

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 15th May, 2019**

+ **CS(OS) 598/2018 & IA No.4852/2019 (u/O XII R-6 CPC)**

SCHEIDER ELECTRIC INDIA PVT. LTD. Plaintiff

Through: Ms. Mohna M. Lal, Mr. Prashant
Kumar and Ms. Geetali Talukdar,
Advs.

Versus

RENTWORKS INDIA PVT. LTD. & ORS Defendants

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
Raj Shekhar Rao, Mr. Vipul Ganda,
Ms. Aastha Trivedi and Ms.
Chandreyee Maitrai, Advs. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

Review Petition No.211/2019

1. The defendant No.1 seeks review of the order dated 16th April, 2019.
2. The senior counsel for the defendant no.1/review applicant has been heard.
3. It is expedient to elucidate the facts.
4. The plaintiff had taken equipment on hire / lease from the defendant No.1/review applicant and which equipment was hypothecated by the defendant No.1/review applicant with the defendants No.2&3 i.e. IndusInd Bank & L&T Financial Services. Holding company of the plaintiff had also issued a letter to the defendants No.2&3 assuring payment of lease rentals directly by the plaintiff to the defendants No.2&3.

5. The plaintiff entered into a Closure Agreement dated 4th September, 2018 with the defendant No.1/review applicant whereunder the lease agreement was closed and the said equipment was agreed to be sold to the plaintiff for total consideration of Rs.24,43,08,047/-.

6. It is the case of the plaintiff in the plaint in this suit that though it has paid the total consideration of Rs.24,43,08,047/- to the defendant No.1/review applicant on the assurance of the defendant No.1/review applicant that the defendant No.1/review applicant will clear the hypothecation amount due to the defendants No.2&3 but has not done so, resulting the defendants No.2&3 demanding the rentals from the plaintiff, even though the plaintiff is no longer liable to pay rental after the Closure Agreement and that the defendants No.2&3 are threatening to write to the Credit Information Bureau (India) Limited (CIBIL) to reduce the credit rating of the plaintiff. The plaintiff thus instituted this suit, as for specific performance but in fact for recovery of Rs.10,18,84,236/- being the amount due to the defendants No.2&3.

7. The suit came up before this Court first on 26th November, 2018, when the senior counsel for the plaintiff stated that the plaintiff was ready and willing to deposit the said amount of Rs.10,18,84,236/- with the defendants No.2&3 to avoid any reduction in its credit rating. The suit was entertained and summons thereof ordered to be issued and *ex-parte* ad-interim relief granted restraining HDFC Bank with which the defendant no.1 had an account from allowing withdrawal / allowing operations from the said account to the extent of Rs.10,18,84,236/-.

8. On 5th December, 2018, a) the counsel for the defendant No.3 stated that its dues since stood settled; b) the counsel for the defendant No.2

however stated that a sum of Rs.4,50,25,206/- was still outstanding to it; it was informed that the plaintiff, after 26th November, 2018 had paid a sum of Rs.3,94,57,110/- to the defendant No.2 and a sum of Rs.1,91,15,676/- to the defendant No.3 on behalf of the defendant No.1/review applicant and the said amounts were thus due from the defendant No.1/review applicant to the plaintiff.

9. In the orders dated 2nd April, 2019 and 16th April, 2019, for the reasons recorded therein, it was held that the plaintiff was entitled to a decree forthwith in the sum of Rs.5,85,73,786/- against the defendant No.1/review applicant. The counsel for the defendant No.1/review applicant, on 2nd April, 2019 stated that the defendant No.1/review applicant was in the process of filing a Counter-Claim against the plaintiff and the passing of the decree in favour of the plaintiff and against the defendant No.1/review applicant may be deferred. However on 16th April, 2019 the counsel for defendant no.1 review applicant stated that though he was carrying the Counter-Claim with him but had not filed the same because the defendant No.1/review applicant in its written statement to the suit had also taken an objection to the territorial jurisdiction of this Court and filing the Counter-Claim in this suit would amount to acquiescing to the territorial jurisdiction of this Court. It was stated that the defendant No.1/review applicant had also filed an application under Order XIV of the Code of Civil Procedure, 1908 (CPC) for framing of a preliminary issue qua territorial jurisdiction but which application had not been listed. After hearing the counsels on 16th April, 2019 and for reasons recorded therein, it was held that there was no merit in the contention of the counsel for the defendant No.1/review applicant, of this Court not having territorial

jurisdiction. However, on the counsel for the defendant No.1/review applicant again seeking adjournment, passing of the decree in favour of the plaintiff and against the defendant No.1/review applicant was again deferred and the suit posted to 22nd July, 2019.

10. IA No.5894/2019 under Order XIV of the CPC filed by the defendant No.1/review applicant, mentioned and recorded in the order dated 16th April, 2019 to have been filed, came up before this Court on 24th April, 2019, when the counsel for the defendant No.1/review applicant stated that in view of the order dated 16th April, 2019 qua territorial jurisdiction, the same was infructuous.

11. It is in the aforesaid background that this petition has been filed seeking review of the order dated 16th April, 2019 to the extent rejecting the plea of the defendant No.1/review applicant of this Court not having territorial jurisdiction.

12. The plaintiff has its registered office at Delhi. The defendant No.1/review applicant has its registered office at Mumbai. The defendant No.2 IndusInd Bank, as per the memorandum of parties has its office at Delhi and the defendant No.3 L&T Financial Services, as per the memorandum of parties has its offices both at Delhi and Mumbai.

13. The plaintiff instituted this suit invoking the territorial jurisdiction of this Court by pleading in paragraph 56 of the plaint as under:

“56. The dispute Resolution clause contained in Clause 11 of the Closure Agreement dated 4th September, 2018 provides that all disputes arising out of the Closure Agreement dated 4th September, 2018 between the Plaintiff and Defendant No.1 will be tried and adjudicated by this Hon’ble Court. Defendant Nos.2 has its offices at Delhi, within the jurisdiction of this

Hon'ble Court, from where they are carrying on business and working for gain. Hence, this Hon'ble Court has the jurisdiction to entertain and adjudicate and decide the present suit."

14. The defendant No.1/review applicant, in paragraph C-13 of preliminary objections in its written statement pleaded as under:

"C. THE HON'BLE COURT LACKS TERRITORIAL JURISDICTION TO ADJUDICATE THE PRESENT SUIT.

13. That, without prejudice to the afore-mentioned, it is further submitted that, there are more than one Defendants in the array of parties. Section 20(b) and (c) of Civil Procedure Code, 1908 ("CPC") provides, inter alia, that every Suit shall be filed within the local limits of Court in whose jurisdiction any of the Defendants, where there are more than one at the time of commencement of the Suit, actually and voluntarily resides or carries on business or personally works for gain, provided that in such case either the leave of the court is given, or the Defendants who do not reside or carry on business or personally work for gain, as aforesaid, acquiesce in such institution, or the case of action, wholly or in part arises. The Plaintiff has relied upon clause 11 of the Closure Agreement which provides that all disputes arising out of the Closure Agreement between the Plaintiff and Defendant No.1 will be tried and adjudicated by this Hon'ble Court. It is submitted that the Closure Agreement was made only between the Plaintiff and the Defendant No.1, and since the Defendant Nos.2 and 3 not being parties to the Closure Agreement are not privy to the Closure Agreement assuming, though denying, that the Defendant No.2 has any office at Delhi within the jurisdiction of this Hon'ble Court where from it is alleged to be carrying on business, has no relevance whatsoever. Apart from the fact that Defendant No.2 has no nexus or it is

concerned with the subject matter of Suit, there is no cause of action between Defendant No.2 and the Plaintiff and where there is no transaction in New Delhi between the Plaintiff and Defendant No.2 or Defendant No.3 to the Suit, no suit can be filed in this Hon'ble Court. In any event, it is not even pleaded by the Plaintiff that the Closure Agreement provides that all disputes shall be instituted by the Parties in this Hon'ble Court or in New Delhi. In any event, Closure Agreement has not been signed by all the Defendants simply because one Defendant who is not a party to the Closure Agreement resides in Delhi cannot be a ground for filing this suit in this Hon'ble Court. The relevant clause only provides that the courts in New Delhi shall have jurisdiction in all the matters arising out of the Closure Agreement and does not vest exclusive and sole jurisdiction in the courts of New Delhi nor does it state that the jurisdiction conferred on the Courts in Delhi is an agreement as to jurisdiction between the Plaintiff and all the Defendants since Defendant Nos.2 and 3 are strangers, being third parties to the Closure Agreement. Since Defendant Nos.2 and 3 are not parties to the Closure Agreement, even if jurisdiction is conferred, no suit can be filed against Defendant Nos.2 and 3 by the Plaintiff. If the Plaintiff wants to maintain any action against Defendant Nos.2 and 3 he has to maintain an action under the Deed of Assignment which has been inherited by the Plaintiff. Without prejudice to the rights of Defendant No.1, the said clause is contrary to law as, if no cause of action arises in New Delhi and if any of the Defendants does not reside or carry on business or personally work for gain in respect of the transaction in dispute, this Hon'ble Court has no jurisdiction. It is further submitted that this Hon'ble Court has no jurisdiction, because as provided in the CPC, a Suit can be filed only where the cause of action arises or where the parties are carrying on business, while no cause of action has arisen

in New Delhi between the Parties because the Closure Agreement was signed in Mumbai and not in New Delhi and has to be performed in Mumbai and not in New Delhi especially when Closure Agreement and the dispute arising out of it are to be performed in Mumbai as per the Closure Agreement. There is also nothing in the Closure Agreement that any payment or any action has to be taken by any party in New Delhi. Further, there is no property or the subject matter of the Suit situated within the local limits of this Hon'ble Court. Sections 18 and 19 of the CPC also do not apply to the facts of the present Suit, in any event, the Plaintiff has not invoked the jurisdiction of this Hon'ble Court under Sections 16, 17, 18 & 19 of the CPC. The Plaintiff has merely relied to file the Suit before this Hon'ble High Court on the ground that one of the parties is in New Delhi, namely Defendant No.2, even though Defendant No.2, not being a party to the Closure Agreement and not being bound by the contents of the Closure Agreement merely because it has an office in New Delhi, which has no connection with the subject matter of Suit. The Suit is therefore, not maintainable before this Hon'ble Court, since no cause of action has arisen within the territorial jurisdiction of this Hon'ble Court."

(emphasis added)

and in response to paragraph 56 aforesaid of the plaint pleaded as under:

"93. That, the contents of Paragraph No.56 are denied and has already been dealt in the Preliminary Objections."

15. The order dated 16th April, 2019 of which review is sought, qua territorial jurisdiction is as under:

"6. The counsel for the defendant no.1 draws attention to paragraph 56 of the plaint qua territorial jurisdiction, which

inter alia provides that the dispute resolution clause contained in Clause 11 of the Closure Agreement dated 4th September, 2018 between the plaintiff and the defendant no.1 provides that all disputes arising out of the Closure Agreement will be tried and adjudicated by the Courts at Delhi.

7. The counsel for the defendant no.1 though does not dispute that the Closure Agreement contains such a Clause qua jurisdiction of the Courts at Delhi, argues that the same does not provide for exclusive jurisdiction.

8. Even if that be so, the same would in any case indicate the parties to have consented to the jurisdiction of the Courts at Delhi as well.

9. It is not as if the agreement for jurisdiction of Courts at Delhi is with respect to a Court which otherwise had no jurisdiction. The equipment, initially leased out by the defendant no.1 to the plaintiff and subsequently sold by the defendant no.1 to the plaintiff vide the Closure Agreement, is admittedly at Delhi.

10. The counsel for the defendant no.1 then states that the said clause in the Closure Agreement does not apply qua defendants no.2 and 3 viz. IndusInd Bank and L&T Financial Services.

11. The dues claimed by the defendants no.2 and 3 have already been paid and the suit now survives only against the defendant no.1, and therefore the said argument also is misconceived.

12. Even otherwise it is not open to the defendant no.1 to controvert the territorial jurisdiction of this Court, not on the ground of this Court not having territorial jurisdiction as far as the suit against defendant no.1 is concerned but on the ground that this Court does not have territorial jurisdiction against defendants no.2 and 3, specially when defendants no.2 and 3 are not taking any such objection.

13. There is thus no merit in the contention of the counsel for the defendant no.1, of this Court not having territorial jurisdiction.”

16. In the aforesaid state of affairs, I have enquired from the senior counsel for the defendant No.1/review applicant to point out the plea, in paragraph C-13, reproduced above of the preliminary objections, in the written statement of defendant no.1/review applicant, qua territorial jurisdiction of this Court insofar as against the defendant No.1/review applicant. It has been enquired, whether not the entire objection qua territorial jurisdiction is on the premise of this Court not having territorial jurisdiction qua defendants No.2&3 and which argument of the counsel for defendant no.1 / review applicant appearing on 16th April, 2019 was dealt with in the order dated 16th April, 2019. It has further been enquired, whether not the defendant No.1/review applicant in its written statement has not controverted the plea in paragraph 56 of the plaint of Clause 11 of the Closure Agreement dated 4th September, 2018 providing for adjudication of disputes arising therefrom between plaintiff and defendant No.1 at Delhi; the only plea in paragraph C-13 is of the said clause not entitling the plaintiff to sue defendants No.2&3 who were not parties thereto at Delhi.

17. The senior counsel for the defendant No.1/review applicant has drawn attention to the underlined part of paragraph C-13 of the preliminary objections of the written statement reproduced hereinabove.

18. The senior counsel for the defendant No.1/review applicant has further contended that there was no admission of the defendant No.1/review applicant, as attributed in para no.9 of the order of which review sought, of

the equipment initially leased out by the defendant No.1/review applicant to the plaintiff and subsequently sold by the defendant No.1/review applicant to the plaintiff vide the Closure Agreement, being at Delhi. It is pleaded in the review application that all the equipment in question was delivered from and to places other than Delhi and it is the Bangalore office of the plaintiff which is using the equipment. Attention is also invited to the cause of action paragraph 55 of the plaint to contend that the cause of action pleaded is with respect to the Closure Agreement only and not with respect to the Hire Purchase Agreement which was closed vide the Closure Agreement. It is thus contended that the reasoning in paragraph 9 in the order dated 16th April, 2019, on the premise of equipment being at Delhi, even though factually erroneous, does not constitute a good ground, since the plaintiff has not pleaded cause of action on that premise.

19. I may at the outset state that provision of review cannot be abused to take a second hearing in the matter through a different counsel.

20. The argument of the counsel for the defendant No.1/review applicant appearing on 16th April, 2019 was, that because the clause qua jurisdiction of Courts in the Closure Agreement, though providing for jurisdiction to be of Delhi did not provide for exclusive jurisdiction of the Courts at Delhi, the plaintiff was not entitled to sue in the Courts at Delhi and which argument was dealt with in paragraph 8 of the order dated 16th April, 2019. The argument now urged, at the time of review, is of the said clause being of no avail because by consent jurisdiction cannot be vested in a Court which does not have jurisdiction. The same was not urged on 16th April, 2019.

21. The Closure Agreement, at pages 15 to 23 of Part-III-A file, is engrossed on a stamp paper of Maharashtra and does not record the place of its execution and is executed by defendant No.1/review applicant only. The copy thereof filed by the plaintiff, though has a column for signatures on behalf of the plaintiff, does not contain any signatures on behalf of the plaintiff. The plaintiff, at page 14 of Part-III-A file, has filed an email dated 4th September, 2018 at “6:37 PM” of Saira Lobo of the defendant No.1/review applicant to Vivek Choudhary of the plaintiff to the effect “Please find attached the Closure Agreement and the Board Resolution”. The plaintiff, at page 24 of Part-III-A file, has also filed an email dated 4th September, 2018 at 1:10 PM of Vivek Choudhary to Alan Vanniekirk of defendant No.1/review applicant to the effect “As discussed today, please find attached the draft of the indemnity for your confirmation. Once confirmed we will execute the same at our end and sent across to you. Please send us the executed Closure MRA and Invoice for processing the payment”. From the said documents it transpires that the defendant No.1/review applicant at Mumbai sent the executed Closure Agreement to the plaintiff at Delhi. The Closure Agreement executed by the defendant No.1/review applicant in Clause 11 thereof provides “This Agreement shall be governed by the laws of India and the courts in New Delhi shall have jurisdiction over matters arising out of this Agreement”. With the plaintiff admittedly at Delhi, to which place the Closure Agreement was also forwarded by defendant no.1 / review applicant; in the light of the defendant No.1 having agreed to the jurisdiction of the Courts at Delhi, it cannot be said that the Courts at Delhi do not have territorial jurisdiction at all, for the agreement agreeing to the territorial jurisdiction of Courts at

Delhi not vesting exclusive jurisdiction in the Courts at Delhi. Acceptance of Closure Agreement was completed at Delhi only from the plaintiff, in acceptance thereof sending payment to defendant no.1 / review applicant. As far back as in *Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas & Co.* AIR 1966 SC 543 it was held that a contract is executed at the place where the offer is accepted and from where the communication of the acceptance is transmitted to the offerer.

22. In view of the aforesaid also, no ground for review is made out. The reasons given above have been required to be given owing to the defendant no.1 / review applicant choosing to, in review, arguing anew.

23. It is quite evident that the defendant No.1/review applicant, after avoiding passing of a decree on 2nd April, 2019 and after making a statement on 24th April, 2019 that the application under Order XIV of the CPC was infructuous, has filed this Review Petition as an afterthought.

24. No ground for review is made out.

25. Dismissed.

MAY 15, 2019

‘bs’..

RAJIV SAHAI ENDLAW, J.