

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

Delivered on: 23-04-2019

Coram :

**The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Mr. Justice P. KESHA RAO**

CIVIL REVISION PETITION Nos.4868 AND 4821 OF 2018

Between in C.R.P. No.4868 of 2018:

Felguera Gruas India Private Limited,
having its regd. Office at Visakhapatnam
rep.by its Authorized Representative
Mr. Nandan Kumar

.. Petitioner/
Defendant No.1

Vs.

1. K.B.S. Irrigation Private Limited, rep.by its
Managing Director Sri P. Chandra Shekar,
regd. Office at Sirla Hills, Hyderabad.

.. Respondent No.1/
Plaintiff

2. Mr.Luis Alfonso Zipico Mortera
Occ: Director of Felguera Gruas Indian Pvt.Ltd.

3. Mr. Roberto Perez Lopez, Authorized Signatory
of Felguera Gruas Indian Pvt.Ltd

.. Respondent Nos.2 and 3/
Defendant Nos.2 and 3

For Petitioner in both CRPs : Ms. Altaf Fathima,

For Respondent No.1 in both CRPs : Mr. P.S.P. Suresh Kumar

For Respondent Nos.2 and 3 : - - -

Gist :

Head Note :

Cases Referred :

2005 (6) ALT 642

C/15

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

THE HON'BLE SRI JUSTICE P. KESHA RAO

CIVIL REVISION PETITION Nos.4868 AND 4821 OF 2018

COMMON ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

Aggrieved by the dismissal of an application under Order VII, Rule 10 of the Code of Civil Procedure, 1908 (for short 'CPC'), the first defendant in a suit for recovery of money filed before the Commercial Court has come up with C.R.P. No.4868 of 2018.

2. Challenging the dismissal of an application for deletion of his name from the array of parties, the 3rd defendant in the same suit, who is one of the Directors of the 1st defendant, has come up with C.R.P. No. 4821 of 2018.

3. Heard Ms. Altaf Fatima, learned counsel for the petitioners in both revisions, and Mr. P.S.P. Suresh Kumar, learned counsel for respondent No.1 - plaintiff.

4. The 1st respondent in these revisions filed a suit in O.S. No.196 of 2016 on the file of the Chief Judge, City Civil Court, Hyderabad, against a company by name Felguera Gruas India Private Limited and its Director and Authorized Signatory, for recovery of a sum of Rs.1,67,81,803/-. The basis of the claim was that the 1st respondent/ plaintiff is engaged in the business of supply and installation of Dust Suppression Systems; that the 1st defendant, which is engaged in the business of material handling in Seaports, entered into contracts for the supply and installation of Dust Suppression Systems on 05.09.2012; that

pursuant to those contracts, the 1st respondent/plaintiff successfully supplied and installed the system; that after making part payment, the defendants failed to make payment of the balance amount and that therefore an amount of Rs.1,67,81,803/- had become due and payable.

5. Defendant Nos.1 and 2, immediately upon receipt of suit summons, filed an application in I.A. No.70 of 2017 under Order VII, Rule 10 of CPC for the return of the plaint; on the ground that the Courts in Hyderabad did not have jurisdiction to try the suit. The 3rd defendant filed a written statement raising a preliminary objection that he was neither a necessary nor proper party and that the Courts in Hyderabad did not have jurisdiction to try the suit. The 3rd defendant, in his written statement also contested the claim on merits.

6. Along with the written statement, the 3rd defendant also filed an application in I.A.No.69 of 2017 under Order 1, Rule 10 (2) of CPC for deletion of his name from the array of parties.

7. The suit was later transferred to the file of the Commercial Court, Hyderabad. The Commercial Court dismissed both the applications, one taken out by defendant Nos.1 and 2 and the other taken out by defendant No.3. Therefore, the defendants have come up with the above revisions.

8. The contention of the petitioner in C.R.P. No.4868 of 2018 (defendant No.1 in the suit) is that no part of the cause of action arose within the jurisdiction of this Court; that the contracts were signed and executed at Visakhapatnam; that the 1st defendant has its registered office at Visakhapatnam; that in view of the judgments of the Supreme

Court, the parties cannot confer jurisdiction by contract; and that in terms of Section 20 of CPC, the Courts in Hyderabad did not have jurisdiction to try the suit.

9. The 1st respondent/plaintiff placed reliance upon Clause 24 of one Contract bearing No.2600410021, which was for the supply of Dust Suppression System. They also relied upon Clause 32 of another Contract bearing No.2600410022, for the installation of the Dust Suppression System. Both these Clauses were identically worded and hence only one of them is re-produced as follows:

“The parties, waiving any other right that may correspond to them, expressly and exclusively submit any dispute to the jurisdiction and competence of the Courts and Tribunals of Hyderabad and the corresponding higher Courts. The submittal of disputes between the parties to the jurisdiction foreseen herein does not entitle either of them to suspend the fulfilment of their obligations under the contract.”

10. Therefore, on the basis of the said Clause, the Commercial Court dismissed the application of defendant Nos.1 and 2 filed under Order VII, Rule 10 of CPC.

11. Insofar as the application filed by the 3rd defendant to delete him from the array of parties is concerned, the Commercial Court held that as a person, who represented the 1st defendant as Authorized Signatory, he was in the know-of-things and that therefore it is premature to delete him from the array of parties. Therefore, the 3rd defendant's application under Order 1, Rule 10 (2) of CPC was also rejected.

12. Let us first take the question of jurisdiction which is the subject matter of the revision, C.R.P. No.4868 of 2018.

13. It is seen from the first contract relating to the supply of Dust Suppression System, that the plaintiff was described as a person having registered office at Hyderabad and the 1st defendant was described as a person having registered office at Visakhapatnam. The place where the contract was entered into, is indicated to be Visakhapatnam, at page 19 of the first contract immediately above the signatures of the parties. Just below the last Clause, viz., Clause 28.5 and just about the place containing the signatures of the parties, it is written as follows:

“In witness whereof, the parties sign the present contract in duplicate original copies, each copy having identical legal validity in Visakhapatnam on 1st of June, 2012.”

14. The second contract also contains similar recitals just below Clause 37 and just above the signature of the parties.

15. Therefore, two-things are clear, viz., (i) that the plaintiff has its registered office at Hyderabad, but the 1st defendant has its registered office at Visakhapatnam; and (ii) that the contract was signed and executed at Visakhapatnam.

16. While the first contract was for supply, the second contract was for installation of the System. Both the contracts specify that the supply and installation are to take place at Kakinada Seaport Berth No.5. Clause 3 of both the contracts contains the scope of the contracts. In the first contract, it is stated that the scope of the contract is the supply, fabrication, shop assembly and testing, packing, forwarding and

transport of all the materials and equipment defined there-under, up to delivery DDP Kakinada Seaport.

17. Under Clause 9.5 of the first contract and Clause 11.7 of the second contract, all invoices should be made out in the name of the 1st defendant at Visakhapatnam.

18. Under Clause 21 of the second contract, the plaintiff was obliged to comply with all applicable Laws on-site. Under Clause 22, the plaintiff was obliged to take care of the safety of all persons on the site, appoint an Accident Prevention Officer at site and also provide and maintain proper and efficient Life Saving Appliance at site.

19. From all the above, it is clear that no part of the cause of action arose at Hyderabad. Both the contracts were executed and signed at Visakhapatnam. The supply and installation were to be carried out in Kakinada. Invoices are to be raised in the name of the 1st defendant addressed at Visakhapatnam. Hence, Clauses 24 and 32 of both the contracts conferring exclusive jurisdiction upon the Courts at Hyderabad, are not valid, inasmuch parties cannot confer jurisdiction, by contract, upon a Court within whose jurisdiction no part of the cause of action arise nor even the defendant resides or carries on business.

20. Mr. P.S.P. Suresh Kumar, learned counsel for the 1st respondent/plaintiff relied upon a judgment of the Division Bench of this Court in **Incomm Tele Limited v. Bharat Sanchar Nigam Limited**¹. In paragraph No.41 of the said decision, the Division Bench of this Court enunciated four principles. One of those principles was that

¹. 2005 (6) ALT 642

even a fraction of a cause of action is enough to decide the territorial jurisdiction of a Court in appropriate cases having regard to the totality of the facts and circumstances.

21. But, in this case, not even a fraction of a cause of action is seen to have arisen within the jurisdiction of the Courts in Hyderabad. The mere fact that the plaintiff has its registered office in Hyderabad is not sufficient to cloth the Courts in Hyderabad with jurisdiction. Therefore, the said decision is of no assistance to the 1st respondent/plaintiff.

22. Unfortunately, without any application of mind to any of these facts, the Commercial Court dismissed the application under Order VII, Rule 10 of CPC. It is a pity that the Commercial Court did not even look into the place of execution of the contract, the place of performance of the work and the bundle of facts constituting the cause of action. Therefore, C.R.P. No.4868 of 2018 is liable to be allowed and the application of defendant Nos.1 and 2 under Order VII, Rule 10 of CPC is liable to be allowed.

23. Coming to the other Civil Revision Petition arising out of the dismissal of the application filed by the 3rd defendant under Order 1, Rule 10 (2) of CPC, it must be pointed out that once it is held that the Commercial Court at Hyderabad had no jurisdiction to entertain the suit, any decision rendered on the interlocutory application will also be without jurisdiction. Therefore, the application under Order 1, Rule 10 (2) of CPC may have to be considered only by an appropriate Court,

after the plaintiff takes return of the plaint and represents the same before the appropriate Court.

24. In view of the above, both the Civil Revision Petitions are allowed, the impugned orders of the Commercial Court are set aside. The Commercial Court is directed to return the plaint for presentation to the appropriate Court. The appropriate Court may then take up the application under Order 1 Rule 10 (2) of CPC filed by the 3rd defendant and proceed in accordance with law. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the revisions shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHA VA RAO, J

April 23, 2019
Mgr