

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

APPEAL SUIT No.1888 OF 2018

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

This Appeal is filed challenging the Judgment dated 28.03.2018, in O.S.No.367 of 2010, on the file of the Court of the III Additional District Judge, Ranga Reddy District at L.B.Nagar (for short, the trial court).

2. The appellant herein is the defendant and the respondent herein is the plaintiff in O.S.No.367 of 2010. For the sake of convenience, the parties shall be referred to as they are arrayed in O.S.No.No.367 of 2010.

3. The plaintiff is a company involving in the business of manufacturing and supplying of electronic energy meters and other accessories to various organizations throughout India. The defendant, A.P. Northern Power Distribution Company Limited, invited tender/bid for procurement of Single Phase Electronic Energy Meters (5-20A) of Class 1.0 Accuracy with Pilfer Proof Box against specification No.OT-202/04-05 (for brevity, meters). The plaintiff submitted its tender; after several correspondences, both the parties entered into a contract called 'Purchase Order-cum-Agreement' on 03.03.2005. As per the terms of the Purchase Order, the plaintiff has to supply the meters for Rs.495.11 paise each, for total quantity of 5,00,000 meters, inclusive of freight, insurance, excise duty, education cess and APGST against Form-G. The basic price was determined as

Rs.403/- per each meter. The plaintiff supplied 4,35,000 meters on various work orders as per the schedule of deliver. Thereafter, when the plaintiff was about to dispatch the balance of 65,000 meters, it received a letter from the Chief General Manager of the defendant company on 02.03.2007 to reduce the price of Rs.487.21 paise for balance of 65,000 meters or otherwise, they would cancelled. It was also stated that the quoted price of the plaintiff is more than other firms. Thereafter, the defendant issued a final notice calling upon the plaintiff to explain why purchase order should not be **short closed** for already supplied quantity of 4,35,000 meters, as the plaintiff violated the terms and conditions of the Purchase Order. In these circumstances, the plaintiff filed O.S.No.367 of 2010 seeking damages of Rs.4,86,12,451/- against the defendant, with interest and costs.

4. In the suit, the defendant took a number of defences and also took a preliminary objection that the learned trial court had no jurisdiction to entertain the suit as the parties by express contract had agreed to confer exclusive jurisdiction in regard to all disputes arising out of the contract on the Courts or Tribunals situated in Hanamkonda/Warangal cities. Thus, no suit or other legal proceedings shall be instituted elsewhere.

5. Based on the pleadings, the learned trial court framed following issues:

- “(i) Whether the plaintiff is entitled for the suit amount of Rs.3,91,61,525/- with subsequent interest?
- (ii) Whether this court is having jurisdiction to entertain the suit?
- (iii) To what relief?”

6. The learned trial court observed that issue No.2 is the important and crucial issue to decide jurisdiction aspect, and accordingly, it proceeded to decide the same at the first instance. On this issue, after considering the arguments of both sides, and the judgments of Hon'ble Supreme Court, the learned trial court negated the contention of the defendant. The operative portion, on this issue, reads as under:

16. After considering the available oral and documentary evidence put forth by both the parties and also by going through the relevant provisions of Sections 19 and 20 of CPC, and Sections 4 and 6 of Indian Contract Act, inconsonance with the dictas laid in the above said two citations, this Court left with no option except to arrive to the conclusion that the contentions of the defendant that this court has no jurisdiction has no legs to stand. Though the defendant tried his level best to derive benefit under this category, but when this court meticulously considered transactions from the genesis till this date, it emphatically goes to show that the plaintiff has right to file this suit as major portion of transactions took place at Plaintiff's work place and this court has jurisdiction to entertain the suit. Thereby the contention of the defendant has no legs to stand for that reason this issue is answered against the defendant and in favour of the plaintiff.

7. Smt. K. Udaya Sri, the learned counsel for the appellant, contends that the parties have agreed under clause No.22 (iv) of the Purchase Order dated 03.03.2005 that the Courts or Tribunals situated in Hanamkonda/Warangal cities shall have exclusive jurisdiction and that no suit or other legal proceedings shall be instituted elsewhere. Therefore, the suit should have been filed only before the Courts at Hanmakonda/Warangal. As such, the learned trial court committed error of law in not returning the plaint on the ground of lack of jurisdiction. On that ground alone, she sought to set aside the Judgment and Decree of the trial court.

8. Smt.K.Lalitha, learned counsel for the respondent, contends that though there is a clause restricting the jurisdiction of Courts at Hanamkonda/Warangal, it could operate as estoppel against the parties to the contract, but it could not tie the hands of the court and denude it of the powers to do justice. Hence, she supported the Judgment and Decree of the learned trial court.

9. To decide the issue of jurisdiction, it is necessary to refer to clause No.22 (iv) of the Purchase Order dated 03.03.2005 and it reads as under:

“22. GENERAL:-

(i) to (iii) ...

(iv) All and any disputes or differences arising out of or touching this order shall be decided by Courts or Tribunals situated in Hanamkonda/Warangal cities. No suit or other legal proceedings shall be instituted elsewhere.”

10. A perusal of the aforesaid clause, it is clear that the parties specifically agreed that the Courts or Tribunals situated in Hanamkonda/Warangal cities shall have exclusive jurisdiction. The said clause also ousts the jurisdiction of other courts. It is to be noted that the determination of the place where the contract was made is part of the law of contract. When there is a specific clause in the Purchase Order, the plaintiff has no choice, except to institute the suit before the Courts at Hanamkonda/Warangal.

11. With the perusal of clause No.22 (iv) of the Purchase Order dated 03.03.2005, *prima facie*, we are satisfied with the contention of the learned counsel for the appellant that the learned trial court had no jurisdiction to entertain the suit. The learned trial court,

though took note of clause No.22 (iv) of the Purchase Order dated 03.03.2005, wrongly proceeded in the matter and decreed the suit on merits. Hence, without expressing any opinion on the merits of the matter, we are of the opinion that the Judgment of the learned trial court is liable to be set aside for lack of jurisdiction.

12. For the reasons stated above, the impugned Judgment dated 28.03.2018 in O.S.No.367 of 2010 on the file of the Court of the III Additional District Judge, Ranga Reddy District at L.B.Nagar, is set aside.

The learned trial court is directed to send the complete record of the case to the Principal District Judge at Warangal. The Principal District Judge at Warangal is directed to try the suit, to give an opportunity to both the parties to present their evidence, if any, while treating the record of the case as the evidence already collected, to hear the case finally, and to pronounce the judgment and decree on or before 30th October, 2019.

Miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, J

T.AMARNATH GOUD, J

Date: 08.02.2019

Note: The Registry is directed to send a copy of this judgment to the Principal District Judge, Warangal, immediately.

B/o. TJMR