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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Misc. Civil Application No. 288 OF 2017
WITH
CIVIL APPLICATION No. 376 OF 2018

Nidan Healthcare Ltd.	...	Applicant
Vs.		
Dr. Anil Govind Joshi	...	Respondent

Mr. Nikhil S. Karnawat, for the Applicant.

Mr. Akshay Kulkarni i/b Ashutosh M. Kulkarni, for the Respondent.

CORAM : A. M. DHAVALE, J.
DATE : SEPTEMBER 19, 2018

PC :-

1. Heard the learned advocate for the Applicant and the learned advocate for the Respondent. This is an application filed under S. 22 and 24 of the Civil Procedure Code for transfer of Special Civil Suit No. 102 of 2017 pending on the file of Civil Judge, S. D. Sangli to the Commercial Court at Kolhapur.
2. The Applicant Nidan Healthcare Ltd. had provided on hire MRI machine to the respondent Dr. Anil Joshi, from

Sangli and it was installed at Sangli. The agreement took place at Kolhapur. The terms of the agreement disclose that normally, both the courts will have jurisdiction in case of dispute between the parties with regard to the agreement. However, there was exclusion clause, restricting the territorial jurisdiction in respect of disputes arising out of the agreement to the courts at Kolhapur only. As the machine was damaged by fire, the Applicant filed Special Civil Suit No. 112 of 2016 in the court of Civil Judge, S.D. Kolhapur for compensation of Rs.1,24,38,093/-. It was recently transferred to the Commercial Court i.e. Additional District Judge, Kolhapur. Thereafter, the respondent herein has filed Special Civil Suit No. 102 of 2017 in respect of the same MRI machine for damages of Rs.96,67,000/-.

3. Learned advocate for the Applicant relied on the exclusion clause in the agreement and the judgments of the Apex Court in (i) **B. E. Simoes Von Staraburg Niedenthal Vs. Chattisgarh Investment Ltd.**¹; and (ii) **Swastik Gases P. Ltd.**

¹ (2015) 12 SCC 225

Vs. Indian Oil Corporation Ltd.². to submit that the parties by mutual agreement have restricted the jurisdiction of the courts to only courts at Kolhapur. Though this legal position is disputed, the terms of the agreement, now shown to me, make it clear that the parties had ousted jurisdiction of the court at Sangli and had agreed to conduct the matter only in court at Kolhapur.

4. He has relied on S. 22 and 23 of C.P.C. and submitted that since the court at Sangli had inherent jurisdiction, the provisions of S. 22 and 23 can be invoked, as both the courts are subordinate to this court.

5. The Apex Court in **Neha Arun Jugadar and Anr. vs. Kumari Palak Diwan Ji³** held that transfer under S. 24 cannot be ordered on the ground that the transferor court had no jurisdiction. S. 24 can be invoked only when both the courts are having jurisdiction.

6. In the present matter, the transfer has been sought

² 2013 (5) All MR 885

³ AIR 2011 SC 1164

not only on the ground of exclusion of jurisdiction, but also on the ground that earlier suit in respect of the same subject matter is pending in the court at Kolhapur. It is necessary that both the suits involving common substantial question of law and fact should be tried by one and the same judge, so as to avoid conflicting decisions.

7. Now, the jurisdiction of the commercial court is enhanced, and therefore, the fact that the suit at Sangli was valued below Rs. one crore, will not come in the way of transfer. Learned advocate for the Applicant relied on judgment in **B. E. Simoese Von Staraburg Niedenthal** (*supra*) wherein the Apex Court held that courts at Goa had exclusive jurisdiction and the jurisdiction of the District Judge, Raipur was ousted. Still, it was held that it was not necessary to send the matter back to the District Judge, Raipur for determination of the jurisdiction. Considering this fact, following order is passed.

ORDER

- (i) Misc. civil application is allowed.
- (ii) Special Civil Suit No. 102 of 2017 pending on

the file of Civil Judge (S.D.), Sangli is hereby transferred to the commercial court at Kolhapur for conducting the same alongwith Special Civil Suit No. 112 of 2016, transferred from the court of Civil Judge, S.D. Kolhapur and renumbered as Special Civil Suit No. 2 of 2018.

- (iii) Parties are directed to remain present before the commercial court at Kolhapur on 12th October, 2018.
- (iv) The office superintendent of the Civil Court Sangli is directed to transmit all records & proceedings of Special Civil Suit No. 102 of 2017 to the Commercial Court at Kolhapur before the due date.
- (v) Misc. civil application is disposed of in the aforesaid terms.
- (vi) Civil Application No. 376 of 2018 is already disposed of by an order dated 10th September, 2018.

Sd/-
[A. M. DHAVALE, J.]