

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 20 of 2003**

Minwool Rock Fibers Ltd., A Company Registered Under the Companies Act, 1956, Vardhman Nagar, Post Box No.26, Rajnandgaon (District Rajnandgaon), Chhattisgarh.

---- Appellant**Versus**

1. Steel Plant of India Ltd., Rourkela Steel Plant, A/C Package 10 Z, Rourkela, Orissa.
2. B.K. Engineering Corporation, 45/46, Industrial Estate, Bhilai-490026, M.P. (Now Chhattisgarh).

---- Respondents

For Appellant	:	Mr. Syed Majid Ali, Advocate
For Respondent No. 1	:	Mr. G. L. Uike, Advocate under the authority of Dr. Saurabh Kumar Pande, Advocate
For Respondent No. 2	:	Mr. H. B. Agrawal, Senior Advocate with Ms. Meera Jaiswal, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****14/12/2018**

1. The appellant/plaintiff has assailed the impugned judgment and decree dated 12/09/2002 passed by learned First Additional District Judge, Rajnandgaon, Chhattisgarh in Civil Suit No.1-B/1998 whereby the learned trial Court dismissed the suit after framing and deciding two preliminary issues.
2. Brief facts for disposal of this appeal, are that appellant/plaintiff was having its head corporate office at Hyderabad and local office at Vardhman Nagar, Rajnandgaon. Appellant/plaintiff is a

company registered under the Companies Act and its branches are also situated at Bombay, Madras and New Delhi. Appellant/company received a purchase order (Annexure P/4) from respondent/defendant No.2 on 28/06/1996 for supply of Mineral Wool for PBCC project, SAIL, RSP, Rourkela.

3. Respondent/defendant No.2 as per address mentioned in the purchase order is having its place of business at Industrial Estate, Bhilai District Durg. The purchase order has been made by respondent No.2 to the appellant/plaintiff with certain terms and conditions. The purchase order was a written document, which also bears terms and conditions with respect to price, dispatch, insurance, tax, delivery, damages, payments and other conditions including territorial jurisdiction of the competent Court in case any dispute arises in supply of the articles mentioned in the purchase order.
4. The appellant/plaintiff has supplied goods as mentioned in the purchase order from 21/08/1996 to 06/11/1996 for an amount totaling Rs.94,871.50. The articles as mentioned in the purchase order amounting to Rs.94,871.50 was supplied to respondent/defendant No.2 at the place mentioned in the purchase order i.e. Rourkela with respondent No.1, but even after lapse of the time as agreed and sending several letters demanding amount of goods, the payment of the same has not been made. For the said reason, the appellant/plaintiff filed a suit valuing it at Rs.1,25,879.00, which includes cost of goods,

interest and other charges, before the Court at Rajnandgaon, District Rajnandgaon, Madhya Pradesh (now Chhattisgarh).

5. Respondent No.2 after receiving notice of suit, appeared before the Court at Rajnandgaon and submitted written statement to the claim made by the appellant/plaintiff in the suit and raised an objection with respect to territorial jurisdiction of the Court at Rajnandgaon and also raised objection with regard to maintainability of the suit.
6. It has been pleaded that as per purchase order, the goods are to be supplied at Rourkela and payments are to be made at Bhilai. It has been further pleaded that as per condition of purchase order, the dispute, if any, arose with respect to the said purchase order is to be decided by the Court at Durg itself. It has been also pleaded that as the appellant/plaintiff is a company registered under the Companies Act, therefore, the suit as filed in its form and place of presentation is not maintainable.
7. Respondent/defendant No.2 after making preliminary objections has submitted its reply on merits and denied all the adverse pleadings made in the plaint against it.
8. Respondent/defendant No.2 also filed a counter claim valued at Rs.1,20,000.00 on the ground that supply was not made within the stipulated period and further that goods supplied were below the standard specification.

9. Initially, the learned trial Court, on the objection raised by defendant, has framed a preliminary issue with respect to the jurisdiction of the Court to try the suit filed by plaintiff. During the course of hearing of the preliminary issue with respect to jurisdiction, the learned trial Court revealed that the suit was not filed by competent person as per law and thereafter gave an opportunity to the respective parties to make necessary amendment in their pleadings, to file documents to show that the suit has been properly constituted and filed. After affording proper opportunity to the parties when the Court found that still no proper pleadings and materials have been placed on record then the learned trial Court had framed another issue with respect to the competency of the person who signed and verified the pleadings on behalf of the plaintiff. It is thereafter the learned trial Court had heard and decided both the issues together.
10. The learned trial Court proposed to decide following two issues as preliminary issues :-
- “(i) क्या अक्षम व्यक्ति द्वारा वादी की ओर से वाद पेश किया गया है, जिसके कारण वाद पोषणीय नहीं है ?
- (ii) क्या यह वाद इस अदालत की स्थलीय अधिकारिता के बाहर है ?
11. The learned trial Court decided both the issues in favour of respondent/defendant No.2 and dismissed the suit against which this appeal is preferred.

- 12.** Learned counsel appearing for the appellant/plaintiff submitted that the learned trial Court committed an error in holding that the Court at Durg is only having jurisdiction to decide the dispute arose between the parties. He further submitted that the appellant/plaintiff was having its branch office at Rajnandgaon and goods were also supplied from Rajnandgaon. He further submitted that during the correspondence for payment of goods, respondent No.2 had mentioned that he will make payment at Rajnandgaon, therefore, the Court at Rajnandgaon is having jurisdiction and the suit was rightly been filed before it. He further submitted that the restriction made in the purchase order for filing of suit at particular Court is contrary to law. He also submitted that the person who verified the pleadings in the plaint was an Assistant Manager of the appellant/company, therefore, he was fully competent to sign the averments and file the suit. He lastly submitted that respondent/defendant No.2 has not contended that the civil suit was signed, verified and filed by an incompetent person, but even then, the preliminary issues have been framed and decided by the learned trial Court.
- 13.** On the other hand, learned counsel appearing for respondent No.2 supported the impugned judgment and decree. He submitted that respondent/defendant No.2 was having its place of business and office at Bhilai from where purchase order has been made and forwarded to the office of Hyderabad

as well as Rajnandgaon with certain terms and conditions including territorial jurisdiction of the Court to decided the dispute, if any, arising from the said purchase order and after accepting all terms and conditions made in the purchase order placed by respondent No.2, the goods were supplied. He further submitted that the suit in its form is not maintainable as the appellant/plaintiff is a company registered under the Companies Act and the suit has not been filed under the procedure as prescribed under the Companies Act.

14. I have heard learned counsel appearing for the parties and perused the records carefully.
15. The purchase order as enclosed along with written statement made by respondent No.2/corporation, reveals that respondent/defendant No. 2 is a partnership Firm registered with the Registrar, Firms and Societies and the same is owned by the partners mentioned in it and as per the pleadings made in the written statement also respondent No.2 is a partnership firm.
16. So far as preliminary issue with respect to territorial jurisdiction for filing of a suit is concerned, it is apparent from perusal of the purchase order that written purchase order has been made by respondent No.2 on 28/06/1996, in which, place of business and address of office has been mentioned as **“45/46, Industrial Estate, Bhilai-490026, Madhya Pradesh (now Chhattisgarh), India”**. The aforementioned detail clearly

shows that the address of defendant No. 2, for purposes of office and place of business has been clearly shown at Bhilai, which comes within the territorial jurisdiction at Durg.

17. Section 20 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') prescribes for the territorial limits of jurisdiction of Courts. Section 20 of the CPC is reproduced herein below:-

“20. Other suits to be instituted where defendants reside or cause of action arises.-

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

[***]

Explanation [***].—A corporation shall be deemed to carry on business at its sole or principal office in {Subs. by Act 2 of 1951, sec.3 for "the States".} (w.e.f. 1-4-1951) [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

18. From bare reading of provision of Section 20 of the CPC, it is clear that the suit can be filed at a place where the defendant or defendants resides and carries business, or personally works for gain, or when there are more than one defendant,

any one of the defendants resides or carries on business or personally work for gain or where the cause of action wholly or partly arise.

19. It is not in dispute that in the given facts of the case, there are more than one territorial jurisdiction where the suit can be filed and the defendants have specifically mentioned as one of the conditions at the time of placing purchase order with the appellant/plaintiff fixing the territorial jurisdiction of the Court at Durg to be a place for institution of suit, if any, with respect to the particular purchase order. The proposal for supply of goods with certain terms and conditions was made by defendant No.2, which was accepted by the appellant/plaintiff and supplied the goods in accordance with it.
20. The Supreme Court while considering the issue with respect to the jurisdiction of the Courts in the matter of **A.B.C. Laminart Pvt. Ltd. and another v. A. P. Agencies, Salem**¹, observed as under:-

“8. The next question is whether clause 11 is valid, and if so, What would be its effect? As Clause 11 formed part of the agreement it would be valid only if the parties could have validly agreed to it. It is common knowledge that the law of contract only prescribes certain limiting principles within which parties are free to make their own contracts. An agreement enforceable at law is a contract. An agreement which purports to oust the jurisdiction of the Court absolutely is contrary to public policy and hence void. Each of the citizens has the right to have his legal position determined by

1 (1989) 2 SCC 163

the ordinary Tribunal except, of course, in a contract (a) when there is an arbitration clause which is valid and binding under the law, and (b) when parties to a contract agree as to the jurisdiction to which disputes in respect of the contract shall be subject. "It has long been established", say Cheshire and Fifoot, "that a contract which purports to destroy the right of one or both of the parties to submit questions of law to the courts is contrary to public policy and is void pro tanto". However, arbitration is a statutory mode of settlement; and as a matter of commercial law and practice parties to a contract may agree as to the jurisdiction to which all or any disputes on or arising out of the contract shall be subject.

9. Section 28 of the Indian Contract Act, 1872 provides that every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunal, or which limits the time within which he may thus enforce his rights, is void to that extent. This is subject to exceptions, namely, (1) contract to refer to arbitration and to abide by its award, (2) as a matter of commercial law and practice to submit disputes on or in respect of the contract to agreed proper jurisdiction and not other jurisdictions though proper. The principle of Private International Law that the parties should be bound by the jurisdiction clause to which they have agreed unless there is some reason to contrary is being applied to municipal contracts. In *Lee v. Showmen's Guild*, [1952] 1 All E.R.1175 Lord Denning said:

"Parties cannot by contract oust the ordinary courts from their jurisdiction. They can, of course, agree to leave questions of law, as well as questions of fact, to the decision of the domestic tribunal. They can, indeed, make the tribunal the final arbiter on questions of fact, but they cannot make it the final arbiter on questions of law. They cannot prevent its decisions being examined by the courts. If parties should seek, by agreement, to take the law out of the hands of the courts and put it into the

hands of a private tribunal, without any recourse at all to the courts in cases of error of law, then the agreement is to that extent contrary to public policy and void."

10. Under Section 23 of the Indian Contract Act the consideration or object of an agreement is lawful, unless it is opposed to public policy. Every agreement of which the object or consideration is unlawful is void. Hence, there can be no doubt that an agreement to oust absolutely the jurisdiction of the Court will be unlawful and void being against the public policy. *Ex dolo malo non oritur actio*. If therefore it is found in this case that Clause 11 has absolutely ousted the jurisdiction of the Court it would be against public policy. However, such will be the result only if it can be shown that the jurisdiction to which the parties have agreed to submit had nothing to do with the contract. If on the other hand it is found that the jurisdiction agreed would also be a proper jurisdiction in the matter of the contract it could not be said that it ousted the jurisdiction of the Court. This leads to the question in the facts of this case as to whether Kaira would be proper jurisdiction in the matter of this contract. It would also be relevant to examine if some other courts than that of Kaira would also have had jurisdiction in the absence of Clause 11 and whether that would amount to ouster of jurisdiction of those courts and would thereby affect the validity of the clause.

16. So long as the parties to a contract do not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the Courts. If under the law several Courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions

cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. Would this be the position in the instant case?

18. In *Hakam Singh v. M/s Gammon (India) Ltd.*, (1971) 3 S.C.R. 314, where the appellant agreed to do certain construction work for the respondent who had its principal place of business at Bombay on the terms and conditions of a written tender. Clause 12 of the tender provided for arbitration in case of dispute. Clause 13 provided that notwithstanding the place where the work under the contract was to be executed the contract shall be deemed to have been entered into by the parties at Bombay, and the Court in Bombay alone shall have jurisdiction to adjudicate upon. On dispute arising between the parties the appellant submitted a petition to the Court at Varanasi for an order under section 20 of the Arbitration Act, 1940 that the agreement be filed and an order of reference be made to an arbitrator or arbitrators appointed by the Court. The respondent contended that in view of the Clause 13 of the arbitration agreement only the Courts at Bombay had jurisdiction. The Trial Court also held that the entire cause of action had arisen at Varanasi and the parties could not by agreement confer jurisdiction on the Courts at Bombay which they did not otherwise possess. The High Court in revision held that the Courts at Bombay had jurisdiction under the general law and hence could entertain the petition and that in view of Clause 13 of the arbitration agreement the petition could not be entertained at Varanasi and directed the petition to be returned for presentation to the proper Court. On appeal therefrom one of the questions that fell for consideration of this Court was whether the Courts at Bombay alone had jurisdiction over the dispute. It was held that the Code of Civil Procedure in its entirety applied to proceedings under the Arbitration Act by virtue of Section 41 of that Act. The jurisdiction of the Court under the Arbitration Act to entertain a proceeding for filing an award was accordingly

governed by the provisions of the Code of Civil Procedure. By the terms of section 20(a) of the Code of Civil Procedure read with explanation II thereto the respondent company which had its principal place of business at Bombay was liable to be sued at Bombay. It was held that it was not open to the parties to agreement to confer by their agreement jurisdiction on a Court which did not possess under the Code. But where two Courts or more have under the Code of Civil Procedure jurisdiction to try the suit or proceeding an agreement between the parties that the dispute between them shall be tried one of such Courts was not contrary to public policy and such an agreement did not contravene Section 28 of the Contract Act. Though this case arose out of an arbitration agreement there is no reason why the same rule should not apply to other agreements in so far as jurisdiction is concerned. Without referring to this decision a Division Bench of the Madras High Court in *Nanak Chand Shadurian v. The Tinnelvally-Tuticorin Electric Supply Co. Ltd., Calcutta, A.I.R. 1975 Madras 103* observed that competency of a Court to try an action goes to the root of the matter and when such competency is not found, it has no jurisdiction at all to try the case. But objection based on jurisdiction is a matter which parties could waive and it is in this sense if such jurisdiction is exercised by Courts it does not go to the core of it so as to make the resultant judgment a nullity. Thus, it is now a settled principle that where there may be two or more competent Courts which can entertain a suit consequent upon a part of the causes action having arisen there within, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague it is not hit by Sections 23 and 28 of the Contract Act. This cannot be understood as parties contracting against the Statute. Mercantile law and practice permit such agreements."

21. Reverting to the facts of the present case, the defendants are resident of Bhilai, their place of business is also at Bhilai,

which is evident from the purchase order and further that the specific and explicit mentioning has been made in Clause-14 of the purchase order, which are terms and conditions of supply of goods, that to resolve the dispute, the Court at Durg will have the jurisdiction. As the order is placed by defendant No.2 from its office at Bhilai and is also resident of Bhilai which comes under the territorial jurisdiction at Durg and also that the appellant/plaintiff after agreeing with the terms and conditions mentioned in the purchase order, supplied the goods, therefore, appellant was bound to act in accordance with the terms and conditions mentioned in written purchase order. More so, when the Court at Durg is also having a proper jurisdiction under the law which is clear from reading of the pleading and whole clauses of purchase order.

- 22.** In view of the above, I am of the view that learned trial Court has not committed any illegality in deciding the issue of jurisdiction in affirmative and in favour of defendant No.2 by holding that the Court at Rajnandgaon was not having jurisdiction to decide the suit.
- 23.** The other preliminary issue is with respect to maintainability of the suit in its form filed before the Court as the suit filed by appellant/plaintiff, which is a company registered under the Companies Act, was signed and verified by the Assistant Manager.

- 24.** The records of the case would show that the issue with respect to maintainability of suit has been subsequently framed when even after giving opportunity to the parties to the suit, appellant/plaintiff has not amended pleadings or filed necessary documents except one photocopy of letter-head showing the promotion of Shri A.A. Vargis, signatory of the plaint, who has been promoted after the date, on which, civil suit has been filed and arguments on both preliminary issues were heard on the same day. Therefore, the arguments raised by the appellant that preliminary issue No.1 was not framed is not sustainable.
- 25.** Order XXIX of the CPC provides for suit by or against Corporations. Rule 1 of Order XXIX of the CPC provides for subscription and verification of pleading. Order XXIX Rule 1 of the CPC is reproduced herein below:-

“ORDER XXIX

SUITS BY OR AGAINST CORPORATIONS

1. Subscription and verification of pleading.- In suit by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.”

- 26.** Undisputedly, the pleadings of the plaint was signed and verified by Shri A.A. Vargis, who has been shown to be Assistant Manager (H.R.M. and GENL. ADMN.).

- 27.** Perusal of the impugned order would show that during the course of hearing the arguments on territorial jurisdiction, the Court reached to a conclusion that the pleadings have not been properly verified by the person as provided under Order XXIX Rule 1 of the CPC, therefore, directed the parties to take necessary steps to remove the defaults as observed by the Court vide its order dated, but even then, neither the pleadings have been amended nor any documents or power of attorney has been filed. The appellant/plaintiff filed only one document dated 20/05/1998, which is a photocopy of letter-head of faculty officer, Rajnandgaon mentioning that Shri A.A. Vargis, Assistant Manager has been promoted on the post of Manager (ADMN.), whereas, defendant No.2 appears to have amended the pleading and brought same facts on record.
- 28.** From perusal of the plaint, it is clear that the suit has been signed and verified on 28/02/1998 and filed before the Court on 02/03/1998, which is evident from the order-sheets available on record. Admittedly, after direction of the Court, document dated 20/05/1998 was submitted by the appellant/plaintiff showing Shri A.A. Vargis to be promoted from the post of Assistant Manager to Manager (ADMN.). Thus, it is clear that on the date of filing of the suit i.e. 02/03/1998, Shri A. A. Vargis was neither Director nor Principal Officer of the Company having the power and competency under the provision of Order XXIX Rule 1 of the CPC to file,

sign and verify the pleadings of the suit. Therefore, in my considered opinion, the learned trial Court has not committed any illegality in dismissing the suit holding that the suit is not maintainable as it was not signed and verified by the competent person.

- 29.** The appellant/plaintiff is a Corporation or a Firm has to provide specific details and pleadings in the plaint supported by the documents with respect to competency of the said person for filing of suit as provided under the provision of the Code of Civil Procedure.
- 30.** One of the grounds raised by the learned counsel for the appellant is that the issues as framed by the learned trial Court could not be decided as preliminary issues as the same are mixed question of facts and law.
- 31.** The argument as advanced on behalf of the learned counsel for the appellant is not acceptable in view of specific provision as provided under Order XIV Rule 2 of the CPC wherein it has been specifically provided in sub-rule (2) of Rule 2 of Order XIV that where issues both of law and fact arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force.

32. The Hon'ble Supreme Court in the matter of **Foreshore Cooperative Housing Society Limited v. Praveen D. Desai (Dead) Through Legal Representatives and others**² has considered that under what circumstances, the preliminary issue framed can be decided and the suit can be disposed of on the preliminary issue, and held as under :-

"36. Order 14 Rule 2 of the Code of Civil Procedure, confers power upon the Court to pronounce judgment on all the issues. But there is an exception to that general Rule i.e., where issues both of law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on the issue of law, it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law.

37. Order 14 Rule 2 of the Code of Civil Procedure as it existed earlier reads as under:-

"2. Issues of law and of fact.-Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be "disposed of on the issues of law only, it shall try those issues first and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined".

38. A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases. In the un-amended Code, the categorization was only between issues of law and of fact and it was mandatory for the Court to try the issues of law in the first instance and to postpone the settlement of issues of fact until after the issues of law had been

determined. On the other hand, in the amended provision there is a mandate to the Court that notwithstanding that a case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring discretion upon the Court that if the Court is of opinion that the case or any part thereof may be disposed of "on an issue of law only", it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force."

33. In the case in hand, the first issue framed by learned trial Court is with respect to the territorial jurisdiction for filing of suit and next question is with respect to maintainability of suit as the suit has been filed contrary to the provisions of Order XXIX Rule 1 of the CPC.
34. In the opinion of this Court, both the issues formulated as preliminary issues are the issues with respect to the law. Therefore, learned trial Court has not committed any illegality in deciding the suit only on the preliminary issues framed by it.
35. In view of the above discussions, I do not find any merit in the case or any ground for interfering with the impugned judgment and decree dated 12/09/2002 passed by learned trial Court.
36. In the result, the appeal therefore fails. It is dismissed.

Sd/-

(Parth Prateem Sahu)
Judge