

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3201 OF 2016**

Naveen Agarwal

Petitioner

Vs

M/s Maxtone Electronics Private
Ltd.,

.. Respondent

Mr.Kamlesh P. Mali, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 15/03/2016

PC:

1. Heard Mr. Kamlesh Mali, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 13/14.1.2016 passed by the learned Judge presiding over Court Room No.24 of the Bombay City Civil Court, Bombay in Summons for Judgment No. 163 of 2012 in Summary Suit No.2973 of 2012. By that order, the learned trial Judge granted leave to defend the suit to the petitioner, hereinafter referred to as 'defendant', subject to condition of his depositing Rs. 61,47,730/- within one month from the date of the order, failing which the respondent, herein referred to as 'plaintiff', is entitled to decree as prayed for. In the event of defendant deposits the amount, he was given liberty to file written statement within 30 days from the date of such deposit. The plaintiff was at liberty to apply for withdrawal of the amount so deposited which

application will be decided on its own merits.

3. The plaintiff has instituted Summary Suit under Order 37 of C.P.C. for recovery of Rs. 73,30,212/- and further interest of Rs. 61,47,730/- at the rate of 18 % per annum or at such other rate as the Court may deem fit and proper, from the date of filing of the suit till payment or realisation and costs of the suit.

4. In support of this petition, Mr. Mali submitted that the Court has no territorial jurisdiction to entertain and try the suit. He invited my attention to Tax Invoices which show unit of the plaintiff is at Mhape, Navi Mumbai. Incidentally, in that Invoice there is a remark showing registered office of the plaintiff is at Lower Parel (E), Mumbai-400011. He also invited my attention to Delivery Challans which shows branch office at Kolkata. He relied upon Section 20 and Explanation thereto to contend that as the cause of action accrued at Calcutta and as the plaintiff has subordinate office at Kolkata, City Civil Court Bombay does not have territorial jurisdiction to entertain and try the suit. In support of this submission, he relied upon the decision of the Apex Court in the case of Patel Roadways Limited Vs. Prasad Trading Company, (1991) 4 Supreme Court Cases 270.

5. He further submitted that Summary Suit instituted by the plaintiff itself is not maintainable. He invited my attention to Exhibit-B to contend that though Exhibit B refers to 31 Invoices and its total amount shown is Rs. 54,00,200/-. Actually the said

amount comes to Rs. 41,55,000/-. That apart, the plaintiff has produced only 20 Delivery Challans as against 31 Invocies. He, therefore, submitted that Summary Suit under Order 37 is not maintainable.

6. Mr. Mali further submitted that documents, such as, Invoices and challans produced by the plaintiff are forged and bogus and do not bear signature of the defendant. He, therefore, submitted that the learned trial Judge ought to have granted unconditional leave to defend to the defendant.

7. I have considered the submissions advanced by Mr Mali. I have also perused the material on record. Perusal of the Tax Invoices produced by the plaintiff shows that it has unit at Mohape, New Mumbai and Warehouse at Kolkata. The registered office of the plaintiff is at Lower Parel (E), Mumbai. Invoices also have an endorsement that it is subject to Mumbai jurisdiction. Perusal of the Delivery Challans shows that the registered office of the plaintiff is at Mumbai and there is also endorsement on the Delivery Challans that it is subject to Mumbai jurisdiction.

8. The learned trial Judge has considered this aspect in paragraphs 5,8,9, 12 and 30. In paragraph 8, the learned trial Judge noted that the plaintiff claims that it received orders from the defendant at Mumbai. It sold and supplied goods from Mumbai. The defendant agreed to make payment at Mumbai. Dishonour cheque was received by it at Mumbai. The defendant

was required to make payment at Mumbai and, therefore, material part of cause of action arose in Mumbai. In paragraph 13, the learned trial Judge noted that facts on record show that all dealings were done by the plaintiff at Mumbai office and material part of cause of action arose in Mumbai within the jurisdiction of the City Civil Court. The learned trial Judge also considered decision of this Court in Naran Lala Pvt Ltd Vs. Ion Exchange (India) Ltd in Writ Petition No.1299 of 2015 decided on 10.3.2015. The learned trial Judge also considered the decision of the Apex Court in Patel Roadways Ltd, Bombay (supra) and reproduced paragraph 13 thereof.

9. In the case of Patel Roadways (supra), the respondent in the Civil Appeal arising out of SLP (C) No.14660 of 1990 had instituted suit for damages in the Court of Subordinate Judge, Periakulam within whose territorial jurisdiction the subordinate office of the appellant where the goods were entrusted for transport was situate alleging that fire was due to the negligence and carelessness on the part of the staff of the appellant/defendant.

10. Respondent no.1 in Civil Appeal arising out of SLP (C) No.14692 of 1990 had instituted suit in the of Third Assistant Judge, City Civil Court, Madras for recovery of the loss sustained by it. In both the suits, the appellant, inter-alia took the plea in its defence that in the contract entered into between them the

parties had agreed that jurisdiction to decide any dispute between them would be only with the courts at Bombay and consequently the courts in Madras where the two suits were instituted had no jurisdiction. In both the suits, the trial Court repelled the said contention. Revision Applications preferred in the High Court at Madras were also dismissed. On behalf of the appellant, reliance was placed on Explanation to Section 20 of C.P.C. to contend that since the appellant has its principal office in Bombay, it shall be deemed to carry on business in Bombay and consequently the Courts in Bombay will also have jurisdiction. In paragraph 9, the Apex Court observed thus :

“.... On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate

office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

In paragraph 9, the Apex Court noted that it was not urged on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently clause (c) was not attracted to the facts of the cases.

11. In paragraph 13, the Apex Court observed thus :

"13. As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under Clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one."

After extracting paragraph 13, the learned trial Judge observed in paragraph 7 that in both cases clause (c) of Section 20 was not attracted to confer jurisdiction on courts at Bombay. Further

more, the question under consideration was in respect of place of defendant and not the plaintiff. In this case, the same is not the situation and the said decision is not applicable.

12. In paragraph 15, the Apex Court observed that clause (c) is not attracted to confer jurisdiction on courts at Bombay and the appellant has admittedly its subordinate offices at the respective places where the goods in two cases were delivered to it for the purposes of transport, the court at Bombay had no jurisdiction at all to entertain the suits filed by the respondents and the parties could not confer jurisdiction on the courts at Bombay by an agreement.

13. As noted earlier, after considering the material on record, the learned trial Judge observed in paragraph 8 that it is the claim of the plaintiff that it received orders from defendant at Mumbai, it sold and supplied goods from Mumbai, the defendant agreed to make payment at Mumbai, dishonoured cheque was received by it at Mumbai and the defendant was required to make payment at Mumbai and, therefore material cause of action arose in Mumbai.

14. In paragraph 10 of the plaint, the plaintiff asserted that the defendant issued and delivered to the plaintiff at Mumbai , a cheque no. 497814 dated 10.1.2011 in the sum of Rs. 61,42,730/- towards the payment of the plaintiffs' dues. At the instructions of the defendant, initially the plaintiff did not deposit

the cheque. In paragraph 11, the plaintiff asserted that on 25.1.2011, upon receiving instructions from the defendant at Mumbai to deposit the said cheque, the plaintiff deposited cheque on 25.1.2011 with their banker, namely, Standard Chartered Bank, M.G. Road, Mumbai for realisation. Cheque was returned dishonoured by defendant's Bank on 27.1.2011 for want of sufficient funds in his Bank account to honour the said cheque. In view thereof, in my opinion, the decision relied by Mr. Mali is not applicable to the facts of the present case.

15. In the case of Swastik Gases Private Ltd Vs. Indian Oil Corporation Limited, (2013) 9 SCC 32, in paragraph 32, the Apex Court has observed thus:

“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.”

16. Perusal of paragraph 32 shows that 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, the parties intended to exclude all other courts. A clause and like this is not hit by Section 23 of the Contract Act at all. Such contract 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.

17. Mr. Mali submitted that the Invoices and challans produced by the plaintiffs are forged and bogus and that they are not signed by the defendants. This aspect was considered by the learned trial Judge in paragraphs 11 and 12. In paragraph 12, the learned trial Judge noted that the defendants filed copy of the complaint filed by him against the plaintiffs and its Director at Kolkata. In the complaint so filed, the defendants did not allege that Invoices and Challans were forged and bogus. On the other hand, the defendant admitted that he signed bills and challans, Thus, signing of Challans is not disputed by him. The learned trial Judge has considered the decision of the Apex Court in the

case of M/s Mechalec Engieners & Manufacturers Vs M/s Basic Equipment Corporation, AIR 1977 SC 577 and thereafter observed that the case is covered by clause (e) of the judgment and only as a matter of mercy defendant deserves leave to defend on his depositing the cheque amount in the Court.

18. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)