IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LEAVE PETITION NO.24 OF 2015
IN
SUIT (L.) NO.109 OF 2015

Essel Vidyut Vitaran (Ujjain) Ltd. … Petitioner
Vs.
Madhya Pradesh Paschim Kshetra
Vidyut Vitran Co. Ltd. & Ors. … Respondents

Mr. Ashish Kamath, Adv. a/w. Ms Monoroma Mohanty, Adv. i/b. S K Shrivastava & Co. for petitioner.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 2nd February, 2015.

P.C. :

1. Mentioned. Not on board. Taken on board.

2. The suit is filed for declaration that two letters of defendant No.1 dated 22nd January, 2015 and 29th January, 2015 threatening to invoke the letter of credit of Rs.26 Crores dated 12th May, 2012 and amended from time to time and initiating termination proceedings in respect of an agreement entered into between plaintiff and defendant No.1 called the Distribution Franchise Agreement (DFA) is to be quashed and set aside. It is also for injunction against defendant No.1 from invoking the letter of credit. As consequential relief the plaintiff has sought injunction against defendant Nos.2 and 3 which are the two banks involved in the letter of credit from making payment to defendant No.1 under the letter of credit.

3. The DFA between plaintiff and defendant No.1 sets out

inter-alia in clause 37.1 thereof that the Courts at Madhya Pradesh shall have exclusive jurisdiction over all matters arising out of and relating to DFA.

4. The letter of credit has been opened pursuant to DFA. The plaintiff requires defendant No.1 to be restrained from invoking it and requires defendant Nos.2 and 3 to be restrained from making any payment under it. It is, therefore, a matter arising out and relating to DFA and consequently within the exclusive jurisdiction of the Courts at Indore, Madhya Pradesh.

5. It has been held by this Court that when parties decide to grant exclusive jurisdiction to a Court, which would otherwise be also the Court having jurisdiction by virtue of some of cause of action arising thereunder, it would be only in that Court in which the suit will be filed so that the jurisdiction of all the other Courts having any jurisdiction under that contract would stand ousted. (See ***M/s. Polycab Wires P Ltd. Vs. ETA Engineering Ltd., LPETN No.234 of 2014 in Summary Suit (L.) No.736 of 2014 dated 1st October, 2014.***

6. The DFA dated 30th September, 2011 relates to distribution and supply of electricity in Ujjain city. It is between parties in Madhya Pradesh. It has been entered into in Bhopal, MP. This Court would otherwise have no territorial jurisdiction over matters arising out of and relating to DFA.

7. The jurisdiction of this Court is invoked upon the fact that the letter of credit has been issued by the defendant No.2 bank which

has its address in Mumbai. It is issued upon the application of the plaintiff which has its address in Mumbai. It shows the address of defendant No.2 in Mumbai where defendant No.1, the beneficiary, was to verify the genuineness of the documents. The letter of credit having been issued from defendant No.2 bank in Mumbai and payments having to be made by defendant Nos.2 and 3 at Mumbai, the plaintiff would contend that this Court would have territorial jurisdiction. The plaintiff has, therefore, applied for leave under Clause – XII of the Letters Patent, though defendant No.1 has its office at Indore.

8. It is argued on behalf of the plaintiff that the contract under the letter of credit is only between plaintiff and defendant No.2 bank, both having its offices in Mumbai. It is contended that that contract is independent of the DFA as held in the case of ***Hindustan Steel Works Construction Ltd. Vs. Tarapore & co. & Anr. (1996) 5 Supreme Court Cases 34***. Counsel on behalf of the plaintiff drew the Court's specific attention to the observations of the Supreme Court considering the earlier judgment of the Supreme Court which considered the case of the Queens Bench Division holding that a letter of credit constitutes a bargain between the banker and vendor of goods which imposes an absolute obligation upon a banker to pay as per the terms of the letters of credit in dispute between the parties. Counsel on behalf of the plaintiff would contend that in this judgment the Court observed that a contract or bank guarantee (which is like a contract under a letter of credit) is independent and distinct of the primary contract between the parties, and as a contract between the bank and the beneficiary is not qualified by the underlying transaction

and, therefore, in a suit filed for an injunction restraining the other party to the contract (one being the plaintiff itself) from acting upon the contract, the DFA which is the independent contract should not be considered at all. It is, therefore, argued that the clause conferring territorial jurisdiction only upon Courts at Indore, MP would not apply to the reliefs in this suit.

9. This is indeed a narrow and pedantic interpretation of the proposition of law made out in the above case.

10. The proposition of law has indeed well settled. It is that a letter of credit imposed upon a banker an absolute obligation to pay the beneficiary irrespective of any dispute between contracting parties. Consequently when the case of grant of injunction is considered by the Court which has territorial jurisdiction over a particular contract on merits, the Court would bear in mind that well settled principle oft reiterated as in the case relied upon by the plaintiff herein. This Court whilst granting leave under Clause XII of the Letters Patent upon seeing a part of the cause of action which might arise within its territorial limits would not see the merits of the contract. The judgment relating to what merits has to be seen and what has not to be seen would be considered only by the Court on merits upon it having territorial jurisdiction. Consequently the proposition of law that unless fraud or retrievable injustice is shown, making it a exceptional case justifying interference for restraining any bank from enforcing the bank guarantee (or a letter of credit) in a contract, which is independent and distinct from the underlined primary and main contract between the parties under which the very

bank guarantee (or the letter of credit) is opened, would not apply to the application for leave when the territorial jurisdiction of all the Courts is otherwise ousted by agreement between parties. Hence the reliance upon the judgment is misconceived and incorrect.

11. Counsel on behalf of the plaintiff has referred to Suit No.560 of 2014 in which under similar circumstances arising out of a similar contract leave under clause XII was applied for and granted by this Court. That was a suit only for injunction against a similar contracting party from invoking guarantee given by the plaintiff by way of bank guarantee and as against the bank from making payment under the bank guarantee. The underlying contract in that case also granted exclusive jurisdiction to Court at Patna. The clause 17.1.2 in that case set out that any dispute arising out of compliance / non compliance of the agreement in that case would be exclusively under the jurisdiction of the Court at Patna. The clause conferring jurisdiction did not relate to “all matters arising out of or related to DFA”. The dispute arising out of compliance / non compliance of the agreement may or may not encompass within itself the dispute under a guarantee given by the plaintiff through its bank which had to make the payment. The letter of credit in this case is a matter arising out of and relating to DFA. Consequently in this case it is seen that the territorial jurisdiction of this Court having been ousted for the matter arising out and relating to the DFA, Leave cannot be granted. Hence leave is refused.

(ROSHAN DALVI, J.)