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

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Date of Decision: 27.03.2017

+ CM(M) 923/2016 and CM Nos. 34147/2016 (stay) & 34149/2016
(delay in re-filing)

EASUN REYROLLE LTD Petitioner
Through Mr.S.D.Kushwaha, Adv.

versus

M/S SAV ENGINEERS Respondent
Through Mohd. Rashid, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order of the trial court dated 15.02.2016 whereby the trial court decided the preliminary issue framed regarding territorial jurisdiction of the court holding that this court has territorial jurisdiction and rejected the contentions of the petitioner.
2. The plaintiff/respondent has filed the suit for recovery of Rs.16,64,795/-. The amount is claimed on the allegation that the goods supplied by the petitioner were defective
3. Issue No.1 as framed by the trial court reads as follows:-
“Issue No.1: Whether this court has no jurisdiction to entertain the present suit.”
4. The trial court has decided against the petitioner and in favour of the

respondent.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the petitioner has admitted that a part of cause of action has arisen within the territory of Delhi. He has also admitted that no part of cause of action has arisen in Chennai. He however submits that under Section 20(a) of CPC read with the explanation, it is the court in Chennai only which would have the territorial jurisdiction to try the suit. He relies upon the ouster clause in the invoice to support his contention. He also relies upon the judgment of the Division Bench of this Court in the case of ***Ultra Home Constructions Pvt. Ltd. vs. Purushottam Kumar Chaubey, 2016 (4) R.A.J. 252*** and of the Supreme Court in the case of ***Patel Roadways Limited vs. Prasad Trading Company & Anr. 1991 ACJ 1001.***

7. The trial court held that the respondent/plaintiff issued a purchase order from Delhi to the petitioner/defendant at its corporate office at Bangalore and subsequently, the goods were dispatched by the petitioner from its factory at Hosur (Tamil Nadu) to the respondent at Delhi. Accordingly, the court held that part of cause of action has arisen in all the three places and the courts in all the three places are competent to entertain any dispute arising out of these transactions. It further rejected the reliance of the petitioner on an ouster clause incorporated in the invoice that the courts in Chennai where the registered office of the petitioner is situated alone would have the territorial jurisdiction to decide the said matter. It held that as no part of cause of action having arisen in Chennai, the ouster clause would not be applicable.

8. As per the invoice, the ouster clause reads as follows:-

“SUBJECT TO CHENNAI JURISDICTION ONLY.”

9. In the above context, reference may be had to the judgment of the Supreme Court in the case of *Patel Roadways Limited vs. Prasad Trading Company & Anr.* (supra). In that case, the Supreme Court disposed of two appeals. In the first appeal, the petitioner therein who was in the business of carrier and transport of goods on hire had its principal office in Bombay and branch offices at various other places. The respondent therein had entrusted a consignment to the appellant therein at its subordinate office at Tamil Nadu to be delivered in Delhi. After the goods reached Delhi, they were kept in a godown. The same got destroyed and damaged in a fire. The respondent instituted a suit in the court of Subordinate Judge, Periakulam within the territorial jurisdiction of the subordinate office of the appellant therein where the goods were entrusted for transport. The Supreme Court in those facts held as follows:-

“9. Clauses (a) and (b) of Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently Clause (c) is not attracted to the facts of these cases. What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part

of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

10. The Supreme Court concluded in the facts of the case that the ouster clause was not attracted as no jurisdiction was conferred on the courts in Bombay as the appellant admittedly had subordinate office at respective places where goods were delivered to it for the purpose of transport. It further held that the courts at Bombay would have no jurisdiction to entertain the suit as the parties could not confer jurisdiction on the courts at Bombay by an agreement.

11. In the present case, the admitted position is that the petitioner has its principal office at Chennai. However, admittedly, no cause of action has arisen in Chennai. On the other hand, as noted by the trial court, a part of cause of action has arisen at Bangalore and Hosur where the petitioner Company has subordinate offices. Hence, for the purpose of the explanation

to Section 20 CPC, the courts in Chennai where no part of cause of action has arisen would not have any jurisdiction to try the present suit even though the petitioner has its registered office there.

12. In view of the above legal position, there is no reason to interfere with the impugned order. The trial court has rightly concluded that the ouster clause has no application to the facts of the case as the courts in Chennai would have no territorial jurisdiction to try the present suit. The petition is dismissed.

13. All pending applications also stands dismissed.

JAYANT NATH, J

MARCH 27, 2017

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