

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

**SUMMONS FOR JUDGMENT NO.15 OF 2016
IN
SUMMARY SUIT NO.709 OF 2013**

Sona Alloys Private Limited

....Applicant/Plaintiff

V/s.

Kothari Products Limited

....Defendant

Mr. Chirag Mody i/b. M/s. DSK Legal for the applicant/plaintiff.

Mr. Gautam Ankhad i/b. M/s. Dhaval Vussonji & Associates for the defendant.

CORAM : K.R.SHRIRAM,J

PRONOUNCED ON : 3rd AUGUST, 2016

P.C.:-

1 The plaintiff has filed this summary suit for recovery of an amount of Rs.15,03,99,082/- alongwith interest at the rate of 24% p.a. amounting to Rs.4,23,09,716/- as on 31st March, 2013 and further interest at the rate of 24% p.a. from 1st April, 2013 on the principal outstanding amount till actual payment and/or realization thereof. The suit is based on the invoices raised by the plaintiff on the defendant in respect of the goods supplied to the defendant and/or to the consignee of the defendant.

2 The defendant in reply to the Summons for Judgment has raised the issue of jurisdiction of this court and has submitted that it is

the Courts at Ahmedabad only which would have jurisdiction to hear and decide the suit. The defendant in support of the issue of jurisdiction submitted as under :

- a. The suit invoices state that the same are subject to Ahmedabad jurisdiction;
- b. The earlier invoices which were raised by the plaintiff from March 2011 till February 19, 2012 were paid at Ahmedabad;
- c. For the earlier invoices, Letters of Credit were opened and the invoices were negotiated in Ahmedabad and the payments were made in Ahmedabad by the Advisory Bank, i.e., State Bank of Bikaner & Jaipur, Ahmedabad;
- d. The plaintiff's registered office is at Ahmedabad;
- e. The Apex Court in **Swastik Gases Private Limited V/s. Indian Oil Corporation Limited**¹ has held that where the contract specifies that Courts at a particular place shall have jurisdiction, then only Courts at such place shall have jurisdiction to hear and decide the Suit.

3 In response to the above, the plaintiff submitted as under :-

- a. It is the Courts at Mumbai alone which have jurisdiction to try and decide the present Suit, given that the Suit invoices have been accepted by the Defendant at its office at Prabhadevi, Dadar, Mumbai;
- b. The Defendant's office is at Mumbai and the invoices were received at Mumbai;
- c. The goods have been supplied by the Plaintiff from its factory at Plot No. C-1, MIDC Area, Village Lonand, Taluka Khandala, District Satara, Maharashtra to the consignee of the Defendant, Masscorp Ltd which has its address at., S. No.

1. (2013) 9 SCC 32

26, Barne Industrial Estate, Theragaon Chinchwad, Pune, Maharashtra. Thus, no part of the cause of action has arisen in Ahmedabad;

d. The present Suit is for recovery of amounts due under the Suit invoices and it is an admitted position that there are no Letters of Credit established for the payment of the same. Thus, the reliance on the earlier Letters of Credit or the earlier invoices raised are not at all relevant for the present Suit.

e. It is an admitted position that the Defendant has not produced any Letter of Credit to show that the payments were to be made at Ahmedabad or that any Letters of Credit were opened by the Defendant for making payment of the Suit Invoices;

f. The Defendant has in its books of account shown the address of the Plaintiff is that of the Plaintiff's factory at Satara, Maharashtra and not registered office at Ahmedabad;

g. Although the Defendant is raising the issue of jurisdiction, it does not have any office in Ahmedabad and the Defendant is raising the issue of jurisdiction to delay the proceedings and frustrate the Plaintiff. It is evident from Exhibit C to the Plaint that the Defendant has admitted its liability and has no defence on merits and is adopting dilatory tactics to delay and frustrate the hearing of the present Suit;

h. Further, the provisions of Section 20 of the Code of Civil Procedure, 1908 and the Letters Patent of this Hon'ble Court, stipulate that this Hon'ble Court shall have jurisdiction to try and determine a Suit when the Defendant resides or carries on business within the territorial limits of this Hon'ble Court. In the present case, it is admitted that the Defendant carries on business at its office at Dadar, Mumbai and the Invoices were raised upon and accepted by the Defendant at the office at Dadar, Mumbai. Therefore, this Court has jurisdiction.

i. The situs of the Defendant is relevant and not the plaintiff for the purpose of jurisdiction as is sought to be argued by the Defendant. The Plaintiff may have its office at any place, however, the court will not have jurisdiction to hear and decide a suit on the basis of the Plaintiff's place of business or residence;

j. In view of the above, no part of the cause of action has arisen at Ahmedabad and therefore, the Courts in Ahmedabad do not have jurisdiction.

4 It was also submitted by the plaintiff in *Swastik Gas (supra)* relied upon by the Defendant, a part of the cause of action had arisen in Kolkata and therefore the Hon'ble Supreme Court held that the Courts in Kolkata have jurisdiction. In the present case, no part of the cause of action has arisen at Ahmedabad and therefore, the Courts in Ahmedabad would not have jurisdiction to decide the present dispute. It was also submitted that paragraphs 31 and 32 of the decision in *Swastik Gas (supra)* supports the case of the plaintiff that only if some part of the cause has arisen within a particular Court's jurisdiction and there is a clause in the contract whereby parties have agreed to that jurisdiction, then only will the Courts at such place have exclusive jurisdiction.

5 The plaintiff further submitted that the Hon'ble Supreme Court has in the case of *InterGlobe Aviation Ltd v. N. Satchidanand*² held that it is now well settled that the parties cannot by agreement confer jurisdiction on a court which does not have jurisdiction and that any clause which ousts the jurisdiction of all courts having

2. Manu/SC/0799/2011

jurisdiction and conferring jurisdiction on a court not otherwise having jurisdiction would be invalid. And, the aforesaid judgment is applicable to the present case since no part of the cause of action has arisen in Ahmedabad and hence the clause conferring jurisdiction on Courts in Ahmedabad cannot be made applicable to the present case.

6 Furthermore, the counsel for the plaintiff submitted that no amount of consent can confer jurisdiction on a court. Therefore, since the courts in Ahmedabad lack inherent jurisdiction to adjudicate upon the present dispute, any decree passed by the courts in Ahmedabad in respect of the subject matter of the present Summary Suit would be a nullity and the Plaintiff would be rendered remediless, which can never be the case. Reliance was placed on *Muthavalli of Sha Madhari Diwan WAKF, S.J.Syed Zakrudeen and Another v. Syed Zindasha*³; and *Athmanathaswami Devasthanam v. K. Gopalswami Ayyangar*⁴.

7 The counsel for the plaintiff also relied upon the judgment of Delhi High Court in *Victoria Motors Pvt. Ltd. v. Rai Automotive Systems*⁵ and submitted that simple printed conditions on the back of

3. (2009) 12 SCC 280

4. AIR 1965 SC 338

5. 2014 SCC Online Del 3987

a bill or a consignment note which restricts jurisdiction to only one Court, cannot be a rider on the jurisdiction of another competent Court to entertain the suit.

8 Let us see whether this court has jurisdiction.

9 The suit is based on invoices raised by the plaintiff. On the reverse of the invoice it is expressly stated “subject to Ahmedabad jurisdiction”. It is the plaintiff's case that the invoice is the contract between the parties. All invoices raised by the plaintiff from March, 2011 until 19th February, 2012 have been paid by the defendant (after receiving amounts from the third party) at Ahmedabad as the advising bank was State Bank of Bikaner & Jaipur, C.G. Road Branch, Ahmedabad where the plaintiff holds its account bearing no.61118846184. This fact has not been disputed in the plaintiff's affidavit in the rejoinder dated 9th June, 2016 in the present summons for judgment. The invoices claimed in the suit are also payable at Ahmedabad. It is well settled law that part of the cause of action arises where money is expressly or impliedly payable under the contract. The payments have been and were to be made at Ahmedabad and therefore, a part of the cause of action arises at Ahmedabad.

Paragraphs 11 and 12 of *Infrastructure Leasing and Financial Services Limited vs. DSQ Holding Limited & Ors.*⁶ read as under :-

"11. In the present case, admittedly, the payment was to be made at Bombay and in fact according to the plaintiff some of the payments are made at Bombay and, therefore, this Court shall have jurisdiction to entertain and try the present suit. Since I have held that the suit is not a suit for land, the leave application for Clause XII of the Letters Patent will have to be considered on the basis of the territorial jurisdiction where the cause of action has arisen in the present case the part of the cause of action has arisen in Bombay and, therefore, this Court has jurisdiction to entertain and try the present suit. Moreover, in the present case, there is an agreement between the parties that for the purpose of jurisdiction Mumbai Court shall alone have jurisdiction. The said clause 26 of the agreement reads as under :

"26. Without prejudice to the rights of IL&FS to enforce certain provisions of this pledge without intervention of the court and to exercise certain other remedies as set out herein, the provisions of this Agreement shall be governed by Indian Law. All disputes shall be subject to Bombay jurisdiction only."

12. In view of the aforesaid clause 26 also this Court shall have jurisdiction to entertain and try the present suit. In view of the fact that part of the cause of action has arose in Mumbai and that both the parties have by an agreement conferred an exclusive jurisdiction to the Courts in Bombay in respect of disputes between the parties. In light of the present facts, I do not find any merit in Chamber Summons No. 1759 of 2003 and, accordingly, I dismiss the same."

10 In *K.E.P.V. Venkatachalam Pillai vs. Rajaballi M. Sajun*⁷

the court held as under :-

"..... whatever the relationship between the parties may in fact be, payment for the goods purchased by the plaintiff or on his behalf was to be made at Tuticorin. If that is so, part of the cause of action arose within the jurisdiction of the Tuticorin District Munsif's Court....."

⁶. 2005 (2) MH.LJ.965

⁷. AIR 1935 Mad 663

11 In *State of Sikkim vs. Jammu & Kashmir Bank Limited &*

*Ors.*⁸ in paragraph 15 it is stated as under :-

“15. In the present case, an intention was shown in the bank guarantee itself that the amount shall be paid to the Finance Secretary to the Government of Sikkim at Gangtok. Accordingly part of the contract was performable at Gangtok so as to satisfy Section 49 and there was jurisdiction to entertain the suit.....”.

12 The registered office of the plaintiff is at Ahmedabad. The principal place of business of the plaintiff is therefore, at Ahmedabad. It is for this very reason that the printed condition is stated on the invoice. It is the plaintiff's case that goods were supplied from Khandala to Satara, whilst the defendant has an office at Mumbai, it is possible that all four courts, viz., Ahmedabad, Khandala, Satara and Mumbai would have jurisdiction. Possibly to avoid the inconvenience that would be caused to the plaintiff that the plaintiff has prescribed for jurisdiction to courts at Ahmedabad. The plaintiff is, therefore, bound by the conditions stated in its own invoice.

13 The correspondence between the parties has also been exchanged from Ahmedabad since Ahmedabad is where the principal office of the plaintiff is situated. Copies of the correspondence are also annexed to the pleadings. Paragraph 17 of the judgment of the Apex

8. AIR 2002 Sik 8

Court in the matter of **Nawal Kishore Sharma vs. Union of India &**

Ors.⁹ reads as under :-

“17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.

14 Therefore, the place from where correspondence to dispute is exchanged between the parties can also be stated to be the place where a part or fraction of cause of action arose.

9. (2014) 9 SCC 329

15 In view of the above discussions, certainly part of cause of action has arisen at Ahmedabad and the appropriate forum will be Ahmedabad. Even otherwise, assuming in a given case for e.g., if the defendant was required to file proceedings against the plaintiff for recovery of excess payments made by the defendant to the plaintiff or for damages under the contract and the defendant filed proceedings at Ahmedabad, then based on the jurisdiction clause printed on the invoice, the courts at Ahmedabad could certainly exercise jurisdiction in this matter. The plaintiff cannot then argue/plead that Ahmedabad courts lack jurisdiction. Therefore, it is clear that the courts at Ahmedabad have jurisdiction in this matter.

16 In *Shriram City Union Finance Corporation Limited vs. Rama Mishra*¹⁰, it has been held that if one or more court has jurisdiction to try a suit, it is open to the parties to choose any one of the two competent courts to decide their disputes. In case parties under their own agreement expressly agree that their disputes shall be tried by only one of them, then the parties can file the suit in that court alone to which they have so agreed.

10. (2002) 9 SCC 613

17 The very existence of a jurisdiction clause in an agreement makes the intention of the parties clear that the jurisdiction of other courts are excluded. When the contract specifies the jurisdiction at a particular place and such court has jurisdiction to deal with the matter, then it is that court alone, in the present case being Ahmedabad, which will have jurisdiction to decide the dispute between the parties. Paragraphs 32 and 55 of *Swastik Gases Private Limited vs. Indian Oil Corporation Limited (supra)* read as under :-

“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.

.....

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.”

18 In the circumstances, in view of this well settled position in law, I am inclined to hold that only the court at Ahmedabad have jurisdiction to hear and decide the suit. The present suit ought to be filed at Ahmedabad only.

19 The registry to return the plaint alongwith summons for judgment to the plaintiff to be presented before the appropriate forum at Ahmedabad. I must hasten to add that I have not expressed and I am not expressing any views on the merits of the matter.

(K.R.SHRIRAM,J)