

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1299 OF 2015

Naran Lala Pvt.Ltd.)
 Managing Director Mr.Vijay M.Kansara)
 having its Registered Office and Factory)
 at P.B.No.20, Railway Station Road,)
 Navsari – 396 445, Gujarat)... Petitioner

Vs.

Ion Exchange (India) Ltd.)
 having its Registered Office at Ion House,)
 Dr.E.Moses Road, Mahalaxmi, Mumbai-400011)
 through its Authorized Representative Mr.Krushna)
 Chandra Rath, Executive (Legal).)... Respondents

Mr.Mikhail Behl with Mr.K.G.Mhatre & Prateek Pai i/b. Mhatre & Associates, for the Petitioner.

Mr.Sham Walve i/b. Mr.Haresh K.Meghani, for the Respondents.

CORAM : **G. S. KULKARNI, J.**

RESERVED ON : **25th FEBRUARY, 2015**

PRONOUNCED ON : **10th MARCH, 2015**

JUDGMENT:

1. Rule returnable forthwith. By consent of the learned Counsel for the parties and at their request, taken up for final hearing.

2. This petition challenges the order dated 25.11.2014 passed by the learned Judge of City Civil Court at Bombay, whereby Notice of Motion taken out by the petitioner / original defendants for a relief under Order 7 Rule 10 of the Code of Civil Procedure, 1908 to return the plaint to be filed before the appropriate Court for want of jurisdiction, has been rejected.

Briefly the facts are:-

3. The respondents filed a Summary Suit No.668 of 2014 before the City Civil Court at Bombay under Order 37 Rule 2 of the Code of Civil Procedure against the petitioner praying for decree against the petitioner for principal sum of Rs.40,22,294/- alongwith interest. It was the respondents' case in the suit that the liability of the suit claim had arisen out of two purchase orders dated 20.8.2010 and 4.8.2010 issued by the petitioner in favour of the respondents. The relevant averments in the plaint filed by the respondents in paragraphs 5, 7 and 22 in this regard needs to be noted which read thus:-

“5. The Plaintiffs state that pursuant to L.O.I. Dated 4.8.2010 and purchase order dated 20.8.2010 for supply of water treatment plant and other accessories, the Plaintiffs have completed the said contract as per the purchase order in time and as per the terms and conditions mentioned in the said purchase order and sold and supplied the said equipment under the purchase order Ex.A hereto to Defendants' M/s.Aroma Biotech Pvt.Ltd.

7. The Plaintiffs state that the Defendants have, in response to Plaintiffs' another offer

No.IEI/BRD/F&B/08/2009-10/REV-1 dated 21.7.2010, also by their another letter of indent dated 4.8.2010 and purchase order bearing No.N-041-B/10-11/N/478/Rena dated 20.8.2010 placed an order with the Plaintiffs for supply of water treatment plan and other accessories with technical specifications mentioned in Annexures (I) to (V) to purchase order. Hereto annexed and marked as Exhibit "C" colly. are the copies of Defendants' another set of letter of Indent and purchase order.

22. The Plaintiffs state that they are filing the present suit as Summary Suit to recover their outstanding dues from the Defendants arising out of two purchase orders pursuant to admission by the Defendants by their mail dated 30.8.2012 to the effect that in respect of both the projects at Defendants' clients' sites supply of material was complete before 30.8.2012. The Plaintiffs state that the defendants by their own conduct in issuing "C"-Forms for all invoices issued by the Plaintiffs have admitted their liability to pay to the Plaintiffs outstanding dues of Rs.40,22,294/-."

In the contention of the petitioner, reading of the aforesaid averments clearly indicates that the respondents were pursuing their claims under the contract arrived between the parties under the said purchase orders. The learned Counsel for the petitioner has drawn my attention to the jurisdiction clause in the purchase order whereby the parties had agreed that any dispute arising between the parties under the purchase orders, the same would be subject to Navsari jurisdiction only. The jurisdiction clause in the purchase order reads thus:-

"Jurisdiction:

In case any dispute arising out of this Purchase

Order, the same is subject to Navsari Jurisdiction only.”

The learned Counsel for the petitioner has submitted that the respondents had filed a summary suit against the petitioner in the City Civil Court at Mumbai on the ground that the material part of the cause of action has arisen in Mumbai. He has drawn my attention to the averments in paragraph 27 of the plaint which are the averments in regard to the jurisdiction of the City Civil Court at Mumbai to try and entertain the summary suit. Paragraph 27 of the plaint filed by the respondents reads thus:-

“27. The Plaintiffs are having their registered office at Mumbai, the Defendants are having their registered office at Navsari, Gujarat, the part payments are made by the Defendants to the Plaintiffs in Plaintiffs' Registered Office at Mumbai, statement of account was sent to the Defendants from Mumbai and thus material part of cause of action having been arisen in Mumbai, this Hon'ble Court has jurisdiction to entertain and try this suit.”

Learned Counsel for the petitioner submits that in view of the specific jurisdiction clause (supra) as agreed in the contract, the respondents could not have filed a summary suit before the City Civil Court at Mumbai and ought to have filed the same at Navsari, Gujarat, in pursuance of the agreed jurisdiction clause in the purchase order. He submits that the statement of account as maintained between the parties was under the purchase orders in

questions and therefore, any dispute pertaining to the same was required to be raised before the Court at Navasari, Gujarat. It is submitted that the petitioner thus had filed Notice of Motion in question praying for return of the plaint to be filed before the appropriate Court.

4. Learned Counsel for the petitioner submits that the learned Judge of City Civil Court is in an error in passing the impugned order to reject the petitioner's Notice of Motion. He submits that the observation of the learned Judge in the impugned order that the purchase orders cannot be the foundation for the purpose of jurisdiction is not correct, is erroneous. He submits that the learned Trial Judge is in an error in observing that statement of account stands dehors the purchase order and hence the summary suit was maintainable at Mumbai, is an erroneous conclusion. It is submitted that the jurisdiction clause in the contract has been completely overlooked by the learned Trial Judge while applying the provisions of Section 20(c) of the Code of Civil Procedure. In support of the submission that the jurisdiction clause in the agreement between the parties (purchase orders) would exclude the jurisdiction of the Civil Court at Mumbai, learned Counsel for the petitioner has relied on the decision of the Supreme Court in the case of ***“Swastik Gases Pvt.Ltd. Vs. Indian Oil Corporation Ltd., ((2013)9 Supreme Court Cases 32)”*** in support of his submission.

5. On the other hand the learned Counsel for the respondents in opposing this petition firstly raised a contention that the writ petition was not maintainable to challenge the impugned order and that the petitioner ought to have filed civil revision application under Section 115 of the Code of Civil Procedure. The objection as raised by the learned Counsel for the respondents cannot be sustained in view of the proviso inserted in Section 115 by the Code of Civil Procedure (Amendment) Act, 1999 which reads thus:-

“115. Revision.- (1)
[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]”

A revision would thus lie only when the order in question would have finally disposed of the suit and/or decide the lis. In the present case, the petitioner was praying for return of the plaint. If an order was to be passed in favour of the petitioner, the same would not have amounted to final disposal of the suit. The objection raised on behalf of the respondents that a revision would be maintainable, therefore, deserves to be rejected.

6. On the merits of the case, learned Counsel for the respondents supporting the impugned order submits that the summary suit has been

instituted before the City Civil Court at Mumbai as a part of the cause of action has arisen at Mumbai. He submits that the averment on the jurisdiction in the plaint clearly goes to show that the City Civil Court, Mumbai has jurisdiction to entertain the suit. He, therefore, submits that the writ petition ought not to be entertained.

7. With the assistance of the learned Counsel for the parties, I have perused the documents as placed on record. Taking into consideration the averments as made in the plaint, it appears that the dispute between the parties has arisen under the purchase orders dated 20.8.2010. The purchase orders constituted a contract between the parties. The purchase order has been issued by the petitioner to the respondents from Navsari. The same was issued on the respondents' address at Vadodara. In the jurisdiction clause the parties had expressly agreed that any dispute arising under the purchase orders the same was subject to jurisdiction of Navasari Court in Gujarat. The respondents dispatched the consignment from its Godavari-Andhra Pradesh address to the petitioner's address at Navasari, agreeing to the payment in Tamilnadu jurisdiction as stated in the invoice. It is not the case of the respondents that the suit in question at Mumbai is filed on the basis of any other contract than the purchase orders in question. If that be the case, the jurisdiction to the Court at Navasari as agreed by the respondents could not have been overlooked by the learned Trial Court. It

is a settled principle of law that when two Courts have territorial jurisdiction to try and entertain a civil suit, then the parties can agree to subject themselves to the jurisdiction of one of the Court to the exclusion of others. The maxim '*expressio unius est exclusio alterius*' applies, which means expression of one is the exclusion of another. By a stipulation in the contract the parties in the present case by subjecting themselves to the jurisdiction of the Navasari Court, have excluded the jurisdiction of other Courts. The word 'only' in the jurisdiction clause (supra) also brings out the clear intention of the parties to this effect. This is not a case where the parties have conferred jurisdiction on a Court which it inherently lacks. The purchase orders in questions have been issued by the petitioner at Navasari as also the purchase orders were issued to the respondents in its office situated at Vadodara in Gujarat. Only because certain payments were received by the respondents in Mumbai, cannot be said to oust the jurisdiction of the Civil Civil Court at Navasari to which the parties have explicitly agreed in the jurisdiction clause as contained in the contract. This issue is no more res integra in view of catena of judgments of the Supreme Court. The learned Counsel for the petitioner has appropriately relied on the decision of the Supreme Court in the case "*Swastik Gases Pvt.Ltd. Vs. Indian Oil Corporation Ltd*".(supra), wherein the Supreme Court was considering a similar issue namely clause 18 in the agreement between the parties therein by which the parties agreed to the jurisdiction, which reads as

under:-

“18. Jurisdiction

The agreement shall be subject to jurisdiction of the courts at Kolkata.”

The question before the Supreme Court was 'whether in view of Clause 18 of the consignment agency agreement the Calcutta High Court has exclusive jurisdiction in respect of the application made under Section 11 of the Arbitration and Conciliation Act, 1996. While holding that the intention of the parties is required to be taken into consideration, Justice R.M.Lodha (as His Lordship then was) observed thus:-

“31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of clause 18 of the agreement, the jurisdiction of Chief Justice of the Rajasthan High Court has been excluded.

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at

Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like ‘alone’, ‘only’, ‘exclusive’ or ‘exclusive jurisdiction’ have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties - by having clause 18 in the agreement – is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.”

(emphasis supplied)

In the concurring judgment of His Lordship Shri. Justice Madan B.Lokur, while agreeing with the observations of His Lordship Justice R.M.Lodha that the absence of the words 'alone', 'only', 'exclusive jurisdiction' in the jurisdiction clause is neither decisive nor does it make any material difference in deciding the jurisdiction of a court and that the existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear. His Lordship was pleased to take note of the

decision in “***A.B.C.Laminart (P) Ltd. Vs. A.P.Agencies, ((1989)2 SCC 163)***” to observe that when the parties have agreed to an ouster clause in the agreement, the parties convey their clear intention to exclude jurisdiction of the Court other than those mentioned in the clause concerned. In holding so, after taking into consideration several decisions on the issue, His Lordship in paragraphs 55 & 57 has observed as under:-

“55. It will be seen from the above decisions that except in A.B.C. Laminart where this Court declined to exclude the jurisdiction of the Courts in Salem, in all other similar cases an inference was drawn (explicitly or implicitly) that the parties intended the implementation of the exclusion clause as it reads notwithstanding the absence of the words “only”, “alone” or “exclusively” and the like. The reason for this is quite obvious. The parties would not have included the ouster clause in their agreement were it not to carry any meaning at all. The very fact that the ouster clause is included in the agreement between the parties conveys their clear intention to exclude the jurisdiction of Courts other than those mentioned in the concerned clause. Conversely, if the parties had intended that all Courts where the cause of action or a part thereof had arisen would continue to have jurisdiction over the dispute, the exclusion clause would not have found a place in the agreement between the parties.

57. For the reasons mentioned above, I agree with my learned Brother that in the jurisdiction clause of an agreement, the absence of words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite

clear and it is not advisable to read such a clause in the agreement like a statute. In the present case, only the Courts in Kolkata had jurisdiction to entertain the disputes between the parties.”

(emphasis supplied)

8. In view of the above legal position, it is clear that the parties in the present proceedings having agreed that the dispute, if any, falling under the purchase orders would be subject to jurisdiction of the Navasari Court. It is also apparent that the basis of the summary suit in question as filed by the respondents are the purchase orders issued by the petitioner and the payments made thereunder. In terms of the ouster clause by incorporating the word “only” the parties have explicitly excluded the jurisdiction of the other Courts. The Civil Civil Court at Mumbai though otherwise would have jurisdiction applying the provisions of Section 20(c) of the Code of Civil Procedure, the same stands excluded by the prescribed jurisdiction clause as explicitly agreed between the parties.

9. Thus the learned Judge of the City Civil Court was not correct to come to a conclusion that though the suit was based on the contract entered between the parties namely the purchase orders, but the same was founded upon the statement of the defendants' account and hence, City Civil Court at Mumbai would have jurisdiction to entertain the suit under Section 20(3) of the Code of Civil Procedure. In so observing, the learned Judge has overlooked that the dispute which had arisen between the parties fell

under the purchase orders which formed a contract between the parties. Thus, necessarily the dispute in question arose out of the purchase orders wherein the parties explicitly agreed the same to be subject to the jurisdiction of the Navasari Court. The learned Judge of the City Civil Court could not have considered the statement of defendants' account under the purchase orders de hors the purchase orders which formed the contract between the parties. Such dissection of the contract is nowhere intended by the parties so as to consider the statement of accounts outside the purchase orders. Hence, in my opinion, the reasoning of the learned Judge in the impugned order that the statement of account though falling under the purchase order, would be required to be independently considered, to hold that the City Civil Court at Mumbai would have jurisdiction, is erroneous. The learned Judge of the Civil Civil Court was, therefore, not correct in rejecting the Notice of Motion filed by the respondents, in view of the clear agreement of the parties subjecting themselves to the jurisdiction of the Court at Navasari.

10. In the light of the aforesaid observations, the Writ Petition succeeds. The impugned order dated 25.11.2014 passed by the Judge, City Civil Court, Mumbai in Notice of Motion no.2858 of 2014, is quashed and set aside. Notice of Motion no.2858 of 2014 stands allowed in terms of prayer clause (b) which reads thus:-

“(b) that the Plaint be returned to the Plaintiffs for presenting the same to the Court in which the suit should have been instituted under the provisions of Order 7 Rule 10 of the Code of Civil Procedure, 1908 read with Section 15, 20 & 151 of Code of Civil Procedure, 1908.”

11. Writ Petition stands allowed in the aforesaid terms. No order as to costs.

(G.S.KULKARNI, J.)