

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 10TH DAY OF JULY 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A. No.2521 of 2018

in

C.S.No.812 of 2016

M/s. G.R.Infrastructure Pvt.Ltd
HO 202, Poonam Chambers A Wing,
AB Road, Worli, Mumbai 400 018
Represented by its Authorised Signatory
Mr.Kirana A.Gujarathi ...Plaintiff

-vs-

M/s. EDAC Engineering Limited,
Formerly Spic Jel Engineering Construction Limited,
SPIC House, No.88, Mount Road, Chennai 600 032
Represented by its Director ...Defendant

A.No.1645 of 2017 :

M/s. EDAC Engineering Limited,
Mr.V.Balaji Pathak,
Legal Officer,
SPIC House,
No.88, Mount Road, Guindy,
Chennai 600 032
...Applicant/Defendant

-vs-

M/s. G.R.Infrastructure Pvt.Ltd
HO 202, Poonam Chambers A Wing,
AB Road, Worli, Mumbai 400 018
Represented by its Authorised Signatory
Mr.Kiran A.Gujarathi ...Respondent/Plaintiff

A.No.2521 of 2018:

M/s. EDAC Engineering Limited,
Represented tby its Authorized Signatory,
M.S.Muthamilselvan,
SPIC House,
No.88, Mount Road, Guindy,
Chennai 600 032

-vs-

M/s. G.R.Infrastructure Pvt.Ltd
 HO 202, Poonam Chambers A Wing,
 AB Road, Worli, Mumbai 400 018
 Represented by its Authorised Signatory
 Mr.Kiran A.Gujarathi ...Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to set aside the order dated 13.12.17 passed by the Learned Master, High Court, Madras in A.No.1645/17 in C.S.No.812/16, for the following among other.

This application coming on this day before this court for hearing the court made the following order:-

This application has been filed as an appeal against the order of the learned Master made in A.No.1645 of 2017 in C.S.No. 812 of 2016.

2. The suit in C.S.No.812 of 2016 has been filed as a summary suit under Order 37 Rule 1 to 3 of the Code of Civil Procedure, 1908 claiming a sum of Rs.40,01,276/- with interest at 18% per annum from the date of filing of the suit till date of realisation.

3. The case of the plaintiff is that the defendant had engaged the services of the plaintiff for the purpose of hiring a Crawler Crane of the capacity of 150 MT for carrying out the work at the project site of M/s.Doosan Power System India Private Limited, Kudgi, Karnataka. The contract is evidenced by an work order dated 02.12.2013 and extended work order dated 18.03.2015. As per the work order dated 02.12.2013, the defendant had agreed to make payment of hire charges on completion of every month upon

the plaintiff rising monthly invoices. The payment was to be made within 45 days of certification of invoices. Complaining that the defendant has not paid the monies due under various invoices, the plaintiff had a sent legal notice through its counsel on 07.10.2015, claiming that a sum of Rs.41,19,506/- as due and payable as on the date of notice. A reply has sent by the counsel for the defendant on 02.11.2015. In the said reply, the defendant does not deny the liability, on the other hand, there is a positive admission of the liability and it is stated that the payment could not be made because the defendant had not received payments from its clients. This was followed up by an E-mail on 06.11.2015 by the defendant wherein also the claim made by the plaintiff was not denied. Subsequently, the plaintiff again sent a notice on 19.11.2015 confirming the receipt of part payment and assuring that the Crane will be operated, in order to complete the work, upto 10.02.2016.

4. On 04.12.2016, the plaintiff had issued a letter demanding payment of the arrears of the invoice amounts for hire charges payable for the Crane. However, there was no reply from the defendant. Upon receipt of summons in the suit, defendant had filed an application seeking leave to defend. Leave to defend was sought for mainly on the ground that the Courts at Chennai do not have jurisdiction and it is only the Courts at Mumbai, which have the

jurisdiction. It was claimed that the respondent/plaintiff had not obtained Log Sheet Certification from the Site Engineer of the applicant. It was further contended that the respondent had failed to fulfill the contractual obligations with the applicant and stopped the work.

5. The learned Master by an order dated 13.12.2017 found that as per the contract between the parties, the Courts at Chennai also have jurisdiction and jurisdiction was not confined only to the Courts at Mumbai therefore, the learned Master ruled against the defendant on the question of jurisdiction.

6. As regards the other contentions on the merits of the claim, the learned Master found that the defendant had admitted its liability in the reply legal notice issued by its counsel. Hence it was not open to the defendant to resile from the admission and seek leave to defend. On the above conclusions relying upon the judgments of the Hon'ble Supreme Court in **A.B.C. Laminart Pvt. Ltd. and Others Vs.**

A.P.Agencies, Salem reported in **AIR 1898 SC 1239** and **State Bank of Hyderabad Vs. Rabo Bank** reported in **2015 (10) SCC 521** the learned Master concluded that the defence raised by the defendant are only moonshine and hence the defendant is not entitled to leave to defend. On the above conclusions, the learned Master had dismissed the application for leave to defend. Aggrieved, the defendant has come forward by

7. Heard Mr.M.Aravind Subramaniam, learned counsel appearing for the applicant and Mr.P.Giridharan, learned counsel appearing for the respondent.

8. Mr.M.Aravind Subramaniam, learned counsel for the applicant would vehemently contend that it is only the Courts in Mumbai, which have the jurisdiction. In support of his submission, the learned counsel would rely upon the invoices issued by the plaintiff which contain a clause that any dispute could be subject to Mumbai jurisdiction only. Therefore, according to him, when two Courts have jurisdiction, parties had agreed to confine the jurisdiction to one Court, that Court alone would have jurisdiction. He would also draw my attention to the judgments of the Hon'ble Supreme Court in **Globe Transport Corporation Vs. Triveni Engineering Works and Others** reported in **1984 ACJ 465** and **Hakam Sing Vs. Gammon (India) Ltd.** reported in **(1971) 1 SCC Page 286**. He would also submit that the reliance placed by the learned Master on the judgement **A.B.C. Laminart Pvt. Ltd. and Others Vs. A.P.Agencies, Salem** reported in **AIR 1989 SC 1239** is incorrect and even the said judgment would show that when the parties had agreed to confine the jurisdiction to one Court, then that Court alone would have jurisdiction.

9. Per contra, Mr.P.Giridharan, learned counsel appearing for the respondent would draw my attention to the

the parties. The work order dated 02.12.2013 which is signed by both the parties in respect of the jurisdiction reads as follows: *"Any dispute arising out of this contract shall be subjected to Chennai Jurisdiction"*.

The plaintiff was required to sign the same as a token of its acceptance and it is not in dispute and the same was accepted by the plaintiff. It was sent back in duplicate after the plaintiff signed the same in token of accepting the terms of the work order. Pursuant to the work order the invoices were issued by the plaintiff, those invoices contained a clause that any dispute is subject to Mumbai jurisdiction only. Therefore, we are confronted with two clauses. One in the work order signed by both the parties and the other invoices sent by the plaintiff. Under the work order, the parties have specifically agreed to invest the Courts in Chennai with jurisdiction. It is an admitted case that the defendant resides and carries on business in Chennai and therefore immaterial of the cause of action, the Courts at Chennai would have jurisdiction under Section 20 of the Code of Civil Procedure.

10. In view of the Section 20 of the Code of Civil Procedure, it cannot be disputed that Courts in Chennai would also have jurisdiction. Though the Section 20 may not in terms apply to the High Court in its original side, however, it is an undisputed fact that the High Court is Principle Court of original jurisdiction in so far as the areas, which comes within the original jurisdiction of the

High Court. Therefore, the principles embodied under Section 20 of the Code of Civil Procedure applied to a suit instituted in the High Court also. When there is a contract signed by both the parties investing jurisdiction in the Courts at Chennai, the fact that the invoices issued by one of the parties contains a different clause, in my considered opinion, cannot take away the jurisdiction of the Courts in Chennai and invest the same in the Courts at Mumbai. The Courts at Chennai cannot be denuded of the jurisdiction, which they otherwise possess, by act of one of the parties. Therefore, I do not find any merit in the contention relating to jurisdiction.

11. On merits of the claim, Mr.M.Aravind Subramaniam would contend that the suit being one for liquidated damages, the plaint has to be specific and satisfy the requirements of Order 37. He would draw my attention to the judgment of the Single Judge of the Mumbai High Court in **Jatin Koticha Vs. VFC Industries Pvt. Ltd. reported in 2008 (3) ALLMR 367**. The learned Single Judge of the Mumbai High Court had in fact followed the judgment of this Court in **Lucky Electrical Stores, by Partner Mahendra Kumar Shah and Another Vs. Ramesh Steel House by partner Babulal** reported in **1988 MLJR page 187**. It is pointed out that a plaint under Order XXXVII Rule 2 would contain the following:-

<https://hcservices.ecourts.gov.in/hcservices/>

a) A specific averment to the effect that the suit is filed under this order;

b) that no relief, which does not fall within the ambit of this Rule, has been claimed in the plaint; and

c) the following inscription, immediately below the number of the suit in the title of the suit, namely:

(Under Order XXXVII of the Code of Civil Procedure, 1908)"

12. A perusal of the plaint in the case on hand would show that all the requirements stated above have been complied. In fact, in Lucky Electrical case, the Hon'ble Mr. Chief Justice M.N. Chandurkar had held that the suit under order 37 would be maintainable on a invoice which is not signed by both the parties and unless it is contend that the defendant had denied the very invoice and the availing of service under the invoice leave cannot be granted. In the case on hand, as already pointed out, not only that there is no denial but there is a specific admission of the claim made by the plaintiff in the reply notice issued by the defendant. Therefore, I do not think that the defendant could now contend that the amounts due under the invoices are not correct that no amount is due under the invoices.

13. Mr.M.Aravind Subramanian, as a last ditch effort to make out a case for leave to defend draw my attention the discrepancies in the amounts claimed at various stages. It is not in dispute after the issuance of the notices on 07.10.2015 and after the reply dated 02.11.2015 certain amounts were paid by the plaintiff and the plaintiff

continued to operate the Crane till 14.03.2016. Therefore, there is a likelihood of the amount claimed in the original notice being subjected to certain changes. Hence, I find no merit in the contention of the learned counsel for the plaintiff. In fine, this application is dismissed. No costs. Any amount paid by the defendant pursuant to the decree will be adjusted in the execution proceedings.

Sd/.R.S.M.J.

10.07.2019

//Certified to be a true copy//

Dated this the day of 2019.
SU/23.07.2019

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