

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## CIVIL REVISION APPLICATION (St) NO.34169 OF 2017

Punj Lloyd Ltd )  
A Company incorporated )  
Under the Companies Act, 1956 )  
Having Registered Office at )  
Punj Loyd House )  
17-18 Nehru Place )  
New Delhi 110019 )...Applicant (Orig.Defendant)

VS.

Red Earth Infraprojects Pvt Ltd )  
A company incorporated )  
Under the Companies Act, 1956 )  
Having Registered Office at )  
Guruvidya C.H.S. Ltd )  
98A, Ramdas Nayak Marg )  
Bandra (W) Mumbai )  
400050 )...Respondent(Orig.Plaintiff)

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Mr.Atul Damle, Senior Advocate with Waseem Pangarkar, Ajay Kumov  
i/b. MZM Legal, for the Applicant.

Mr.Ravi PJadhav, for the Respondent.

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**CORAM : G.S.KULKARNI, J.**

**DATE : 16 February 2018**

**P.C. :**

1. Heard learned Counsel for the parties. By this civil  
revision application the applicant/original defendant has challenged

the order dated 18<sup>th</sup> September, 2017 passed by the learned Ad hoc Judge City Civil Court at Dindoshi, Mumbai whereby in rejecting the summons for judgment no. 111 of 2015 in summary suit no. 191 of 2015 of the respondent/plaintiff, the applicant/defendant is granted conditional leave to defend the suit subject to deposit of an amount of Rs. 25,00,000/- in the Court within two months from the date of the said order.

2. The Summary Suit in question was filed by the respondent/plaintiff for recovery of an amount of Rs. 49,28,763.5 along with future interest on the principal amount of Rs. 31,96,928 from the date of filing of the suit. The respondent/plaintiff is engaged in the business of letting out Crawler Cranes, Hydra Cranes, Earth Moving machinery etc. Applicant/defendant issued a letter of intent by E-mail to the Respondent/plaintiff in respect of 1 no. Of 75 MT Crawler Crane Tata 955 ALC and thereafter applicant/defendant placed on the respondent/plaintiff a work order dated 11.11.2010. Another letter of intent was issued by the applicant/defendant on 22.04.2011 to the respondent/plaintiff in respect of 1 No. of 165 T Crawler Crane, and thereafter on 21.05.2011 by an E-mail applicant/defendant placed on the plaintiff another work order dated 23.04.2011. The said work orders as issued by the applicant/defendant

on the respondent/plaintiff pertained to the work site at Punj Lloyd Limited at Kayalapatuu Village Poochimendu. The hire rates for the T Crawler Cranes were agreed between the parties at Rs. 6,65,000/- and 3,00,000/- for 165 T Crawler Crane and 75 MT Crawler Crane respectively.

3. The respondent/plaintiff raised eleven bills/invoices in regard to the first work order as stated in Para 5 of the plaint. The bills and invoices at item no. iv, vi, and vii were partly paid and item no. viii and xi were not paid. As regards the second work order, total thirteen invoices/bills were issued by the respondent/plaintiff out of which one invoice/bill was not paid. These invoice bills were received and duly accepted by the defendant without any protest.

4. As set out in Para 8 of the plaint the respondent/plaintiff persistently reminded the defendant to make payment of the outstanding amount of Rs. 31,96,928. However the applicant/defendant despite verbal assurances to the respondent/plaintiff failed or neglected to make payment. The plaintiff has written several e-mails requesting to the applicant/defendant to make payment of outstanding dues which were dated 30<sup>th</sup> January 2012, 15<sup>th</sup> February 2012, 23<sup>rd</sup> February 2012, 24<sup>th</sup> May 2012, 29<sup>th</sup>

May 2012, 11<sup>th</sup> July 2012, 14<sup>th</sup> August, 2012, 23<sup>rd</sup> August 2012 and 26<sup>th</sup> December 2013. However, no payment was made from the applicant/defendant.

5. Accordingly the respondent/plaintiff filed the summary suit in question and a summons for judgment was taken out. The applicant/defendant filed an application for leave to defend below Exhibit-7 interalia contending that the Court at Mumbai had no jurisdiction to entertain the suit as the work order/agreement provides that the jurisdiction shall be with the Delhi/Gurgaon Courts in regard to any disputes between the parties under the contract. The second objection was that the suit was barred by limitation, the third objection was that the respondent/plaintiff had failed to abide by the terms and conditions in the alleged invoices in regard to the rates as the log sheets were not supplied.

5. The learned Trial Judge considering the defence as urged by the applicant/defendant by the impugned order has granted the applicant/defendant conditional leave to defend the suit subject to the deposit of an amount of Rs. 25,00,000/-, keeping open the issues of limitation and jurisdiction to be decided at the adjudication of the suit.

6. Learned Senior Counsel for the applicant/defendant, in assailing the impugned order has raised three fold contentions which are almost similar to the contentions as urged before the trial Court. Firstly that the Court at Mumbai did not have jurisdiction to entertain the suit, in view of the specific jurisdiction clause in the work orders that the jurisdiction for any dispute in relation to the said contract shall be subjected to the Delhi/Gurgaon Courts. It is next contended that the learned Trial Judge has completely overlooked the objection of the applicant in regard to suit being barred by limitation. It is thirdly submitted that in any case the Court ought to have considered that there was a lapse on the part of the respondent/plaintiff, in furnishing the rates in pursuance of a specific clause as agreed in the contract. Learned Senior Counsel for the applicant/defendant contends that in view of these specific objections the learned Trial Judge ought to have held that the suit was not maintainable before the court at Mumbai and ought not to have in any case granted to the applicant/defendant conditional leave to defend the suit. In support of his submissions he has placed reliance on the decision of the Supreme Court in (i) ***Swastik Gases Pvt. Ltd. Vs. Indian Oil Corporation Ltd.***<sup>1</sup>, (ii) ***Naran Lala Pvt.Ltd., Navsari Vs. Ion Exchange (India) Ltd.Mumbai***<sup>2</sup> (iii) ***IDBI Trusteeship Services Limited Vs. Hubtown Limited***<sup>3</sup>.

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1 (2013)9 SCC 32

2 2015(3) Mh.L.J. 167

3 (2017) 1SCC 568

7. On the other hand, learned Counsel for the respondent/plaintiff has supported the impugned order. He submits that none of the grounds urged on behalf of the applicant are tenable in the facts and circumstances of the case. It is submitted that the tax invoices which are issued by the respondent demanding the payment are subject to Mumbai jurisdiction as specifically incorporated in the tax invoices and thus, respondent/plaintiff has appropriately instituted the suit before the City Civil Court at Mumbai. My attention is also drawn to Para no. 14 of the plaint which contains the averments of the respondent/plaintiff in regard to Court at Mumbai having jurisdiction. As regards the issue of limitation, the learned Counsel for the respondent/plaintiff submits that the objection as to the limitation has been rightly rejected by the learned Trial Judge to be considered at that stage of the suit. As regards the grievance of the applicant that the rates not being furnished, it is submitted that there is no material to support the said contention as being urged on behalf of the applicant. It is thus submitted that the impugned order would not require interference in respect of the contention on the jurisdiction of this Court. Learned Counsel for the respondent has placed reliance on the decision of the Supreme Court in (i) *M/s Patel Roadways Limited Vs. M/s. Prasad Trading Company* <sup>4</sup>, (ii) *Indian Performing Rights*

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<sup>4</sup>AIR 1992 Supreme Court 1514.

***Society Ltd. Vs. Sanjay Dalia & Anr.***<sup>5</sup>

10. I have heard the learned Counsel for the parties. I have also perused the impugned order and documents placed on record, on behalf of the applicants and respondents. The contract in question between the parties is not in dispute which has arisen by virtue of the applicant/defendant placing work orders on the respondent/plaintiff. It is also not in dispute that under the said contract the respondent/plaintiff had supplied the Cranes to be utilized by the applicants at the sites as agreed between the parties. It is also not in dispute that in regard to the said supplies, invoices were raised by the respondent/plaintiff on the applicant under the said work orders and that part payments were received and part of the payments remained due and payable by the applicant/defendant to the respondents.

11. On the basis of the above admitted factual conspectus, it is required to be seen that in view of the objections as urged on behalf of the applicant whether the impugned order could have been passed by the learned trial Judge.

12. The first objection of the applicant/defendant in regard to the jurisdiction of the Court, appears to be of much substance and can

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<sup>5</sup> (2015)10 SCC 161

decide this civil revision application. The parties to the contract had specifically agreed to the following jurisdiction Clause:-

**“Jurisdiction:** Any dispute in relation to this contract/agreement shall be subjected to the Honourable Delhi/Gurgaon Court.”

13. It is thus not in dispute that in relation to the contract/agreement, the parties had subjected themselves to the jurisdiction of Delhi/Gurgaon Court. The implication of such a jurisdiction clause would be that when the parties agreed to such a jurisdiction clause, then the parties by such agreement have excluded the jurisdiction of the other Courts. The law in this regard is now well settled, that when two Courts have territorial jurisdiction to try and entertain the civil suit, then the parties can agree to subject themselves to the jurisdiction of one of the Court to the exclusion of the other. The maxim '*expressio unius est exclusio alterius*' applies, which means expression of one is the exclusion of another. It is not in dispute that the applicant/defendant has its registered office at Delhi.

14. As clearly seen from the jurisdiction clause as noted above the parties have subjected themselves to the jurisdiction of the Delhi Court and can be said to have excluded the jurisdiction of the Mumbai Court. It is also not a case where the parties have conferred jurisdiction on a Court which it inherently lacks. Only because e-mails were

received by the respondent/plaintiff at Mumbai and/or the part payments were received at Mumbai, it cannot be said that the jurisdiction of the civil court at Delhi is ousted to which the parties explicitly agreed in the jurisdiction clause as contained in the contract.

15. The Supreme Court in “*Swastik Gases Pvt.Ltd. Vs. Indian Oil Corporation Ltd.*,”<sup>6</sup> was considering a similar issue namely clause 18 in the agreement between the parties therein by which the parties agreed to the jurisdiction, as under:-

“18. Jurisdiction

The agreement shall be subject to jurisdiction of the courts at Kolkata.”

The question before the Supreme Court was 'whether in view of Clause 18 of the consignment agency agreement the Calcutta High Court had exclusive jurisdiction in respect of the application made under Section 11 of the Arbitration and Conciliation Act,1996. While holding that the intention of the parties is required to be taken into consideration, Justice R.M.Lodha (as His Lordship then was) observed thus:-

“31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of actionh as also arisen in Jaipur and, therefore, Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of

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6((2013)9 Supreme Court Cases 32)

the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of clause 18 of the agreement, the jurisdiction of Chief Justice of the Rajasthan High Court has been excluded.

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like 'alone', 'only', 'exclusive' or 'exclusive jurisdiction' have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties - by having clause 18 in the agreement - is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner."

(emphasis supplied)

In the concurring judgment of His Lordship Shri. Justice Madan B.Lokur, while agreeing with the observations of His Lordship Justice R.M.Lodha (as His Lordship then was) that the absence of the words 'alone', 'only', 'exclusive jurisdiction' in the jurisdiction clause is neither decisive nor does it make any material difference in deciding the

jurisdiction of a court, and that the existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear, it was held that when the parties have agreed to a jurisdiction in the agreement the parties convey their clear intention to exclude jurisdiction of the Court other than those mentioned in such a clause.

16. Thus, it is clear that the parties in the present proceedings have agreed that the dispute, if any, in relation to the contract/agreement shall be subjected to jurisdiction of the Delhi Court. Thus it is apparent that the basis of the summary suit in question as filed by the respondents being the work orders/contract, and the payments in question being made thereunder, the said work orders in terms of the jurisdiction clause, explicitly exclude the jurisdiction of the other courts. Thus the Civil Court at Mumbai though otherwise would have jurisdiction applying the provisions of Section 20(c) of the Code of Civil Procedure, the same stands excluded by the prescribed jurisdiction clause as agreed between the parties. The contention as urged on behalf of the respondent that a tax invoice is subject to Mumbai jurisdiction also cannot be accepted. A perusal of the note on the tax invoice reads thus:

“The payment of this must be made by payee's A/c. Cheque or Demand Draft 18% interest will be charged if payment is not made within 15 days. Subject to Mumbai Jurisdictions. Our Equipment & Personnel

working at your site will be under our control & Supervision.”

It is clear that the said note on the tax invoice is only restricted to the payment terms/negotiable instrument which may be issued in making payment under the said invoice. This clause cannot be construed to supersede or in any manner dilute the principal contract/agreement between the parties, whereby the parties have agreed to confer jurisdiction on Delhi/Gurgaon Court in any dispute arising under the contract. Thus, the contention as urged on behalf of the respondent/plaintiff that the tax invoice being subjected to the jurisdiction of the Mumbai Court, the summary suit has been appropriately instituted before the Court at Mumbai, cannot be accepted.

17. As regards the contention of the respondent/plaintiff relying on the decision on *M/s Patel Roadways Limited Vs. M/s. Prasad Trading Company* (supra) that the court at Mumbai would have jurisdiction in terms of Section 20(c) of the Civil Procedure Code, in my opinion, cannot be accepted. This decision of the Supreme Court would also not assist the respondent/plaintiff. This is for the reason that the decision is not a decision where the Supreme Court was called upon to decide the controversy akin to the present facts. The ratio of the decision relates to the interpretation and effect of the 'explanation'

below Section 20 of the Code of Civil Procedure. The ratio of the judgment can be seen in paragraphs 12 and 13 of the decision, which is not the case in this proceedings. In *Indian Performing Rights Society Ltd. Vs. Sanjay Dalia & Anr.* (supra) the question which fell for consideration of the Supreme Court was as to the interpretation of Section 62 of the Copyright Act, 1957 and Section 134(2) of the Trade Marks Act, 1999 in regard to a place where a suit can be instituted by the plaintiff. It is in this context the Court has examined Section 20 of the Code of Civil Procedure and had referred to the decision in the case of *M/s Patel Roadways Limited Vs. M/s. Prasad Trading Company*, in construing the Explanation below Section 20 of the Code of Civil Procedure. Thus, this judgment would not be of any assistance to the respondent.

18. In view of the above discussion, in my opinion, the learned trial Judge was not correct in rejecting the objection as to jurisdiction of the Court as urged on behalf of the applicant/defendant. As the learned Counsel for the parties have concededly advanced extensive submissions on the jurisdiction issue, interest of justice would require that only for this purpose the issue need not be re-examined by the trial Court and more particularly in view of the clear position in law. In view of the above conclusion I need not delve on the other issue as has

been urged on behalf of the parties on the merits of the disputes, as ex-facie the Court at Mumbai would lack jurisdiction to entertain the suit. Accordingly, the application needs to succeed. It is allowed in the following terms:-

ORDER

- (i) The impugned order dated 18 September 2017 is quashed and set aside.
- (ii) The learned trial Judge is directed to return the respondent's plaint in Summary Suit No.191 of 2015 as per the provisions of Order VII Rule 10 and 10A of the Code of Civil Procedure, to be filed before the appropriate court, as per the jurisdiction clause as agreed between the parties.
- (iii) The revision application is disposed of in the above terms. No costs.

***(G.S.KULKARNI, J.)***