

CR No.3122 of 2017 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.3122 of 2017 (O&M)

Date of decision:27.11.2018

Alpha Corp Development Private Limited ... Petitioner

Vs.

Alpha Residents Welfare Association (Regd.) Karnal and others
... Respondents

CR No.3705 of 2017 (O&M)

Alpha Corp. Development Pvt.Ltd. And another ... Petitioners

Vs.

Alpha Residents Welfare Association (Regd.) Karnal and others
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Alok Jain, Advocate
for the petitioner.

Mr. Rajinder Goyal, Advocate
for the respondents.

AMIT RAWAL J.

This order of mine shall dispose of two Civil Revisions bearing
Nos. 3122 of 2017 and 3705 of 2017.

Civil Revision bearing No.3122 of 2017 is directed at the
instance of the defendant against the order dated 19.04.2017, whereby, an
application under Order 7 Rule 11 CPC seeking rejection of the plaint in a
suit for declaration, rendition of accounts, mandatory injunction and

permanent injunction, has been dismissed.

Mr.Alok Jain, learned counsel appearing on behalf of the petitioner submitted that plaintiffs/respondents no.1 to 7 filed the suit aforementioned, asserting that plaintiffs no.2 to 7 purchased the plots in 'Alpha International City, Sector 28-29, Karnal' and are its residents, whereas, plaintiff no.1 claimed to be a Registered Association of its Residents. The plaint could not proceed under Order 2 Rule 3 CPC because plaintiff cannot be permitted to join or club several causes against the same defendants. Each of the grievances is required to be tried by way of separate suit. The Courts at Karnal did not possess the territorial jurisdiction in view of Specific Clause in Plot Buyers Agreement and Conveyance Deed besides having Arbitration Clause as the parties have set their hands to the exclusive jurisdiction of the Court at Delhi.

In this view of the matter, an application under Order 7 Rule 11 CPC Annexure P-6 was filed which was opposed by filing reply (Annexure P-7). The aforementioned application earlier vide order dated 31.01.2017 (Annexure P-2) was dismissed on the ground that Section 15 of Haryana Development and Regulation of Urban Area, 1975 was not attracted. However, vide order dated 15.02.2017 in Civil Revision No.1105 of 2017, the same was set aside and the matter was remitted. The trial Court on remand, has not appreciated the aforementioned fact, particularly, the contents of the Clause 23 of the aforementioned contract.

In support of the aforementioned contention, relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Swastik Gases (P) Ltd. Vs. Indian Oil Corporation Limited 2013(9) SCC 32.**

Per contra, Mr. Rajinder Goyal, learned counsel appearing on behalf of the respondents supported the order under challenge on the premise that question of territorial jurisdiction is a mixed question of facts and law and can only be adjudicated in case the parties lead evidence and the suit as such cannot be thrown out. Even the multifariousness as sought to be negated cannot be discarded as per the provisions of Order 2 Rule 3 CPC and thus, urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is some force and merit in the submissions of Mr. Jain. It would be in the fitness of things to extract Clause 23 of the Agreement which reads as under:-

“23 Jurisdiction:

The Courts at New Delhi alone shall have the jurisdiction in all matters arising out of touching and/or concerning this Agreement regardless of the place of execution of this Agreement which is deemed to be at New Delhi.”

The interpretation of expression “alone” or “only” is no longer res-integra. It is settled law that where the parties had set their hands to the jurisdiction of particular Court by ousting the jurisdiction of other Courts, suit of such nature at the convenience of the plaintiff, at the place of work

and vocation, cannot be entertained.

The aforementioned view of mine is supported by the ratio decidendi culled out in paragraphs 32, 37 and 57 of Swastik Gases (P) Ltd.'s case (supra) which read 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 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.

37. In my opinion, the very existence of the exclusion of jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like “only”, “exclusively”, “alone” and so on are not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement. Therefore, I agree with the conclusion that jurisdiction in the subject matter of the proceedings vested, by agreement, only in the Courts in Kolkata.

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.”

The provisions of Clause were not controverted by the learned counsel for the respondents. Even the order under challenge did not refer to the clause or the provisions of law, therefore, the order under challenge is not sustainable and the same is hereby set aside. The plaint is ordered to be returned back to be presented in a competent Court, in accordance with law.

Consequently, the revision petition no.3705 of 2017 filed by defendant no.1, whose defence to file written statement, has been struck off, has been rendered infructuous as the defendant would have the right to contest the suit in a competent Court having the jurisdiction.

(AMIT RAWAL)
JUDGE

November 27, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No