

**A. No.2911 of 2016
in C.S.No.292 of 2016**

M.M.SUNDRESH, J.

The plaintiff is a proprietary concern in the field of manufacturing of industrial pumps. The defendant is a manufacturer of mechanical seals, which are used in the industrial pumps. The plaintiff raised purchase orders for the purchase of mechanical seals. Some of the purchase orders have been raised at the office of the defendant at Chennai and others at Pune. The place of office of the plaintiff is in Coimbatore and the defendant is having Southern its Regional Head Quarters at Chennai. This office oversees the customer requirements for the southern part of the country. The material manufacturing is being done at Pune.

2. The present suit has been filed seeking a decree for recovery of a sum of Rs.42,15,017/- towards damages interalia contending that the goods supplied by the defendant are faulty.

3. Seeking to strike off of the plaint on the ground of want of jurisdiction, this application has been filed by the applicant/defendant.

For the sake of brevity, the plaintiff and the defendant in C.S.No.292 of 2016 are arrayed as such.

4. The learned senior counsel appearing for the applicant submits that as per the clause contained in the invoice, the jurisdiction lies within the Courts in Pune. The plaintiff itself is having its field of activity at Coimbatore. Thus, the principles governing *forum conveniens* is also in favour of the defendant. In support of his contentions, the learned counsel placed his reliance on the following judgments:

(i) 2004 (4) Supreme Court Cases 677 - New Moga Transport Co. Vs. United India Insurance Co. Ltd.

(ii) 2008 (2) Supreme Court Cases 302 - Raman Tech & Process Engg. Co. and another Vs. Solanki Traders

(iii) 2007 (4) Current Tamil Nadu Cases 496 - Sanghi Transport limited Vs. Oriental Insurance Company

5. The learned counsel for the respondent/plaintiff submits that most of the purchase orders have been raised at the office at Chennai. The invoices are unilateral in nature. The purchase orders do not make any reference to the territorial jurisdiction. A purchase order is

a contract and the invoice is only a follow-up action. Therefore, the application has to be rejected. In support of his contentions, the learned counsel had made reliance on the following judgments :

(i) AIR 2003 ORISSA 17 – Prakash Roadlines Ltd. Vs. M/s.Shree Jagannath Weavers' Co-operative Spinning Mills Ltd., and others

(ii) AIR 1985 ORISSA 106 – The Paradeep Port Trust, Vs. M/s.Hindusthan Mercantile Transport Corporation and another

(iii) AIR 2002 RAJASTHAN 248 – M/s. Hindustan Metals, Hodhpur Vs. M/s.Vishal Goods Transport Co. and another

6. The facts are not in dispute. Admittedly, the plaintiff is carrying on its business at Coimbatore. The defendant is having a customer service centre in Chennai, which is also its Southern Regional Headquarters. Thus, there is no production/manufacturing activities being carried on by the defendant at Chennai. The invoices do in-fact have the jurisdiction clause for resolving the dispute between the parties.

7. This Court is concerned with the applicability of clause 12 of the Letters Patent. Therefore, the decision relied on by the learned

counsel for the defendant with respect to Section 20 of the Civil Procedure Code do not apply. It is not a case in which the Courts do not have any jurisdiction. Admittedly, a part of cause of action has arisen at Chennai. The invoices have been sent from Pune. Atleast, some of the purchase orders have been addressed to Chennai. The principle governing the *forum of conveniens* also would lead to a conclusion of filing a suit at Pune, especially, when the plaintiff itself, is not conducting any business in the territorial jurisdiction of this Court. While deciding the issue of jurisdiction, the Court of law has to consider the facts governing the case. Merely because there are certain communications available between the plaintiff at Coimbatore and the defendant at Chennai, the same will not be the sole ground to exclude jurisdiction of the courts in Chennai.

8. The invoices sent by the defendant from Pune were received by the Plaintiff. There is no dispute on this fact as also seen from the documents filed on behalf of the defendant. These invoices were also honoured. There is a co-relation between the purchase order of the plaintiff with respect to the time of delivery, payment, as well as tax and excise, freight, guarantee and other specifications. When the plaintiff has accepted the invoices and honoured it, it cannot be said

that the clause contained therein with respect to the jurisdiction is not binding on it.

9. Considering the question of jurisdiction, it has been held by the Honourable Apex Court in **New Moga Transport Co- Vs. United India Insurance Co. Ltd. 2004 – (4) Supreme Court Cases 677** as under :

“By a long series of decisions it has been held that where two courts or more have jurisdiction under CPC to try a suit or proceeding, an agreement between the parties that the dispute between them shall be tried in any one of such courts is not contrary to public policy and in no way contravenes Section 28 of the Indian Contract Act, 1872. Therefore, if on the facts of a given case more than one court has jurisdiction, parties by their consent may limit the jurisdiction to one of the two courts. But, by an agreement, parties cannot confer jurisdiction on a court which otherwise does not have jurisdiction to deal with a matter. [See *Hakam Singh v. Gammon*

(India) Ltd. and Shriram City Union Finance Corpn.
Ltd. v. Rama Mishra.]

Therefore, even assuming that this Court has got jurisdiction, considering the facts and circumstances of this case, it is just and appropriate for the plaintiff to institute the suit at Pune. At this point of time, the learned counsel for the plaintiff submits that the bank guarantee given by the plaintiff may be kept alive for a period of four weeks. The learned counsel for the defendant/applicant has also agreed for the said course.

10. Accordingly, this application is allowed. Consequently, the connected miscellaneous petition is closed. The bank guarantee is ordered to be kept alive for a period of four weeks from today as agreed. The Registry is directed to return the plaint, so as to enable the plaintiff to present it before the jurisdictional court at Pune.

08.08.2016

vrc

M.M.SUNDRESH, J

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