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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.339 OF 2014
WITH
CIVIL APPLICATION NO.390 OF 2014
IN
APPEAL FROM ORDER NO.339 OF 2014

Savoy Electronics Pvt.L td and ors

.... Appellants.

V/s.

Nedis B.V. and ors

.... Respondents

Mr. Ashis S. Kamat, a/w Mr. Aditya Shiralkar a/w
Mr. Kunal G. Mehta I/by Ranjit & Co. for the
Appellants.

Mr. Santosh Adukia, for the Respondent Nos. 1 to 3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 26TH OCTOBER, 2016.

P.C. :

1. This appeal is preferred against the order dated 22nd January, 2014, passed by City Civil Court, Dindoshi, Mumbai in S. C. Suit No.1143 of 2012 thereby upholding contention raised by defendant Nos. 2 & 3 that the Civil Court at Mumbai had no jurisdiction to try and entertain the suit and thus, returned the plaint to the appellant plaintiff for presentation before appropriate Court.

2. Said order was passed on application filed by defendant No.2 under Section 9-A of the Code of Civil Procedure. Defendant No.2

has relied upon Article 24 of the Distribution Agreement between Bandridge Europe N.V. and Savoy Electronics Pvt. Ltd. Article 24 of the the said agreement reads thus :-

“Article 24, Choice of Jurisdiction and choice of law.

1. Any conflicts following between the parties from this agreement either directly or indirectly related thereto, shall be tried in the first instance by the Court of the district of The Hague being the district where the Conceder is established.
2. Dutch law shall apply exclusively to this agreement.
3. However, admittedly neither defendant No.2 nor defendant No.3 are parties to the said agreement. Moreover, as stated in the plaint paragraph No.20, relating to the jurisdiction of Court, the claim against defendant Nos. 2 & 3 is pertaining to tortuous liability. Paragraph No.20 of the plaint reads thus:-

“20. The Plaintiffs submit that this Hon'ble Court has the necessary and/or requisite jurisdiction to entertain, try and/or dispose of the present suit. This is because, the agreement was signed by the Plaintiffs at Mumbai and moreover, the jurisdiction, prescribed under the suit contract i.e. of the Courts at Hague is not exclusive. Further, the cause of action i.e. Defendant No.1's breaches of the suit

contract has entirely arisen in Mumbai, and Hague is neither the natural nor convenient nor an exclusive jurisdiction to entertain the present suit. This is because, Defendant No.1's communications and/or representations (through Defendant No.3) have been received by the Plaintiffs in Mumbai. Further, the cause of action as against Defendant Nos. 2 and 3 is in tort i.e. procuring a breach of contract by Defendant No.1. This has necessarily arisen in Mumbai and further, this cause being in tort and Defendant Nos. 2 and 3 not being parties to the suit contract, the jurisdiction clause in the suit contract has no application. Defendant Nos. 2 and 3 are situated within jurisdiction. Hence, this Hon'ble Court has the jurisdiction to entertain, try and/or dispose of the present suit"

4. Therefore, it is clear that neither defendant No.2 nor defendant No.3 being the parties to the agreement, the jurisdiction of the Civil Court at Mumbai cannot be excluded to entertain the suit. Though the contents of Article 24 confer exclusive jurisdiction in the Court at Hague, the said Article cannot be made applicable in respect of cause of action against them as they are not parties to that agreement and secondly as liability claimed against them is arising out of tort.

5. In this respect, the averments made in paragraph No.20 of

the plaint which are to be taken at this stage for considering the issue of jurisdiction, clearly reveals that the cause of action against defendant Nos. 2 & 3 had arisen in Mumbai. Learned counsel for appellant has also brought to the notice of this Court the consent of defendant No.1, for allowing appellant to file claim by this suit.

6. In view thereof, looked at it from any angle, at least on behalf of defendant No.2 and 3, plea relating to the bar of the jurisdiction of the Civil Court at Mumbai cannot be raised. As the trial Court has lost sight of this important aspect, the impugned order passed by the Trial Court can not survive and hence quashed and set aside.

7. The appeal is allowed accordingly.

8. The impugned order dated 22.01.2014, passed by the trial Court, directing return of the plaint, is quashed and set aside.

9. In view of disposal of appeal itself, Civil Application No.390 of 2014, does not survive and the same is disposed of accordingly.

[DR. SHALINI PHANSALKAR JOSHI, J.]