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

NOTICE OF MOTION (LODGING) NO.738 OF 2017
IN
COMMERCIAL SUIT (LODGING) NO.608 OF 2017

RRC International Freight Services Limited)	
2 nd Floor, Great Social Building,)	
60, Sir P.M. Road, For, Mumbai – 1.)	...Applicant
)	...Ori.Deft.
<u>IN THE MATTER BETWEEN :</u>)	
)	
LSI Logistic Shipping International S.A.)	
Incorporated under the law of Luxemburg)	
Having sole shareholder Mr.Pirre Hubert)	
(through its Constituted Attorney, Mr.Balan)	
Pattani), having its office at 20, Rue De)	
Hollerich, L-1740, Luxembourg.)	...Plaintiff
)	
....Versus....)	
)	
RRC International Freight Services Limited)	
2 nd Floor, Great Social Building,)	
60, Sir P.M. Road, For, Mumbai – 1.)	...Defendant

Mr.Rohit Kapadia, Senior Counsel with Mr.Karl Shroff i/b Mr.Nilesh Parekh for the Plaintiff.

Mr.Milan Desai with Ms.Shaila Taware for the Applicant in Notice of Motion (Lodging) No.738 of 2017 (Original Defendant).

CORAM : R.D. DHANUKA, J.
DATE : 14TH NOVEMBER, 2017.

ORAL JUDGMENT :-

1. By this notice of motion, the applicant (original defendant)

prays that the issue of jurisdiction be decided as a preliminary issue under section 9-A of the Code of Civil Procedure, 1908. In view of the plea of jurisdiction raised by the defendant in the affidavit in reply, the following issue is framed :-

“Whether jurisdiction of this Court is ousted in light of the terms of the contract :

(i) that contract is governed by Law of England and Wales and

(ii) in case of any disputes the place of jurisdiction shall be London” ?

2. Learned counsel appearing for the parties have addressed this Court on this issue based on the pleadings filed by them.

3. Learned counsel for the applicant in this notice of motion invited my attention to the contract entered into between the parties on 17th April, 2017 and more particularly paragraph XXIII and XXIV, which provide that law that prevails will be the English Law. If necessary, the place of jurisdiction will be at London. He also invited my attention the letter dated 25th August, 2017 addressed by the original plaintiff to the applicant stating that the contract is governed by Law of England and Wales and also submitting to the jurisdiction of High Court in London. It is stated that the plaintiff has no alternate but to pursue the claim against the applicant in the High Court in London in respect of the claim set out in the said letter.

4. It is submitted by the learned counsel that in view of the aforesaid two clauses in the contract entered into between the parties and in view of the statement made by the original plaintiff in its own letter that the parties are governed by English Law and the jurisdiction would vest in London Court, the plaintiff could not have filed this suit in this Court. He submits that this Court has thus no territorial jurisdiction to entertain, try and dispose of the suit and thus on that ground itself the suit deserves to be dismissed.

5. Mr.Kapadia, learned senior counsel appearing for the original plaintiff on the other hand invited my attention to the averments made in the plaint and also various provisions of the contract entered into between the parties on 17th April, 2017. He submits that the plaintiff was entrusted with the work of transporting 10,000 tons of Metro Rails from Vladivostok Port to the site of Maharashtra Metro Rail Corporation Limited (MMRCL) at Nagpur. The plaintiff has already transported to the said Metro Rails from Vladivostok Port to Mumbai Port through a third party. The plaintiff and the defendant entered into a contract dated 17th April, 2017 whereby the defendant was to transport the said Metro Rails from Mumbai Port to the MMRCL site at Nagpur. He also invited my attention to the rubber stamp of the applicant (original defendant) affixed on each of the page of the contract entered into between the

parties and would submit that the said stamp would clearly indicate that the contract was executed in Mumbai.

6. It is submitted that since no part of cause of action had arrived at London, even by consent of parties, the parties could not have conferred jurisdiction upon the Courts in London. He submits that substantial part of cause of action for filing the suit has arisen in Mumbai and thus this Court has territorial jurisdiction to entertain, try and dispose of the suit.

7. Learned senior counsel placed reliance on the judgment of the Supreme Court in case of **A.B.C. Laminart Pvt. Ltd. & Anr. vs. A.P. Agencies, Salem, (1989) 2 SCC 163** and in particular paragraphs 9, 10, 11, 16, 18 and 21 and would submit that since no part of cause of action had arisen at London, the parties could not have conferred the jurisdiction on Courts in London. If any such agreement between the parties is arrived at conferring the jurisdiction on the Court which does not have jurisdiction, it is void and would be contrary to section 28 of the Indian Contract Act, 1872.

8. Learned counsel for the applicant in rejoinder made an attempt to distinguish the judgment of the Supreme Court in case of **A.B.C. Laminart Pvt. Ltd. & Anr.** (supra) and would submit that the plaintiff itself being a foreign company had agreed that the dispute with the applicant would be subject to Laws of England and subject

to the Courts in London. He submits that the parties would be governed by private International Law and thus the provisions of the Indian Contract Act, 1872 would not be attracted. He also placed reliance on the judgment of the Supreme Court in case of **M/s.Swati Gases P. Ltd. vs. Indian Oil Corporation Limited**, decided on 12th July, 2013 in Civil Appeal No.5086 of 2013 and in particular paragraphs 23, 28 and 31.

9. It is submitted that though the rubber stamp of the defendant was affixed on each page of the contract showing the address of the respondent at Mumbai, after affixing the signature of the defendant on the said contract, the said agreement was sent to the plaintiff at Luxembourg and the same was executed by the plaintiff at the place of its office address at Luxembourg. Upon raising the query by this Court whether any such plea is raised by the applicant in the affidavit in support of the notice of motion or in the affidavit in reply filed to the notice of motion filed by the original plaintiff, learned counsel fairly admits that no such plea has been raised by the applicant. Upon further raising a query by this Court as to whether any part of cause of action has arisen in London, learned counsel fairly admits that no part of cause of action had arisen in London.

10. A perusal of the contract entered into between the parties

indicates that the defendant had agreed to transport Metro Rails from Vladivostok Port to the site of Maharashtra Metro Rail Corporation Limited at Nagpur. The rubber stamp affixed on the contract entered into between the parties also indicates that the contract was signed in Mumbai. It is not in dispute that the defendant is carrying out business in Mumbai. In paragraph 34 of the plaint, the plaintiff has averred that the registered office of the defendant is situated within the territorial jurisdiction of this Court. The defendant has been carrying the business in Mumbai. Substantial part of the cause of action in filing the present suit has arisen in Mumbai and thus this Court has territorial jurisdiction to entertain, try and dispose of the present suit. Though affidavit in reply has been filed by the defendant to the notice of motion filed by the applicant and also a separate notice of motion is filed by the applicant raising the issue of territorial jurisdiction under section 9-A of the Civil Procedure Code, 1908, no plea is raised by the applicant (original defendant) that no cause of action has arisen in Mumbai or stating that any part of cause of action had arisen in London. A perusal of the said contract clearly provides that various obligations of the parties were to be performed by the parties in Mumbai. I am thus inclined to accept the submission of the learned senior counsel for the original plaintiff that substantial part of cause of action had arisen in Mumbai.

11. Insofar as the submission of the learned counsel for the applicant that in the contract and more particularly in clauses XXIII and XXIV of the agreement, the parties have agreed that the law that prevails would be English Law and if necessary, the place of jurisdiction will be at London and thus it will be for the plaintiff to show that what part of cause of action had arisen at London is concerned, in my view there is no merit in the submission made by the learned counsel. The plaintiff has made sufficient averments in the plaint as to what part of cause of action had arisen in Mumbai. Insofar as those provisions of the contract and more particularly clauses XXIII and XXIV are concerned, in my view since no part of cause of action has arisen in London, the parties even by consent cannot confer the jurisdiction on that Court which Court does not have jurisdiction to entertain, try and dispose of the suit.

12. The Supreme Court in case of **A.B.C. Laminart Pvt. Ltd.** (supra) has categorically held that the jurisdiction of the Court in matter of a contract depends on the situs of the contract and the cause of action arising through connecting factors. It is held that if it is found that the parties have agreed to confer jurisdiction on the Court which does not have jurisdiction, such agreement, would be void and contrary to section 28 of the Indian Contract Act, 1872. In my view, the principles laid down by the Supreme Court of **A.B.C. Laminart**

Pvt. Ltd. (supra) would clearly apply to the facts of this case.

13. Insofar as the judgment of the Supreme Court in case of **M/s.Swastik Gases P. Ltd.** (supra) relied upon by the learned counsel for the applicant is concerned, the facts before the Supreme Court in that matter were that part of cause of action had arisen at Jaipur (Rajasthan) and some part of cause of action had arisen at Kolkata. The parties in the contract arrived at between them agreed that the dispute, if any, would be subject to the Kolkata jurisdiction. The Supreme Court considered the rival submissions made by the parties and more particularly the contention that since the parties had not agreed to exclusive jurisdiction of Kolkata High Court, whether Kolkata High Court would exercise jurisdiction to entertain, try and dispose of the dispute between the parties. In that context, the Supreme Court held that 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 but that would not be decisive and does not make any material difference. It is held that since the parties had made a provision that the agreement was subject to the jurisdiction of a Court having concurrent jurisdiction, the parties have amicably and exclusively agreed to the exclusion of the jurisdiction of the other Courts. In my view, the judgment of the Supreme Court **M/s.Swastik Gases P. Ltd.** (supra)

will not even remotely apply to the facts of this case. In this case, the parties have not conferred the jurisdiction exclusively on any one Court out of the two Courts, having concurrent jurisdiction.

14. Insofar as the reliance placed by the defendant on the letter dated 25th August, 2017 addressed to the applicant contending that the contract was governed by Law of England and Wales and also that the jurisdiction of High Court in London has jurisdiction and the plaintiff will have no alternate but to pursue the claim against the applicant in the High Court in London is concerned, in my view even if a party takes an erroneous stand in the pleading or in the correspondence that a particular Court has jurisdiction to entertain, try and dispose of the suit which Court though has no jurisdiction, by raising such erroneous plea, that Court will have no jurisdiction to entertain, try and dispose of the proceeding. There is no estoppel against law. The Court has to verify whether the Court has territorial jurisdiction to entertain, try and dispose of the suit after considering various facts in the matter, including the place of execution of contract between the parties and place of accrual of cause of action. In my view, merely because such a contention is raised by the plaintiff in the said letter, that would not bind this Court to accept the plea that London Court has jurisdiction and this Court does not have jurisdiction in view of the fact that no cause of action has admittedly

arisen in London.

15. For the reasons recorded aforesaid, the issue framed by this Court under section 9-A of the Code of Civil Procedure, 1809 is answered in negative. In my view, this Court has territorial jurisdiction to entertain, try and dispose of this suit. There is no merit in the submission of the defendant that parties are governed by private International Law.

16. The notice of motion is thoroughly misconceived and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)