

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10449 OF 2013

With
Civil Application No.2838 of 2013
In
Writ Petition NO. 10449 OF 2013

Meera And Co. Limited	...Petitioner
<i>Versus</i>	
Kirloskar Oil Engines Ltd	...Respondent

....
Dr. Birendra Saraf, a/w. Smruti Kanade, Jinelle Gogri i/b.
Negandhi, Shah & Himayatullah, for the Petitioner.

Ms. Pallavi N. Dabholkar, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 12th JANUARY, 2017

P.C.

1. Heard Dr.Birendra Saraf, learned Counsel for the petitioner and Ms.Pallavi Dabholkar, learned Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of

India, the petitioner, hereinafter referred to as the 'defendant' has challenged the judgment and order dated 11.6.2013 passed by the learned Jt. Civil Judge, Senior Division, Pune below Exhibit-23 in Special Civil Suit No.307/2002. By that order, the learned trial Judge held that the Court at Pune has territorial jurisdiction to entertain and try the suit.

3. In support of this Petition, Dr. Saraf has invited my attention to :

(i) paragraph-13 of the plaint, wherein the respondent, hereinafter referred to as the 'plaintiff', has averred thus :

“13. The plaintiff further says that the engines were manufactured at Pune and also were supplied from Pune to various units of the defendant. The invoices were raised at Pune and the money was due and payable at Pune. The Commercial Policies were executed at Pune. And hence a part of the cause of action has arisen at Pune and therefore this Hon'ble Court has jurisdiction to entertain, try and decide the present

suit.”

- (ii) Paragraphs-13 of the written statement of the defendant,
- (iii) Preliminary issue framed by the learned trial Judge on 1.7.2008, and
- (iv) Paragraphs-3, 141, 146 and 151 of the affidavit of evidence filed on behalf of the plaintiff by Dinesh V. Vyawahere, and his cross-examination.

4. Dr.Saraf submitted that during the cross-examination, the plaintiff's witness admitted that most of the invoices were raised by their office of Ludhiyana to the defendant's office in Ludhiyana, Jammu & Kashmir etc. He further admitted that whenever the invoices were raised on the defendant in Ludhiyana, the defendants had made payment in Ludhiyana office. He also admitted that the plaintiff used to supply the articles/goods to the defendant from their depot in Ludhiyana.

5. Dr. Saraf submitted that from perusal of the cross-examination of the plaintiff's witness, it would be evident that no part of cause of action occurred within the territorial limits of Pune Court. All the transactions had taken place beyond the territorial jurisdiction of Pune Court. He, therefore, submitted

that the learned trial Judge was not justified in holding that the Court at Pune has territorial jurisdiction to entertain and try the suit.

6. On the other hand Ms. Dabholkar has supported the impugned order. She invited my attention to paragraph-C of the written statement filed by the defendant raising preliminary objection and in particular following portion :

“C..... The manufacturing of engines at Pune, the supply of engines from Pune and issuing the invoices from Pune will not make out any cause of action to file and institute the present suit before this Hon'ble Court”

7. She submitted that the learned trial Judge while answering the question of jurisdiction also observed that some of the invoices are raised from Pune office and that amount was payable at Pune. She further submitted that the defendant did not adduce any evidence in support of their contention that Pune Court has no jurisdiction. She, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. I have already extracted paragraph-13 of the plaint as also paragraph-C wherein the defendant has raised preliminary objection. In paragraph-C, the defendant contended that the manufacturing of engines at Pune, the supply of engines from Pune and issuing the invoices from Pune will not make out any cause of action to file and institute the suit in the Court at Pune. In other words, the defendant has accepted that the engines were supplied on few occasions from Pune and that some of the invoices were also issued from Pune. In paragraph-10 of the impugned order, the learned trial Judge has considered the invoices at Exhibits-71 to 162 and observed that some of the invoices are raised from Pune office and that the amount was payable at Pune.

9. Dr. Saraf heavily relied upon the cross-examination of the plaintiff's witness contained in paragraph-151 which is to the following effect :

“151] I am deposing on the basis of the documents placed on record. The transaction in the suit were not taken place

in my presence. It is true that most of the invoices were raised by our office of Ludhiyana to the defendant's offices in Ludhiyana, Jammu & Kashmir etc. It is true that whenever the invoices were raised on the deft. in Ludhiyana, the defendants had made payment in our office in Ludhiyana. It is true that we used to supply the articles/goods to deft. from our depot in Ludhiyana. It is not true that we have not maintaining the account of defendant in our office. It is not true that I am deposing false that deft. was having running an open account in its office in Ludhiyana and Pune. It is true that the defendant used to make payment for sums specified bills for some office in Ludhiyana.”

10. Perusal of cross-examination shows that most of the invoices were raised by the plaintiff's office of Ludhiyana to the defendant's office in Ludhiyana, Jammu & Kashmir. The plaintiff's witness was not confronted with the fact that not a single invoice was raised by Pune office. PW-1 further admitted that whenever invoices were raised on the defendant in

Ludhiyana, the defendant had made payment in their office in Ludhiyana. However, he was not confronted with the fact that the suit claim did not include the invoices raised by Pune office. In other words, one has to proceed on the premises that the plaintiff has instituted the suit in respect of payment of invoices raised from Pune office which were not paid by the defendant. The learned trial Judge further observed that there is no cross-examination on behalf of the defendant of the plaintiff's witness on the invoices at Exhibits-71 to 162. The learned trial Judge further observed that the goods were also supplied from the Pune office and some of the invoices were also raised from the Pune office. Understood thus, I do not find that the learned trial Judge has committed any error in holding that the part of cause of action has arisen in Pune and, therefore, it has territorial jurisdiction to try the suit as per Section 20(C) of C.P.C. Hence, Petition fails and the same is dismissed. In view of dismissal of Writ Petition, Civil Application for stay does not survive and the same is also disposed of. Order accordingly.

(R. G. KETKAR, J.)