration by the trial Court as the inquiry is fact based. The Petition, therefore, deserves to be partly allowed.

28. Hence, the following order :

ORDER

- (i) The Writ Petition stands partly allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The application (Exh. 15) is restored to the file of the learned District Judge at Belapur. The learned District Judge shall decide the aspect of jurisdiction after providing an effective opportunity of hearing to the parties and in the light of the observations hereinabove.
- (iv) By way of abundant caution, it is clarified that the consideration was confined to determine the legality and correctness of the impugned order, and this Court may not be understood to have expressed any opinion on the merits as regards the jurisdiction of the commercial Court at Navi Mumbai to entertain, try and decide the suit.
- (v) Rule made absolute to the aforesaid extent.
- (v) No costs.

(N.J.JAMADAR, J.)