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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 20.07.2016

+ C.R.P. 102/2016

M/S METAL ENGINEERING & TREATMENT
CO PVT LTD

..... Petitioner

Through Mr. Asit Kumar Roy, Advocate.
versus

MANISH KUMAR AGGARWAL PROP

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM No. 25505/2016 (exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 102/2016 and CM No. 25504/2016 (for stay)

1. By the present petition, the petitioner seeks to impugn the order dated 21.03.2016. By the said order, the court had decided the preliminary issue which was framed regarding the territorial jurisdiction of the court to entertain the suit. The issue concerned reads as follows:-

“Whether this court has no territorial jurisdiction to entertain and try the present suit? OPD”

2. The brief facts which led to filing of the present petition are that the respondent/plaintiff deals in manufacturing of various cables, wires and similar products. The petitioner company/defendant during the course of business placed a purchase order dated 07.03.2011 for specified material.

Subsequently, a revised purchase order dated 22.03.2011 for specified material was placed. The respondent sent an advance payment performa invoice against which a payment of Rs.99,225/- was received on 12.04.2011. The petitioner further paid a sum of Rs.99,225/- to the respondent and the amount was credited to the account of the respondent in Delhi. Further the invoice issued by the respondent subsequently mentions “All disputes are subject to Delhi jurisdiction”.

3. The trial court concluded that a perusal of the purchase order dated 22.03.2011 shows that the purchase order was placed by the petitioner on the plaintiff at the address of Village Patparganj, Delhi. The trial court also relied upon the judgments of this High Court in the case of ***Startech Enggcon Pvt. Ltd. vs. Bundelkhand University, 147(2008) DLT 276*** and ***Rameshwar Das Dwarka (P) Ltd. vs. Deepak Puematics (P) Ltd., 147 (2008) DLT 624*** to hold that payments received for the work done is a part of the cause of action and the place where the payment is being made or requires to be paid would be relevant to determine the territorial jurisdiction.

4. I have heard the learned counsel for the petitioner. He has relied upon the judgment of the Supreme Court in the case of ***Union of India vs. Adani Export Ltd. Anr.(2002) 1 SCC 567*** to contend that the impugned order is erroneous and that the place where the payment is received would not constitute a part of the cause of action and would not confer jurisdiction on this court. He submits that the defendant has its place of business in Calcutta and has no presence in Delhi whatsoever. He submits that appropriate courts in Calcutta would have territorial jurisdiction.

5. The issue would be under the facts of the case, the Delhi Courts have territorial jurisdiction to try the suit. The relevant judgment in this regard

would be the judgment of the Supreme Court in the case of *ABC Laminart Pvt. Ltd. & Anr. v. A.P.Agencies, Salem, (1989) 2 SCC 163*. In para 15 of the judgment, the court states as follows:

“15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.”

6. Hence, making of the contract is part of the cause of action. The trial court has held in the present case that the purchase order was placed by the

petitioner at Delhi indicating acceptance of the offer resulting in a binding contract.

7. The trial court also held that the payments were received by the respondent in Delhi. As noted in the above judgment, part of cause action accrues where the money is payable under the contract. Hence, part of cause of action arose in Delhi on this account also.

8. It also cannot be ignored that there is an ouster clause in the contract which states that “All disputes are subject to Delhi Jurisdiction”. In the recent judgment of the Supreme Court in the case of *M/s Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd.*, CA No.5086/2013, decided on 03.07.2013, (2013) 7 S.C.R. 581, the court while interpreting the ouster clause held as follows:

“31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of clause 18 of the agreement, the jurisdiction of Chief Justice of the Rajasthan High Court has been excluded. 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.

32. The above view finds support from the decisions of this Court in *Hakam Singh, A.B.C. Laminart, R.S.D.V. Finance, Angile Insulations, Shriram City, Hanil Era Textiles and Balaji Coke.*”

9. Hence, based on the ouster clause and the fact that a part of cause of action arose in Delhi, the courts in Delhi would have exclusive jurisdiction to try the present suit.

10. A perusal of the judgment of the Supreme Court in *Union of India vs. Adani Export Ltd. Anr. (supra)* would show that in that case the issue involved was regarding the jurisdiction of a High Court under Article 226 of the Constitution of India. What was interpreted in that judgment was Article 226 (2) of the Constitution of India which provides that the concerned High

Court exercising jurisdiction in relation to territories within which the cause of action, wholly or part, arises. In that writ petition, the petitioners of that case had pleaded that the Ahmedabad Court had territorial jurisdiction based on the following averments.

- “(i) the respondents carry on their business of export and import from Ahmedabad ;
- (ii) their orders of export and import are placed from and are executed at Ahmedabad ;
- (iii) documents and payments for export and import are sent/made at Ahmedabad ;
- (iv) the credit of duty claimed in respect of exports were handled from Ahmedabad since export orders were received at Ahmedabad and payments also received at Ahmedabad ;
- (v) non-granting and denial of utilisation of the credit in the pass-book will affect the business of the respondents at Ahmedabad ;
- (vi) respondents have executed a bank guarantee through their bankers at Ahmedabad as well as a Bond at Ahmedabad.”

11. The court noted the submissions of the petitioner. The court held as follows:

“2.Though in these appeals, principal contention involved pertains to the entitlement of the respondents herein to the benefit of the Pass Book Scheme found in paragraph 54 of the Import Export Policy introduced by the appellants herein w.e.f. 1st April, 1995 in relation to certain credits to be given on export of Shrimps, the appellant firstly challenges before us the territorial jurisdiction of the High Court of Gujarat at Ahmedabad to entertain the civil applications and grant relief in favour of the respondents.

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7. The appellant contended as follows:-

With reference to para 16 of the petition, I say that since the Pass Book Licence was issued at Chennai by the designated authority at Chennai and the transactions concerning the said pass book were made from Chennai port and cause of action is lying at Chennai, it is in order that the case is transferred to the jurisdiction of the Hon'ble High Court of Madras at Chennai notwithstanding the petitioners having their office at Ahmedabad from where the export import planning work was being executed.

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17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the courts territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in Paragraph 16 of the petition, in our opinion, fall into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.

18. As we have noticed earlier, the fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has no connection whatsoever with

the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection whatsoever with the actions of the appellants impugned in the application. The non-granting and denial of credit in the pass-book having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants.”

12. Hence, the important criteria on the basis of which determination can be made as to whether part of cause of action arose in the territorial jurisdiction of a particular court, would be determined based on the facts pleaded in the petition, the truth or otherwise of the said averments being immaterial.

13. A perusal of the fact above shows that the contract is concluded in Delhi. Further payments have been made by the petitioner in Delhi. Hence, a part of cause of action arose within the territorial jurisdiction of Delhi. Further on account of the ouster clause contained in the invoice courts in Delhi would have exclusive jurisdiction. There is no infirmity in the impugned order. The present petition is dismissed.

JAYANT NATH, J

JULY 20, 2016/rb