

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 12TH DAY OF DECEMBER 2017

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No.3390 of 2017

in

C.S.No.283 of 2017

M/s.TJSV Steel Fabrication & Galvanizing (India) Ltd.,
Having Regd.Office
TC 21/497, Makkal Lane,
Kanattukara Post, Ayyanthol,
Thrissur, Kerala-680 011.
Represented by its Authorised Representative
Mr.V.G.Suresh

...Plaintiff

Vs

1. M/s.East Coast Constructions and Industries Limited
Having Regd.Office at
"Buhari Building",
No.4, Moores Road,
Chennai 600006.

..... 1st Defendant

2. The South Indian Bank,
Udumal Pet Branch
No.168/4, Palani Road,
Gandhi Nagar P.O,
Udumalpet,
Tirupur District 642 201

.. 2nd Defendant

A.No.3390 of 2017

M/s.East Coast Constructions and Industries Limited
Having Regd.Office at
"Buhari Building",
No.4, Moores Road,
Chennai 600006.

...Applicant/1st Defendant

VS

1. M/s.TJSV Steel Fabrication & Galvanizing (India) Ltd.,
Having Regd.Office
TC 21/497, Makkal Lane,
Kanattukara Post, Ayyanthol,

Thrissur, Kerala-680 011.
 Represented by its Authorised Representative
 Mr.V.G.Suresh

.....1st Respondent/2nd Defendant

2. The South Indian Bank,
 Udumal Pet Branch
 No.168/4, Palani Road,
 Gandhi Nagar P.O,
 Udumalpet,
 Tirupur District 642 201

.. 2nd Respondent/2nd Defendant

Application praying that this Hon'ble Court be pleased
 to reject the plaint under O 7 r 11 of the C.P.C. In
 C.S.No.283 of 2017 on the file this Hon'ble Court.

This Application coming on this day before this
 court for hearing and the court made the following order:

This application has been filed under Order 7 Rule
 11 of CPC to reject the plaint in CS.No.283 of 2017.

2. This application has been filed by the 1st
 Defendant in the said suit. The suit had been filed, by
 M/s.TJSV Steel Fabrication and Galvanizing (India)
 Limited, having its registered Office at TC.No.21/497,
 Makkal Lane, Kanattukara Pot, Ayyanthol, Thrissur, Kerala
 680 011, represented by its Authorised Representative,
 V.G.Suresh, against (1) M/s.East Coast Constructions and
 Industries Limited, Chennai-6 and (2) The South Indian
 Bank, Udumalpet Branch, Tirupur District, seeking a
 judgement and decree against the Defendants, as follows:-

i. To discharge the performance bank
 guarantee BG.No.0349BG000112013, dated
 22.10.2014, amounting to Rs.25,75,000/-.

ii. To pay a sum of Rs.1,04,00,796/- to the
 Plaintiff with 12% interest from the date

of the plaint i.e. 10.03.2017 to the date of realisation.

iii.To pay costs of the suit.

3. In the cause of action paragraph, it has been stated as follows:-

"The cause of action for the suit arose at Egmore, Chennai where the registered Office of the 1st Defendant is located. It further arose on 27.2.2013 when the Plaintiff received the Letter of Intent from the 1st Defendant for fabrication and supply of composite steel girders; on 27.3.2013, when the Plaintiff received the work orders; on 23.4.2013 when the Plaintiff received the purchase order; from 19.7.2013 to 31.3.2016 being the various dates on which the Plaintiff raised the invoices on the 1st Defendant towards the running account transaction; on 2.2.2016 when the Plaintiff and the 1st Defendant entered into a Memorandum of Understanding for quantities and payment; on 3.2.2016 when the 1st Defendant assured issuance of statutory deduction certificate; on 29.9.2016 and 3.1.2017 when the Plaintiff addressed to the 1st Defendant on need for extension of bank guarantee and for release of payments and further arose on 2.6.2016, 13.6.2016, 20.9.2016, 7.10.2016, 16.12.2016, 22.3.2017 and 4.4.2017 being the dates on which the renewal of bank guarantee was sought by the 1st Defendant."

4. The 1st Defendant had entered appearance and had filed the present application, seeking to reject

the plaint. Leave to institute the suit was granted in A.No.2204 of 2017 on 11.04.2017. While granting leave, this court had observed as follows:-

"Mr.Narendran, the learned counsel for the Applicant would submit that the suit is filed for discharge the performance of bank guarantee and for recovery of money. The learned counsel would further submit that the entire cause of action arose within the jurisdiction of this court and this application is filed since the second Defendant Bank is situated in Udumalpet, Tirupur District, which is situated outside the jurisdiction of this court and it is further contended that the second Defendant is only a formal party and no relief is sought against the second Defendant. "

5. In the affidavit filed in support of the present application, the Director/Authorised Signatory of 1st Defendant Company, has stated that no part of cause of action arose within the jurisdiction of this court. It was stated that the Letter of Intent dated 27.2.2013, two work orders dated 27.3.2013 and the purchase order dated 23.4.2013 were received and accepted by the Plaintiff at Udumalpet, Tirupur District and consequently, the contract came into existence at Udumalpet, Tirupur District. It has been further mentioned that in the invoices, there is an ouster clause, conferring exclusive territorial jurisdiction of the Courts at Udumalpet. It was, therefore, stated that since the goods under the invoices were accepted without any protest, the contract between the parties stood completed and the parties were bound by the ouster clause. It has been, therefore, stated that the Plaintiff is precluded from going to any other Court

except the court at Udumalpet, Tirupur District. Consequently, claiming that no part of cause of action had arisen within the jurisdiction of this Court, this application has been filed, seeking to reject the plaint.

6. The Respondent/ Plaintiff has filed a counter. In the counter, it has been stated that the suit had been filed only for a judgement and decree to discharge the performance guarantee, dated 22.10.2013 and for a direction to pay a sum of Rs.1,04,00,796/- together with interest from the date of the plaint till the date of realisation and for costs. It was further stated that a part of cause of action also arose within the jurisdiction of this court. It was not correct to state that the contract came into existence at Udumalpet. It was further stated that the Letter of Intent was initially issued on 27.2.2013 and the Respondent/ Plaintiff addressed a revised email on 13.3.2013. Consequently, the work orders and purchase orders issued further to the Letter of Intent and emails constituted an actual formation of the contract and it was, therefore, stated that the contract was actually concluded at Chennai. It has further been stated that the clause restricting the jurisdiction of Udumalpet does not bind the parties and it is not an exclusion clause. It has been further stated that the place for instituting the suit would also include where a part of cause of action arose. It has been stated that the contract was formed in Chennai and the 1st Defendant had its registered office at Chennai. The contract was executed and completed in Chennai. Materials were supplied at Chennai. It was also stated that an Advocate Commissioner had been appointed to inspect the work carried out in Chennai. Consequently, it has been stated that a substantial part of cause of action arose within the jurisdiction of this Court and therefore, this application should be dismissed.

7. A perusal of the plaint shows that the parties have come to court on the ground of Letter of Intent issued by the 1st Defendant for construction of sub-structure with pile foundation and superstructure for road over bridge existing road under bridge, between Vyasarpadi-Korrukpet and Vyasarpadi-Basin Bridge Stations. These places are situated within the jurisdiction of this Court. The 1st Defendant had issued the purchase order dated 23.4.2013. A performance guarantee was also provided. There were disputes between the parties. Under these circumstances, the Plaintiff had come to court, seeking the reliefs as stated above against the 1st Defendant.

8. It has been stated that in terms of the work orders and the purchase orders, composite girders were supplied on various dates. The work primarily took place within Chennai. It has, therefore, been stated that this court has jurisdiction.

9. The learned counsel for the Applicant has relied on **2015 12 SCC 225 (B.E.Simoese Von Staraburg Niedenthal and another Vs. Chhattisgarh Investment Limited)** wherein in paragraph 12, the Honourable Supreme Court had held that in view of the clause in the agreement, there is an ouster and consequently, the court cannot assume jurisdiction. The learned counsel also relied on **2017 7 SCC 678 (Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and others)** wherein in paragraph 20, the Honourable Supreme Court has held that where more than one court has jurisdiction, it is always open for the parties to exclude all other courts.

10. On the other hand, the learned counsel for the Respondent has relied on **2013 9 SCC 32 (Swastik Gases Private Limited Vs. Indian Oil Corporation Limited)**, wherein the Honourable Supreme Court had held that the

jurisdiction of the court in the matter of contracts would depend on the situs of the contract and the cause of action arising through connecting factors.

11. Clause 12 of the Letters Patent is relating to original jurisdiction as to suits, which is as follows:-

"12. Original jurisdiction as to suits:-

And We do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court; or if the Defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees. "

12. Order III Rule 1 of the Original Side Rules deals with leave to sue and it is as follows:-

"R.1:- An application for leave to institute a suit in the Court shall be made by Judge's summons entitled in the matter of the

intended suit, and shall be supported by an affidavit stating the residence and occupation of the Defendant, and the reason for instituting the suit in the Court. The application shall be accompanied by the plaint in the intended suit, or a copy thereof.

The court may direct notice of the application to be given to the Defendant.

If leave to sue is granted, the summons to the Defendant shall contain the notice set out in Form No.9."

13. Primarily, this court is concerned with Clause 12 of the Letters Patent. It is seen that if a part of cause of action arose within the jurisdiction of this Court, this Court shall have jurisdiction to adjudicate the issues. In the present case, the cause of action had arisen not only at Chennai, but also at Tirupur and finally, situs of the work order is at Chennai. There being correspondences to and from Chennai, there cannot be exclusive jurisdiction to any one court. Even if the parties have agreed to exclusive jurisdiction of any one of the Court, the said agreement cannot oust the inherent jurisdiction of this Court to adjudicate the issues. I am not in agreement with the Applicant, who stated that the leave to sue already granted must be revoked.

14. Cause of action is a mixture of facts and law and will have to be decided. It is not the case of the Applicant herein that they would be put to disadvantage by adjudicating the issues before this Court. As a matter of fact, since the documents emanated from and within Chennai, it would be only appropriate for

this court to decide the issue. It would also be convenient for both the parties. Consequently, this application does not deserve any consideration and is to be dismissed.

15. In the result, this application is dismissed. No costs.

Sd/.R.S.M.J

21.11.2017

//Certified to be a true copy//

Dated this the th day of 2018.

KY/23.01.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.