

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO.690 OF 2018

WITH

CHAMBER SUMMONS NO.727 OF 2018

IN

SUIT NO.231 OF 2018

Pakona Engineers (India) Private Limited Plaintiff

Vs.

Shrifal Xtending Engineering and Ors. Defendants

Mr. T.N. Subramanian, senior advocate a/w. Mr. Rubin Vakil, Mr. Karan Asrani, Mr. Aniruddha Lad, Mr. T.V. Louis, Ms. Pallavi Kamath and Mr. Bijiv Joseph I/b. BJ Law Offices LLP for plaintiff.

Dr. Abhinav Chandrachud a/w. Mr. Nishant Vyas and Mr. Yagnesh Vyas I/b. Mr. Nishant S. Vyas for defendant no.1/applicant in CHS/727/2018.

Mr. Rohaan Cama a/w. Mr. Akshay Udeshi and Mr. Kaushal Udeshi I/b. M/s. Sanjay Udeshi and Company for defendant nos.3 to 5 and for applicant in CHS/690/2018.

CORAM : K.R.SHRIRAM, J.

RESERVED ON : 17th DECEMBER 2018

PRONOUNCED ON : 20th DECEMBER 2018

P.C.:

1 These are two separate chamber summons, one by defendant no.1 (chamber summons no.727 of 2018) and the other on behalf of defendant nos.3 to 5 (chamber summons no.690 of 2018). Both these chamber summons seek revocation of leave granted by this Court on 8th February 2018 under Clause XII of the Letters Patent.

2 It is the case of plaintiff that defendant nos.2 to 5 were in the employment of plaintiff. Defendant no.2 joined plaintiff in August 2009, defendant no.3 joined plaintiff in January 2012, defendant no.4 joined

plaintiff in August 2010 and defendant no.5 joined plaintiff in February 2012. The letters of employment had a secrecy clause which provided that the employees, viz., defendant nos.2 to 5, without consent in writing of plaintiff, shall not, either during the course of employment or thereafter disclose/divulge or make public any of the processes, technique, records, transactions, dealings, etc. of plaintiff which defendant nos.2 to 5 may come to know during their employment or otherwise. They were also barred from removing from the premises of the company any property, notices or other documents or material relating to such knowledge or information and any design, drawings, pattern, etc. regarding the company products was strictly confidential. Therefore, according to plaintiff, defendant nos.2 to 5 had an obligation, both during the course of the employment and also after cessation of the employment, to maintain the secrecy. It is plaintiff's case that during the time when defendant nos.2 to 5 were in the employment of plaintiff, defendant nos.2 to 5 came into contact with various clients of plaintiff. It is also alleged that during the course of employment, defendant nos.2 and 5 formed a partnership firm in the name and style of defendant no.1 to carry on business which was identical to plaintiff without the consent/knowledge of plaintiff and the same was prohibited under the terms of employment. It is stated that plaintiff came to know that defendants were selling the same products as of plaintiff including fake products to various customers of plaintiff and therefore, defendant nos.2 to

5 through defendant no.1 firm breached the binding covenants and contractual obligations with plaintiff and caused irreparable harm, loss, damage and injury to plaintiff.

3 It is plaintiff's case that when confronted, defendant nos.2 to 5 confessed to the police as well as in the resignation letters that they have breached the covenants and contractual obligations and resigned from the company in March 2017. Though defendant nos.2 to 5 assured that they shall not indulge in continued breach of their illegal activities of supply of spares/parts and services of all types of machineries and plaintiff's clients, defendant nos.2 to 5 have continued to do the same. According to plaintiff, this has caused loss to plaintiff in the sum of Rs.20 Crores. Plaintiff is seeking an order restraining defendants from disclosing or divulging or carrying on similar business as of plaintiff, apart from decree for Rs.20 Crores.

4 The jurisdiction clause that is relevant is in paragraph 41 of the plaint and the same reads as under :

41. This Hon'ble Court has the jurisdiction to entertain, try and decide the present suit. The Plaintiff has its registered office in Mumbai. The entire business of the Plaintiff Company is carried on from Mumbai. Defendant nos.2 to 5 regularly visited Mumbai for the purpose of conducting the business of the Plaintiff Company, during their course of employment. The correspondence between the Plaintiff and the Defendants were exchanged in Mumbai. This Hon'ble Court has the jurisdiction to entertain, try and decide this suit because the Plaintiff has its registered office in Mumbai and the facts giving rise hereto including the various visits by the Defendant Nos.2,3,4 and 5 in Mumbai when they were in service of the Plaintiff took place here in Mumbai. The action could not have been completed unless the Defendants visited

Mumbai which provided them the occasion to ultimately indulge in the illegal activities against the Plaintiff. It is therefore submitted that the entire cause of action arose at Mumbai since the entire business and clientele of the Plaintiff's Mumbai office have seriously got affected, hence the suit is required to be filed within the territorial jurisdiction of this Hon'ble Court since the damages caused to the Plaintiff's Mumbai office. Further, the Defendants approached the clients/customers at the Mumbai Office of the Plaintiff. The entire business of the Plaintiff is carried on by Plaintiff from Mumbai which is within the jurisdiction of this Hon'ble Court. The Plaintiff, therefore, states that the major cause of action in the present suit has arisen within the jurisdiction of this Hon'ble Court and therefore, this Hon'ble Court has jurisdiction to entertain, try and adjudicate the present suit. The correspondence between the Plaintiff and the Defendant were exchanged in Mumbai. As, major part of the transaction has taken place in Mumbai, this Hon'ble Court would have the jurisdiction to entertain, try and dispose of the suit, on leave under Clause XII of the Letters Patent being granted to the Plaintiff. The Plaintiff therefore craves leave to rely upon Clause XII of the Letters Patent and submits that if such leave is granted by this Hon'ble Court that would be an additional reason for this Hon'ble Court to have jurisdiction to entertain and try this suit.

5 It is the case of defendant no.1 that defendant no.1 carries on business in Vadodara, Gujarat and does not carry on business or work for gain within the local limits of the ordinary original civil jurisdiction of this Court. It is also stated that no part of the cause of action relating to defendant no.1 arises within the local limits of the ordinary original civil jurisdiction of this Court and infact in paragraph 41 of the plaint, plaintiff does not even explain how the present suit can be filed against defendant no.1 in this Court.

6 It is the case of defendant nos.2 to 5 that defendants nos.2 to 5 are all based in Vadodara, Gujarat; were employed by plaintiff in Vadodara, Gujarat; business being allegedly carried out by defendants in violation of the employment contract with plaintiff was also being carried out in

Vadodara, Gujarat; and letters of appointment issued to defendant nos.2 to 5, viz., the contract which defendant nos.2 to 5 are alleged to have breached, were also issued in Vadodara, Gujarat and accepted in Vadodara, Gujarat. It is also stated that the letters of appointment, viz., the employment contract, said to contain the secrecy clause, itself contains jurisdiction clause wherein the parties elected to vest jurisdiction with the Courts at Vadodara. The said clause reads as under :

Disputes :

Any disputes between yourself and the company concerning and relating to this contract shall be subject to the jurisdiction of any be determined by the court of competent authority at Vadodara only.

7 Mr. Cama submitted that, therefore, not only do the Courts at Vadodara have jurisdiction on account of defendants residing and/or carrying on business there, the cause of action also has entirely arisen in Vadodara. In the alternative, even if part of the cause of action arose in Mumbai (which it did not), the parties had agreed that the Courts at Vadodara would have exclusive jurisdiction over any and all disputes concerning or relating to the contracts. Mr. Cama submitted that by suppressing this exclusive jurisdiction clause, plaintiff has obtained leave under Clause XII. No part of the cause of action also has arisen within the jurisdiction of this Court. Hence, leave granted on 8th February 2018 ought to be revoked.

8 Mr. Subramanian for plaintiff, opposing the applications, submitted that the entire basis of the claim in the suit for damages is more in the nature of a tortious claim. According to Mr. Subramanian the cause of action in the suit is based on tortious and illegal acts of defendants in fraudulently, misrepresenting to plaintiff's customers and supplying duplicate parts/spares of plaintiff company to such customers. Hence, the exclusive jurisdiction clause contained in the terms of employment of defendant nos.2 to 5 does not apply. Mr. Subramanian also submitted that admittedly there is no contract or exclusive jurisdiction clause between plaintiff and defendant no.1 and the cause of action against defendant no.1 and defendant nos.2 to 5 is not capable of bifurcation or splitting. Mr. Subramanian submitted that from the purported Deed of Partnership dated 19th January 2017 of defendant no.1, it appears that the wife of defendant no.4 and wife of defendant no.5 purportedly are partners of defendant no.1. The knowledge, technical know-how and the expertise of running plaintiff's business was never given and/or imparted by plaintiff to the said persons who are purported partners of defendant no.1. Thus, it is apparent that defendant nos.2 to 5 are using the subterfuge of defendant no.1 to avoid liability under the secrecy clause in their respective letters of appointment and the present suit is a composite suit filed against defendant nos.1 to 5.

9 Having heard the counsel and having considered the affidavits, my views, are as under :

(a) the cause title indicates that defendants are all either resident of Vadodara, Gujarat or carry on business at Vadodara, Gujarat;

(b) it is not plaintiff's case either that any of the defendant is based in Mumbai.

(c) the entire basis of plaintiff's case for leave under Clause XII from this Court is that (i) plaintiff has its registered office in Mumbai and carried on its entire business from the Mumbai office; (ii) defendant nos.2 to 5 visited Mumbai as part of their employment with plaintiff; (iii) the correspondence exchanged between the parties was received by plaintiff in Mumbai and issued by plaintiff from Mumbai; (iv) plaintiff has clients/customers in Mumbai; and (v) the damages caused would be to plaintiff's Mumbai office.

10 None of the above grounds, in my view, are sufficient to vest this Hon'ble Court with jurisdiction, nor do they constitute part of the cause of action as required. This is even more so, when defendants are all based in Vadodara, Gujarat, defendant nos.2 to 5 were employed by plaintiff in Vadodara, Gujarat, the business being allegedly carried out by defendants in violation of the contract with plaintiff is also being carried out in Vadodara, Gujarat and the contract with plaintiff was also being carried out in Vadodara, Gujarat. The clients whom defendants are supposed to have

poached, list whereof is at Exhibit “O” to the plaint, are all based outside India. The letters of appointment, viz., the contract issued to defendant nos.2 to 5 that contains secrecy clause and which defendant nos.2 to 5 have committed alleged breach was also issued in Vadodara, Gujarat and accepted by defendant nos.2 to 5 in Vadodara, Gujarat. The mere fact that defendant nos.2 to 5 visited Mumbai as part of their duties would not help plaintiff's case in any manner. Though in the affidavit in reply, for the first time, it is stated that part of the cause of action in the suit is based on the tortious and illegal acts of defendants in fraudulently misrepresenting to plaintiffs customers and supplying duplicate parts/spares of plaintiff company to such customers, the entire basis of the claim in the suit is defendant nos.2 to 5 committed breach of the secrecy clause contained in their terms of employment and not in tort as submitted by Mr. Subramanian. If one has to consider the secrecy clause in terms of employment, the entire terms of employment, viz., the contract of employment, has to be considered as a whole.

11 Mr. Subramanian relying on *Indian Mineral and Chemicals Company and Ors. V/s. Deutsche Bank*¹ submitted that the assertions in a plaint must be assumed to be true for the purpose of determining whether leave is liable to be revoked on a point of demurrer, is of no assistance to him. I am saying this because even if I assume everything stated in

1. (2004) 12 SCC 376

paragraph 41 of the plaint to be correct, still the mere fact that defendant nos.2 to 5 visited Mumbai as part of their duties would not help plaintiff's case in any manner. Moreover, in *Indian Mineral and Chemicals Company* (Supra), the Court was considering an application made by defendants for revocation of leave under Clause XII of the Letters Patent on the ground that no part of cause of action had arisen within the jurisdiction of the Calcutta High Court. In the present case, revocation sought is on the basis of the exclusive jurisdiction clause as regards defendant nos.2 to 5.

12 The Apex Court in *T. Arvandanam V/s. T. V. Satyapal*² held that the entire plaint has to be read to determine whether the stand taken by plaintiff is illusory and by clever drafting creates an illusion of an alleged factual situation. If on a meaningful and not formal reading of a plaint it is manifest that the stand by plaintiff is only illusory, then the Court may even reject the plaint. Though the application in *T. Arvandanam* (Supra) was under Order VII Rule 11, the principles apply to this case as well. Paragraph 5, 6 and 7 of the said judgment read as under :

5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by

2. AIR 1977 SC 2421

examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

6. The trial court in this case will remind itself of s. 35-A C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.

7. We regret the infliction of the ordeal upon the learned Judge of the High-Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy.

13 The Apex Court in **Swastik Gases Private Limited V/s. Indian Oil Corporation Limited**³ in paragraphs 32, 55 and 57 has held as under :

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*

3. (2013) 9 SCC 32

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.

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55. It will be seen from the above decisions that except in A.B.C. Laminart where this Court declined to exclude the jurisdiction of the Courts in Salem, in all other similar cases an inference was - drawn (explicitly or implicitly) that the parties intended the implementation of the exclusion clause as it reads notwithstanding the absence of the words "only", "alone" or "exclusively" and the like. The reason for this is quite obvious. The parties would not have included the ouster clause in their agreement were it not to carry any meaning at all. The very fact that the ouster clause is included in the agreement between the parties conveys their clear intention to exclude the jurisdiction of Courts other than those mentioned in the concerned clause. Conversely, if the parties had intended that all Courts where the cause of action or a part thereof had arisen would continue to have jurisdiction over the dispute, the exclusion clause would not have found a place in the agreement between the parties.

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57. For the reasons mentioned above, I agree with my learned Brother that in the jurisdiction clause of an agreement, the absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute. In the present case, only the Courts in Kolkata had jurisdiction to entertain the disputes between the parties.

14 The entire basis of the claim in the suit as stated above is alleged breach by defendant nos.2 to 5 of the terms of employment. Plaintiff in paragraphs 7, 8, 13, 29, 31 and 32 has averred as under :

7. The plaintiff states that the terms and conditions contained in the respective Letters of Appointment were accepted by the defendants and were binding upon them. The letters of appointment of defendant nos.2

to 5 contained the following term, which is reproduced herein under for reference -

“Secrecy :

You shall not, at any point of time, without our consent in writing, either during the course of employment or thereafter disclose/divulge or make public any of the processes, technique, records, transactions, dealings, etc. of the company whether the same may be confided or become known to you during the course of your employment or otherwise nor shall you remove from the premises of the company any property, notices, or other documents or material relating to such knowledge or information.

Any design, drawings, pattern, improvements, resulting from your work will be property of the company and all technical information regarding the company products is strictly confidential.

8. The plaintiff states and submits that defendant nos.2,3,4 and 5 had an obligation, both during the course of the employment and also after cessation of the employment, to maintain the secrecy as provided in the aforesaid clause of their respective letters of appointment. The plaintiff submits that, in view of the aforesaid clause, defendant nos.2,3,4 and 5 were prohibited from contacting or interacting with the customers and/or clients of the plaintiff based in India as well as abroad

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13. Thus, defendant nos.2 to 5, through defendant no.1 firm, have breached their binding covenants and contractual obligations with the plaintiff, causing irreparable harm, loss, damage and injury to the plaintiff.

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29. From the aforesaid, it is clear that the defendants have continued their illegal acts as more particularly stated hereinabove, in breach of the covenants contained in their respective letters of appointment. The plaintiff submits that the covenants contained in the respective letters of appointment are valid, effective and binding on defendant nos.2 to 5, not only during the course of employment but also thereafter. Therefore, by carrying on the business of supply of spares/parts and servicing of all types of FFS machinery, defendant nos.2 to 5, through defendant no.1 firm, Thus the plaintiff states and submits that the defendants are in breach of their covenants.

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31. Further, as more particularly stated hereinabove, the defendants have admitted the breaches of the terms of the letters of appointment and their liability in their statements before the police authorities

32. The plaintiff submits that the aforesaid acts of the defendants, in breach of their covenants contained the letters of appointment, have caused heavy losses to the plaintiff

15 Therefore, the entire claim against defendant nos.2 to 5 is for breach of contract of employment which contained the secrecy clause. Therefore, one cannot ignore the exclusive jurisdiction clause.

16 In my view, the clause quoted above relating to “disputes” conferred exclusive jurisdiction to the Courts at Vadodara only. The parties having expressly submitted to the jurisdiction of the Courts at Vadodara, this Court cannot have jurisdiction and the plaint has to be returned to plaintiff for presentation before the Competent Court at Vadodara.

17 So far as defendant no.1 is concerned, admittedly defendant no.1 carried on business at Vadodara. No cause of action relating to defendant no.1 it is even alleged in the plaint arose within the local limits of the Ordinary Original Civil Jurisdiction of this Court. Infact in paragraph 41 of the plaint, plaintiff does not even explain how the present suit can be filed against defendant no.1 before this Court. The basis for claiming jurisdiction in this Court as stated earlier is that plaintiff has its registered office in Mumbai and carried on its entire business from Mumbai, defendant nos.2 to 5 visited Mumbai as part of their employment, correspondence exchanged between the parties was received by plaintiff in Mumbai and issued in Mumbai, plaintiff has clients/customers in Mumbai and the damages caused would be to plaintiff's Mumbai office. In my view, none of the above grounds are sufficient to vest this Hon'ble Court with jurisdiction

against defendant no.1 as they do not constitute part of the cause of action as required.

In the circumstances, this Court would not have jurisdiction even against defendant no.1.

18 In the circumstances, leave under Clause XII is revoked. Plaint has to be returned to plaintiff for presentation in the Court of competent jurisdiction in Vadodara, Gujarat. Plaintiff may either seek refund of court fees and pay full court fees in Gujarat or seek a set off for the court fees paid without claiming the refund but that will be subject to law prevailing in the State of Gujarat.

19 Both the chamber summons are accordingly disposed.

(K.R. SHRIRAM, J.)