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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 141 OF 2013
ALONG WITH
CIVIL REVISION APPLICATION NO. 229 OF 2013

Hyderabad Industries Limited ... Applicant

Vs.

Shri Jay Yogeshwar C&F Agencies ... Respondent

Mr.R.S.Apte Senior Advocate for Applicant.

Mr.P. R. Arjunwadkar, Advocate for Respondent.

CORAM : R. G. KETKAR, J.
RESERVED ON: 04th AUGUST, 2015
PRONOUNCED ON: 13th AUGUST, 2015

P.C. :

. Heard Mr.R.S.Apte, learned Senior Counsel for the applicant and Mr.P. R. Arjunwadkar, learned Counsel for the respondent in both the Applications at length. Rule. Mr.Arjunwadkar waives service. At the request and by consent of the parties, rule is made returnable forthwith and the Applications are taken up for final hearing.

2. By these Applications under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant has challenged the judgment and order dated 24/08/2012 passed by the learned 5th Joint Civil Judge, Senior Division, Kolhapur below Exhibit 14 in Special Civil Suit No. 18 of 2011 and below Exhibit 12 in

Special Civil Suit No. 17 of 2011. By these orders, the learned trial Judge dismissed the applications filed by the applicant under Order 14 Rules 1 & 2(2) read with Section 151 of C.P.C. As the common questions of law and facts arise in these Applications, the same can conveniently be disposed of by this common order. For appreciating controversy raised between the parties, facts from Civil Revision Application No.141 of 2013 are taken into consideration.

3. In support of these Applications, Mr.Apte submitted that respondent, hereinafter referred to as plaintiff, was appointed as a consignment agent during the year 2005 in terms of Consignment Agency Agreement. The said agreement was renewed from time to time. The plaintiff instituted Suit for recovery of the amount due under the cheques which were handed over to the defendant in good faith. The plaintiff contended that the consignment Agency Agreement entered into by and between the parties came to an end on 31/03/2010. The disputed transactions in the Suit had taken place after 01/04/2010. In other words, the transaction took place after the expiry of Consignment Agency Agreement. The plaintiff asserted that disputed transactions took place within the territorial jurisdiction of the Court of Civil Judge, Senior Division, Kolhapur. The goods were supplied at Kolhapur. The defendant's depot is situate at Kolhapur. The plaintiff had handed over cheques to the defendant's representative in Kolhapur. Thus, in view of Section

20(c) of C.P.C., the cause of action partly arose within the territorial limits of the Kolhapur Court.

4. The defendant filed written statement inter alia contending that the Consignment Agency Agreement was renewed from time to time. Clause 20 thereof provided that before revoking the agreement either of the parties to give one month's notice. Neither plaintiff nor defendant gave such notice. In view of Clause 22 of the agreement, the Courts at Hyderabad alone shall have jurisdiction, in the event of any dispute between the parties. The defendant, therefore, filed application Exhibit 14 under Order 14 Rules 1 & 2(2) read with Section 151 of C.P.C. for framing preliminary issue as regards territorial jurisdiction of the Court. By order date 15/03/2012, the learned trial Judge framed the following preliminary issue. "Whether the Court has jurisdiction to try and entertain the Suit?" and permitted parties to adduce evidence.

5. By the impugned order, the learned trial Judge dismissed the application inter alia holding that plaintiff has instituted Suit for refund of the amount of 9 cheques given to the defendant as security. The cheques were handed over after agency agreement came to an end on 31/03/2010. It, therefore, cannot be said that the disputed transactions took place during the subsistence of the agreement. From the record also it is evident that the agreement was not renewed after 31/03/2010. The disputed transactions took place

within the limits of Kolhapur Court. The depot of the defendant is situate in Kolhapur. The goods were supplied at Kolhapur. The plaintiff was appointed as C & F agent and was working in that capacity in Kolhapur. The disputed cheques were also handed over in Kolhapur to the representative of the defendant. In view of Section 20(c) of C.P.C., cause of action partly arose within the limit of Kolhapur Court. As far as reliance placed by defendant on Clause 20 is concerned, the learned trial Judge observed that the said clause can be invoked during the subsistence of the agency agreement.

6. Mr.Apte submitted that the learned trial Judge committed serious error in holding that Kolhapur Court has territorial jurisdiction to entertain and try the Suit. He submitted that in view of Clause 22 of the agreement, the Courts at Hyderabad alone shall have jurisdiction in the matter. He reiterated the submissions that were advanced before the trial Court.

7. On the other hand, Mr.Arjunwadkar supported the impugned order. He submitted that the defendant has suppressed the material facts for misleading the Court. The agreement between the parties came to an end on 31/03/2010. The disputed transactions took place after 01/04/2010. The agreement was not renewed after 01/04/2010. The defendant, therefore, cannot invoke Clause 22 of the agreement. In fact, even defendant did not accept that Courts at Hyderabad alone will have jurisdiction to entertain

and try the Suit. Defendant had instituted Suit against the plaintiff in Vadgaon Court which was compromised. It is, therefore, not open to the defendant to contend that Kolhapur Court has no jurisdiction to entertain and try the Suit. He submitted that after expiry of agreement on 31/03/2010, though agreement was not renewed for some period, there were transactions between plaintiff and defendant. On account of shortage of goods, plaintiff handed over cheques to the defendant in good faith. The defendant, however, misused the cheques and encashed those cheques. The plaintiff has, therefore, instituted Suit for recovery of the amount under those cheques. The cause of action partly accrued in Kolhapur Court. Mr.Arjunwadkar reiterated the submissions that were advanced before the trial Court. Mr.Arjunwadkar relied upon the decision of the Gauhati High Court in the case of *All Bengal Transport Agency Vs. Hare Krishna Banik*, **AIR 1985 Gauhati 7** and in particular paragraph 14 thereof.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that Consignment Agency Agreement was entered into by and between the parties. Clause 20 reads as under :

“Further, upon termination of agreement you shall account for the stock lying with you and shall be responsible for their return in good conditions. You shall render a complete

account all sales, effected by you on our behalf and of sums remitted to us till the date of termination of agreement and shall be responsible for remitting all outstanding balances.”

Clause 22 thereof reads as under :

“In the event of any dispute between the company and yourself, the Courts at Hyderabad alone shall have jurisdiction in the matter.”

9. On one hand, plaintiff claims that the agreement expired on 31/03/2010 and was not renewed subsequently and therefore, defendant can not invoke Clauses 20 & 22, defendant on the other has contended that the agreement was renewed from time to time and the parties entered into transaction even after 31/03/2010 and therefore, parties are bound by Clauses 20 & 22 of the agreement. Perusal of the impugned order and in particular paragraph 7 thereof shows that on behalf of the plaintiff, contention was advanced that though the agreement expired on 31/03/2010, there were transaction between the parties. On account of shortage of goods, plaintiff handed over cheques in good faith to the defendant. It is the case of the plaintiff that those cheques are misused by the defendant' and were encashed. The plaintiff has instituted present Suit for recovery of amount under those cheques. The question is whether the Court at Kolhapur will have territorial jurisdiction to entertain and try the Suit.

10. Perusal of Clause 22 extracted hereinabove shows that in the event of any dispute between the parties, the Courts at Hyderabad

alone shall have jurisdiction in the matter. In my opinion, though the agreement was upto 31/03/2010, nonetheless from paragraph 7 of the impugned order, it is evident that the transaction took place between the parties even post 31/03/2010 and obviously, those transactions will be regulated by agency agreement unless the plaintiff is in position to demonstrate that some other terms and conditions were agreed upon between the parties. The plaintiff has not brought any material on record to substantiate this position. In the absence thereof, it has to be held that even though the agreement was upto 31/03/2010, nonetheless the parties entered into transaction and are bound by the terms and conditions of the agency agreement.

11. Clause 22 of the Consignment Agency Agreement lays down that in the event of any dispute between the parties, the Courts at Hyderabad alone shall have jurisdiction in the matter. The question, therefore, is whether in view of Clause 22, the Courts at Kolhapur will have jurisdiction to entertain and try the Suits.

12. In the case of *A.B.C.Laminart (P)Ltd. Vs. A.P.Agencies*, (1989) 2 SCC 163, the Apex Court has observed in paragraphs 15, 16, 20 & 21 as under :

“ 15. In the matter of a contract there may arise cause 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 been 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.

16. So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the court. If under the law several courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdiction cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must

be declared void being against public policy. Would this be the position in the instant case ?

20. 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 as 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. Thus, in *Salem Chemical Industries Vs. Bird & Co.* where the terms and conditions attached to the quotation contained an arbitration clause provided that : “any order placed against this quotation shall be deemed to be contract made in Calcutta and any dispute arising therefrom shall be settled by an arbitrator to be jointly appointed by us”, it was held that it merely fixed the situs of the contract at Calcutta and it did not mean to confer an exclusive jurisdiction on the court at Calcutta, and when a part of the cause of action had arisen at Salem, the court there had also jurisdiction to entertain the suit under Section 20(c) of the Code of Civil Procedure.

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 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.

13. In paragraph 22, the Apex Court considered clause 11 in

that case which provided as follows. 'Any dispute arising out of this sale shall be subject to Kaira jurisdiction'. It was observed that the said clause ex facie do not find exclusionary words like 'exclusive', 'alone', 'only' and the like.

14. In view of clause 22 of the Consignment Agency Agreement as also in view of the decision in the case of **A.B.C.Laminart (P)Ltd.** (*supra*), it cannot be said that Kolhapur Courts will have territorial jurisdiction to entertain and try the Suits. Reliance placed by Mr.Arjunwadkar on the decision in the case of **All Bengal Transport Agency** (*supra*) does not advance the case of the plaintiff.

15. Mr.Arjunwadkar submitted that plaintiff had instituted Suit in the Court of Civil Judge, Junior Division, Vadgaon in Kolhapur, therefore, it is precluded from questioning jurisdiction of the Kolhapur Court. I do not find any merit in the submission of Mr.Arjunwadkar. As noted earlier, Suit was compromised between the parties and no issue about territorial jurisdiction was raised and consequently decided.

16. In the light of above discussion, the impugned orders i.e. the judgment and order dated 24/08/2012 passed by the learned 5th Joint Civil Judge, Senior Division, Kolhapur below Exhibit 14 in Special Civil Suit No. 18 of 2011 and below Exhibit 12 in Special Civil Suit No. 17 of 2011 are quashed and set aside. The parties shall

appear before the trial Court on 01/09/2015 when the learned trial Judge will pass further orders.

15. Rule is made absolute in the aforesaid terms. In the circumstances of the case, however, there shall be no order as to costs.

(R. G. KETKAR, J.)