

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

+ **FAO No. 419/2016**

% **2nd May, 2017**

M/S G.T. SALES CORPORATION Appellant
Through: Mr. Rajeev Saxena and Ms.
Namrata Chauhan, Advocates.

versus

M/S HINDUSTAN CONSTRUCTION CO. LTD. Respondent
Through: Mr. Arnav Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Order XLIII Rule (1)(a) of the Code of Civil Procedure, 1908 (CPC) against the impugned order of the Trial Court dated 6.5.2016 returning the suit plaint under Order VII Rule 10 CPC for being filed at the competent court at Mumbai.

2. The facts of the case are that the appellant/plaintiff filed the subject suit for recovery of Rs. 3,50,885/- on the ground that the appellant/plaintiff as a seller had supplied machineries to the respondent/defendant for its project at Uri, Baramula, Jammu and Kashmir. Appellant/plaintiff has prayed for a decree in the suit on account of non-payment of the price of the machineries supplied and

which amounts are therefore sought to be recovered through the subject suit.

3. Respondent/defendant after appearing filed an application under Order VII Rule 10 CPC stating that in terms of the purchase orders issued by the respondent/defendant upon the appellant/plaintiff, there was an exclusive jurisdiction of the High Court of Mumbai, and accordingly, the courts at Delhi would not have territorial jurisdiction.

4. In law parties can enter into an agreement whereby where more than one court has jurisdiction then exclusive jurisdiction will be vested with one court. Of course, parties by consent cannot confer jurisdiction on a court which does not have any.

5. In the present case, the registered office of the respondent/defendant is at Mumbai and the appellant/plaintiff has not pleaded that respondent/defendant has any branch office at Uri, Baramula, Jammu and Kashmir for the courts not at Mumbai but at Uri, Baramula, Jammu and Kashmir to have jurisdiction vide *Patel Roadways Limited, Bombay vs. Prasad Trading Company, (1991) 4 SCC 270*. Therefore, if the subject clause in the purchase order issued by the respondent/defendant upon the appellant/plaintiff contains a clause giving exclusive jurisdiction to the courts at Mumbai then the courts at Delhi would not have territorial jurisdiction.

6. The subject clause as regards jurisdiction in the purchase order issued by the respondent/defendant upon the appellant/plaintiff reads as under:-

“Jurisdiction:-

*This purchase order is governed as per Indian Laws and the appropriate court(s) **having jurisdiction will be the High Court in Mumbai only**”*

7. As per the aforesaid clause therefore apparently only the High Court at Mumbai would have exclusive territorial jurisdiction. However, the subject suit is a suit for recovery of only Rs. 3,50,885/-, and the pecuniary jurisdiction for filing of a suit in the High Court of Mumbai is admittedly Rs. 1 crore and above. Once that is so, the subject jurisdiction in this case would be nugatory so far as present dispute is concerned because the present dispute is not of pecuniary jurisdiction over Rs. 1 crore. If the disputes between the parties pertained to monetary claims of either of the parties in excess of Rs. 1 crore only then the High Court of Mumbai would have had exclusive jurisdiction vide *Hanil Era Textiles Ltd. vs. Puromatic Filters (P) Ltd. (2004) 4 SCC 671*.

8. It is not in dispute that Delhi courts have jurisdiction because as per the plaint payment had to be made by the respondent/defendant to the appellant/plaintiff at Delhi on account of

supplies of machineries made by the appellant/plaintiff to the respondent/defendant. In any case, this is a disputed question of fact which will require trial in case the respondent/defendant disputes that payments were not to be made at Delhi.

9. Accordingly, though in principle the impugned order of the court below is correct that parties if agree exclusive jurisdiction of one court where more than one court has territorial jurisdiction, only such court would have jurisdiction, however on facts of this case the impugned order is not correct because the High Court of Mumbai which has exclusive jurisdiction as per the subject clause cannot entertain the subject suit on account of its pecuniary jurisdiction being above Rs.1 crore.

10. In view of the above discussion, impugned order dated 6.5.2016 is set aside. The application under Order VII Rule 10 CPC will stand dismissed, however, whether or not courts at Delhi otherwise have jurisdiction, if disputed by the respondent/defendant will be an issue in the suit and will be decided after leading of evidence and at the stage of final arguments.

11. The appeal is allowed and disposed of in terms of the aforesaid observations.

12. Parties are directed to appear before the District and Sessions Judge, Tis Hazari Courts (Central District) on 22nd May, 2017 and the District and Sessions Judge will mark the suit for disposal to a competent court in accordance with law.

MAY 02, 2017/ib

VALMIKI J. MEHTA, J

