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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 3RD DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE R. SUBRAMANIAN

C.S.No. 703 of 2004

Alumayer India Pvt.Ltd.,
Pace Business Centre,
61, Marol Co-operative Industrial Estate,
Sir M.V.Road,
Andheri (E), Mumbai – 59
Represented by its General Manager
Vivek Keskar ... Plaintiff

Vs.

1.Larsen & Toubro Limited
L&T House,
Ballard Estate,
P.O.Box 278, Mumbai – 400 001.

2.State Bank of India,
Overseas Branch,
Vijaya Building,
17, Barakhamba Road,
New Delhi – 110 001.

3.Bank Hapoalim
34, Rolehild Street
Rishon - Le - Zion
Israel. ... Defendants

Civil suit praying that this Hon'ble Court be pleased to pray for a judgment and decree:

a. Directing the 1st defendant to pay a sum of Rs.2,45,40,219.08 together with 15% interest p.a. on Rs.2,45,40,219.08 from the date of the

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plaint till the date of realization;

b. Grant permanent injunction restraining the 2nd defendant, its Directors, persons claiming through or under them from making any payment to the 1st defendant on the basis of the Bank Guarantee No.0480303CG003022 dated 04.04.2003;

c. Grant permanent injunction restraining the 3rd defendant from making any payment to the 2nd defendant on the basis of the Bank Guarantee No.634-02-000031-5 dated 13.03.2003

d. Directing the defendants to pay the costs of the suit to the plaintiff.

This Civil suit having been heard on 23.08.2021 in the presence of Mr.T.K. Bhaskar, Advocate for the plaintiff herein and Mr.R.Murari, Senior Counsel for M/s.K.P.Indira, Advocates for the 1st defendant herein and upon reading the plaint filed herein and the order dated 18/07/2008 and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of said advocates for the parties hereto and the learned counsel for the plaintiff having submitted that since the plaint is not returned under order VII Rule 10 or 10A of the Code of Civil Procedure and direct the Court to which the plaint is to be re-presented to proceed with the suit from the stage at which the plaint is returned and not opt for a *de novo* trial once this Court have held that this

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Court has no jurisdiction to try the suit and this Court does not think that it will be proper to suggest as to how the case should be proceeded with in the Court having jurisdiction therefore this Court choose to leave the question open to be decided by the Court to which the plaint is re-presented and it is ordered as follows:-

That this Court direct to return the plaint to the counsel for the plaintiff to be re-presented to proper Court within a period of three (3) months from the date of return.

2. That the parties hereto, shall bear their own costs in this Court.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 3RD DAY OF SEPTEMBER 2021.

Sd/-
ASSISTANT REGISTRAR (Comm. Cases)
//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

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EVK

03/09/2021

C.S.No. 703 of 2004

ORDER

DATED : 03.09.2021

THE HON'BLE MR.JUSTICE
R. SUBRAMANIAN

FOR APPROVAL: 08/10/2021

APPROVED ON: 12/10/2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 23.08.2021	Judgment Delivered on 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.703 of 2004

Alumayer India Pvt.Ltd.,
Pace Business Centre,
61, Marol Co-operative Industrial Estate,
Sir M.V.Road,
Andheri (E), Mumbai – 59
Represented by its General Manager
Vivek Keskar ... Plaintiff

Vs.

1.Larsen & Toubro Limited
L&T House,
Ballard Estate,
P.O.Box 278, Mumbai – 400 001.

2.State Bank of India,
Overseas Branch,
Vijaya Building,
17, Barakhamba Road,
New Delhi – 110 001.

3.Bank Hapoalim
34, Rolehild Street
Rishon - Le - Zion
Israel. ... Defendants

PRAYER : Plaint filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure and Sections 26 of CPC praying to grant a judgment and decree on the following terms:-

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(a) Directing the 1st defendant to pay a sum of Rs.2,45,40,219.08 together with 15% interest p.a. on Rs.2,45,40,219.08 from the date of the plaint till the date of realization;

(b) Grant permanent injunction restraining the 2nd defendant, its Directors, persons claiming through or under them from making any payment to the 1st defendant on the basis of the Bank Guarantee No.0480303GG003022 dated 04.04.2003;

(c) Grant permanent injunction restraining the 3rd defendant from making any payment to the 2nd defendant on the basis of the Bank Guarantee No.634-02-000031-5 dated 13.03.2003 and

(d) directing the defendants to pay the costs of the suit to the plaintiff.

For Plaintiff : Mr.T.K.Bhaskar

For Defendants : Mr.R.Murari, Senior Counsel
for M/s.K.P.Indira for 1st defendant

****

J U D G M E N T

The suit is one for recovery of money allegedly due under the construction contract entered into between the plaintiff and the 1st defendant.

2. Though the defendants 2 and 3, who are the Bankers have been impleaded and the reliefs of permanent injunction have been sought for

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against them regarding the bank guarantees furnished by them, it is not in dispute that the Bank guarantees have expired. Therefore the reliefs (b) and (c) sought for in the plaint do not survive. Hence, the defendants 2 and 3 are no longer necessary parties to the suit.

The sum and substance of the plaint is as follows:-

3. The 1st defendant had engaged the plaintiff for carrying out the work of Curtain Walling, Glazing and Cladding for the Corporate Office of Indian Oil Corporation Limited at Sadiq Nagar, New Delhi. The work called Curtain Walling, Glazing and Cladding is essentially erection of glass facade for the building on the outer surface of the building. After initial discussion, the offer of the plaintiff was accepted by the defendant and the defendant issued a Letter of Intent dated 06.12.2002 for Rs.5,26,31,785/-. The detailed work orders were to be issued separately. The work order is for designing, supplying and installing structurally glazed windows for the Corporate Office of Indian Oil Corporation that is being built by the 1st defendant. The work order was issued on 11.02.2003 and the same was issued subject to the terms and conditions contained therein. Clause 25 of the terms and conditions stipulated that all disputes relating to Work Order would be subject to and referred to a Court of competent jurisdiction situated within the limits of the Chennai City.

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4. The plaintiff would also contend that as a condition for issuance of Work Order, the plaintiff was required to submit a Bank guarantee for 5% of the amount of Letter of Intent from a Nationalized Bank, as a performance guarantee. The plaintiff was also required to submit to the Construction Manager of the plaintiff, the details regarding the schedule and organizational chart showing the personnel deployed for the job. The plaintiff complied with the conditions and the Work Order was thereafter issued on 11.02.2003. Since the plaintiff's holding Company is situate in Israel, the 2nd defendant issued Bank Guarantee on the basis of the counter indemnity issued by the 3rd defendant.

5. The plaintiff accepted the Work Order subject to negotiation of some of the conditions therein. Though, the period of contract was fixed as 5 months, the plaintiff has been submitting bills for the work done by the 1st defendant through its various invoices and the 1st defendant had made certain payments well beyond the time fixed under the contract. In fact by letter dated 19.05.2003, the plaintiff had informed the 1st defendant that it cannot accept the period of contract as 5 months from 12.02.2003, since the Work Order itself was issued only on 15.05.2003. There was also some delay in performance of contract due to the change in the minds of the

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Consultant of the defendant regarding the material to be used for the brackets. The consultant wanted Aluminium brackets to be used, deviating from the Work Order which specified Steel brackets. There was some delay caused due to delay in supply of such Aluminium brackets.

6. It is the further claim of the plaintiff that it had supplied machineries for an aggregate value of Rs.1,34,02,359/- under various invoices and that the 1st defendant failed to establish a Letter of Credit as agreed to. It is also contended that the 1st defendant changed the mode of payment instead of establishing the Letter of Credit. All these, according to the 1st defendant, resulted in delay in carrying out the work. It is also the contention of the plaintiff that the delay and deficiency is attributed only to the 1st defendant and not the plaintiff.

7. The 1st defendant in and by its letter dated, 26.08.2004 claimed that it had informed the plaintiff's holding Company that it is revoking the contract and taking appropriate action either contractually or legally. By letter dated 27.08.2004, the plaintiff made it clear to the 1st defendant that the 1st defendant owes a sum of Rs.24,540,219.08/- and with such a huge sum payable to the 1st defendant, the 1st defendant apparently wrote to the

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2nd defendant intimating that it would be enforcing the guarantee issued by

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the 2nd defendant and wanted to encash the guarantee.

8. Contending that the action of the 1st defendant in demanding encashment of the guarantee would cause irreparable damage to the reputation of the plaintiff and the same may cause business disaster to the plaintiff's group, the plaintiff would claim that it is entitled to recover a sum of Rs.24,540,219.08/- from the 1st defendant. Therefore, the plaintiff had come up with the above suit, seeking recovery of the said sum of Rs.24,540,219.08/- along with interest at 15% per month.

9. It is claimed that the cause of action of the suit had arisen within the jurisdiction of this Court, as the 1st defendant has stipulated in Clause 25 of the Work Order that all disputes relating to the Work Order would be subject to the jurisdiction of the competent Court in Chennai City. Therefore, according to the plaintiff, this court would have jurisdiction to try the suit.

10. Upon service of summons, the 1st defendant filed the written statement on 07.10.2005, contending that no part of the cause of action had arisen within the jurisdiction of this Court and therefore this Court would have no jurisdiction to entertain the suit. Referring to Clause 25 of the Work

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Order, the 1st defendant would contend that unless it is shown that some part of the cause of action had arisen within the jurisdiction of this Court, the parties, by agreement cannot vest jurisdiction in this Court and hence this Court does not have jurisdiction to entertain the suit. Relying upon the settled position of law that the parties by consent cannot vest jurisdiction in a Court which otherwise dose not have jurisdiction, the 1st defendant would contend that despite Clause 25 of the Work Order, this Court will not have jurisdiction, if the plaintiff is unable to show that some part of the cause of action arose within the jurisdiction of this Court.

11. The claim was also denied on merits contending that the plaintiff alone was responsible for the delay in carrying out the work and therefore the defendant cannot be blamed for withdrawing from the contract. The defendant would also point out various defects in the performance of the plaintiff to buttress its contention that it was justified in terminating the contract. It is also pointed out that the defendant did not have an obligation to open Letters of Credit for procurement of imported glass and aluminum composite panels. It is claimed that the defendant was compelled to open Letters of Credit because of the plaintiff's unsatisfactory financial position. The progress of the work was also not satisfactory and Indian Oil Corporation had expressed its dis-satisfaction over the work that was carried

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over by the plaintiff. According to the 1st defendant this was also communicated to the plaintiff. It is also claimed that the plaintiff wantonly caused delay in performing the contract. On the above claims, the defendant sought for dismissal of the suit.

12. Though the written statement was filed in the year 2005, the 1st defendant came out with an application for revocation of leave granted in the suit under Clause 12 of the Letters Patent in application No.4761 of 2012. The said application came to be dismissed by this Court, relegating the issue of jurisdiction, to be tried along with other issues, which are framed in the suit, on the ground that the issue relating to territorial jurisdiction has already been framed. The application in A.No.4760 of 2012 filed by the 1st defendant seeking a decision on the issue of jurisdiction was also closed by this Court on 18.10.2019, since the evidence had already been recorded on the merits of the claim also.

13. Since the first issue relates to the territorial jurisdiction of this Court and decision therein would have a bearing on the very jurisdiction of this Court to entertain the suit, I had required the counsel to address the Court only on the point of jurisdiction. Accordingly, I have heard Mr.T.K.Bhaskar, learned counsel appearing for the plaintiff and

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Mr.R.Murari, learned Senior Counsel appearing for Mrs.K.P.Indira, learned counsel for the 1st defendant.

14. On the question of jurisdiction, Mr.T.K.Bhaskar, counsel appearing for the plaintiff would vehemently contend that Clause 25 of the Work Order which reads as follows:-

> *"25. All disputes relating to this Work Order shall be subject to and be referred to the Court of competent jurisdiction situated within the limits of Chennai City."*

coupled with the fact that some of the negotiations on the performance of the contract took place at Chennai within the jurisdiction of this Court would submit that this Court has got jurisdiction to entertain the suit. He would also invoke the principle of estoppel to contend that the 1st defendant who had included Clause 25 in the standard form contract (Work Order) cannot now contend that this Court will not have jurisdiction to entertain the suit.

15. The counsel would also draw my attention to the avernments in the plaint which are to the effect that, in view of Clause 25 of the Work Order, this Court would have jurisdiction to entertain the suit. He would also point out that the witness viz., PW1 had stated that certain negotiations

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took place at Chennai. Relying upon the above circumstances Mr.T.K.Bhaskar, counsel would submit that this Court would have jurisdiction to try the suit. He would also rely upon certain judgments of the Hon'ble Supreme Court and this Court in support of his contentions.

16. Responding to the submission of the counsel for the plaintiff Mr.R.Murari, Senior Counsel appearing for the 1st defendant would submit that except stating that the cause of action had arisen within the jurisdiction of this Court, in view of Clause 25 of the Work Order, there is nothing else in the plaint to confer jurisdiction on this Court. Mr.R.Murari, learned Senior Counsel would point out that the plaintiff's Office is situate in Mumbai and the 1st defendant's office is also situate in Mumbai. The construction site is in Delhi. According to the learned Senior Counsel, in the absence of any material to show that atleast some portion of the cause of action had arisen within the jurisdiction of this Court, the plaintiff cannot maintain the suit before this Court solely based upon Clause 25 of the Work Order, which militate against the well established position of law that the parties by agreement cannot confer jurisdiction on a Court which does not otherwise possess jurisdiction.

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17. Mr.R.Murari, learned Senior Counsel would also fall-back upon

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the settled position of law relating to the jurisdiction of the Court *viz-a-viz* the agreement between the parties to the effect that the parties can by agreement exclude jurisdiction of one of the Courts which otherwise have jurisdiction, they however cannot invest jurisdiction by agreement in a Court which would otherwise not have jurisdiction to entertain the suit.

18. Mr.R.Murari, learned Senior Counsel would also submit that the plaintiff cannot be allowed to take advantage of stray sentence in the cross-examination of PW1 to confer jurisdiction on this Court. He would also point out to the total lack of pleadings relating to the alleged negotiation having taken place in Chennai, in the plaint to contend that no amount of evidence in the absence of plea could be looked into. He would also rely upon several judgments in support of his submissions.

19. The first issue framed in the suit reads as follows:-

Whether this Court has territorial jurisdiction to entertain the present suit?

20. Of course, there has been some delay on the part of the defendant in filing the application for revocation of leave. That by itself cannot preclude the defendant from contending that this Court has no jurisdiction,

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since, the defendant had raised the issue relating to jurisdiction even in the written statement filed during October 2005. May be, the parties would have been placed in better position if the application for revocation of leave had been disposed of on merits. For reasons best known, the application was deferred and the issue was relegated to trial. It remains to be decided as to whether Clause 25 of the Work Order by itself would confer jurisdiction on this Court, when no other part of cause of action had arisen within the jurisdiction of this Court.

21. Mr.T.K.Bhaskar, learned counsel appearing for the plaintiff would apart from relying upon Clause 25 of the Work Orders, which have been marked as Ex.P3(series) would also draw my attention to Ex.P5 the minutes of the meetings to claim that the meetings took place at Chennai. Ex.P5 is the minutes of the meetings that took place on 15.05.2003 and 16.05.2003 at Mumbai, wherein certain decisions were taken by the parties regarding the material to be used. There is nothing in Ex.P5 to show that there was some meeting that took place at Chennai. Further Mr.T.K.Bhaskar would rely upon the cross-examination of PW1, wherein PW1 would admit that there were certain meetings between the plaintiff and the 1st defendant at Chennai.

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22. Mr.T.K.Bhaskar would also invite my attention to the judgment of

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the Hon'ble Supreme Court in ***ABC Laminart Pvt. Ltd. and others Vs. AP Agencies Salem*** reported in ***1989 (2) SCC 163,*** wherein, the Hon'ble Supreme Court had considered the scope and validity of an agreement excluding the Courts jurisdiction. The governing contracts viz., invoices contain certain general terms and conditions of sale. Clause 11 of the said terms and conditions of sale read as follows:-

> *"Any dispute arising out of this sale shall be subject to Kaira jurisdiction." The order of confirmation with the general terms and conditions was sent from Udyognagar, Mohamadabad, Gujarat to the respondent's address at No.12, Suramangalam Road, Salem, Tamil Nadu.*

23. The dispute arose between the parties and the suit was laid at Salem by the respondent viz., AB Agencies. The trial Court accepted the contention of the defendant that it had no jurisdiction in view of Clause 11 of general terms and conditions of sale. This Court allowed the appeal and directed the trial Court to take the plaint and dispose of the same. It is the correctness of this order of the High Court which was canvassed before the Supreme Court in ***ABC Laminart Pvt. Ltd. and others Vs. AP Agencies Salem*** *(supra).*

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24. The Hon'ble Supreme Court held that so long as the parties to the contract did not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to decide the cause under law, it cannot be said that the parties by their contract can oust the jurisdiction of this Court. It was further observed that if under law several Courts would have jurisdiction and the parties have agreed to submit to one of those jurisdictions and not the other or others of them, it cannot be said that there is a total ouster of jurisdiction. The following observations of the Hon'ble Supreme Court in ***ABC Laminart Pvt. Ltd. and others Vs. AP Agencies Salem*** *(supra)* would be relevant:

> *"In other words, were the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against the public policy."*

It was further observed

> *"if on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide the dispute arising out of the contract it must be declared void being against public policy"*

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25. After laying down the law as above, the Hon'ble Supreme Court went into the facts of that case and finally upheld the jurisdiction of the Court at Salem on the ground that the relevant Clause viz., Clause 11 does not confine the jurisdiction exclusively to the Courts at Kaira.

26. Mr.T.K.Bhaskar, learned counsel would also draw my attention to the judgment of Gujarat High Court in ***Snehal Kumar Sarabhai Vs. Economic Transport Organisation and others*** reported in ***AIR 1975 Guj 72,*** wherein, the Gujarat High Court had held that while the parties are free to enter into an agreement to restrict the dispute to a particular Court, the same cannot validly take away the jurisdiction of the other Court which would otherwise have jurisdiction. The Gujarat High Court also further observed that the ouster clause can operate as estoppel against the contracting parties, it cannot tie the hands of the Court and denude it of the power to do justice.

27. Mr.T.K.Bhaskar would also draw my attention to the judgment of this Court in ***Sulphur Mills Limited Vs. Economic Transport Organisation and others*** reported in ***2021 (3) CTC 178,*** wherein, the Division Bench of this Court has considered the scope of the power of this Court under Clause

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12 of the Letters Patent. The said judgment may not be of much use since it dwells into the powers of the Court while considering the application for revocation of leave. Admittedly, in the case on hand the application for revocation of leave has been closed, without any decision, relegating the issue to be decided after trial.

28. The next decision relied upon by Mr.T.K.Bhaskar is that of the Calcutta High Court in ***Sahabati Gopini Vs. Mangturan Agarwalla*** reported in ***AIR 1934 Cal 524,*** wherein, the Calcutta High Court upheld the power of the higher Court to deal with the suit of lesser pecuniary value within the pecuniary jurisdiction of the lower Court. The said judgment also, in my opinion, is not of any assistance to decide the issue that arises here.

29. Mr.T.K.Bhaskar, learned counsel would also rely upon the judgment of the Division Bench of this Court returned in the ***RPC'Connor Vs. PG Sampath Kumar*** reported in ***AIR 1953 Mad 897,*** relating to the powers of the High Court on the original side to direct return of the plaint.

30. Reliance is also placed by Mr.T.K.Bhaskar, on the judgment of

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the Hon'ble Supreme Court of India in ***M/s.EXL Careers and another Vs.***

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Frankfinn Aviation Services Private Limited reported in ***2020 (12) SCC 667,*** regarding the stage from which, the Court to which the returned plaint is re-presented, should proceed with the suit returned under Order VII Rule 10 or 10A of the Code of Civil Procedure.

31. Mr.R.Murari, learned Senior Counsel, to a great extent would also rely upon the judgment of the Hon'ble Supreme Court in ***ABC Laminart Pvt. Ltd. and others Vs. AP Agencies Salem*** *(supra).* Referring to paragraph 12 of the judgment, which I have already extracted, Mr.R.Murari, learned Senior Counsel would submit that, while, it is open to the parties to confer jurisdiction on one Court or oust the jurisdiction of one Court, the conferring of or ousting of the jurisdiction must be of the Court which would otherwise have jurisdiction. It is not open to the parties, by contract, to confer jurisdiction on a Court which would not otherwise have jurisdiction.

32. Mr.R.Murari, learned Senior Counsel would also contend that there is total dreath of pleading and evidence to show that atleast some part of the cause of action arose within the jurisdiction of this Court. The Registered Offices of both the plaintiff and the 1st defendant are situate at Mumbai and project site is situate at Delhi. Therefore, according to

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Mr.R.Murai, learned Senior Counsel, if this Court does not otherwise possess jurisdiction, the parties cannot confer jurisdiction on it under Clause 25 of the Work Order. He would draw my attention to the portion of paragraph 16 of the judgment in ***ABC Laminart Pvt. Ltd. and others Vs. AP Agencies Salem*** *(supra),* which reads as follows:-

> ***"If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy."*** [Emphasis supplied]

33. Therefore, according to Mr.R.Murari, learned Senior Counsel, if the plaintiff is unable to show that this Court would not have jurisdiction otherwise, Clause 25 by itself cannot confer jurisdiction. Once it is found that the agreement is against the public policy, the question of applying the principle of estoppel will not arise.

34. Reliance is also placed by Mr.R.Murari, on the judgment of the Hon'ble Supreme Court in ***National Textile Corporation Ltd., and others Vs. Haribox Swalram and others*** reported in ***2004 (9) SCC 786,*** wherein, the Hon'ble Supreme Court while considering the question of territorial

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jurisdiction and cause of action held that unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case would not give raise to the cause of action within the jurisdiction of this Court. This judgment is projected by the learned Senior Counsel to counter the submission of Mr.T.K.Bhaskar based on the alleged admission made by PW1 that some part of the negotiations took place at Chennai within the jurisdiction of this Court, which would amount to part of the cause of action having arisen within the jurisdiction of this Court. In the said judgment, while dealing with the term cause of action the Hon'ble Supreme Court has held as follows:-

> *"Cause of action as understood in civil proceedings means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. To put it in a different way, it is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. "*

The Hon'ble Supreme Court further observed that

> *"each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. "*

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Therefore, according to Mr.R.Murari, learned Senior Counsel a mere reference to certain negotiations that had taken place within the jurisdiction of this Court would not confer jurisdiction on this Court.

35. Support is also drawn by Mr.R.Murari, learned Senior Counsel from the judgment of the Delhi High Court in ***Unimers India Limited Vs. The IFCI Limited and others*** reported in ***2012 (129) DRJ 608,*** wherein, the Delhi High Court had referred to the judgment of the Bombay High Court in ***Baroda Oil Cakes Traders Vs. Parshotam Narayandas Bagulia and another*** reported in ***AIR 1954 Bombay 491*** and concluded that it is not every fact which may be incidental or connected with the cause and may be a matter of evidence can be a part of cause of action and all the material facts relating to a cause cannot be said to be part of cause of action for the purpose of Section 20(c) of the Code of Civil Procedure. The Delhi High Court has also pointed out that negotiations and discussions relating to the contract in hand or the approvals by the Board of Directors sitting in Delhi giving go-ahead to execute the contract would again not be part of cause of action for the complaint or the suit in hand.

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36. Mr.R.Murari, learned Senior Counsel would also rely upon the

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judgment in ***Ram Sarup Gupta Vs. Bishun Narain Inter College and others*** reported in ***1987 (2) SCC 555,*** to contend that in the absence of a pleading in the plaint, mere admission in the oral evidence of the PW1 relating to some meeting that had been held would not confer jurisdiction on this Court.

37. I had considered the rival submissions. A Close examination of law laid down in various decisions relied upon by the counsel on either side would lead to an inevitable conclusion that the parties can by contract confer jurisdiction on one Court excluding jurisdiction on the other or others, at the same time, exclusion of jurisdiction of all Courts would be void.

38. The next question that would arise is, whether the parties can invest jurisdiction in a Court which otherwise does not have jurisdiction?

The answer to the above question is available in paragraph 16 of the judgment of the Hon'ble Supreme Court in ***ABC Laminart Pvt. Ltd. and others Vs. AP Agencies Salem*** *(supra),* wherein the Hon'ble Supreme Court points out that if the parties agree to a particular jurisdiction and such jurisdiction is otherwise not a proper jurisdiction to decide the dispute arising out of the contract, it must be declared void being against the public

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policy. Therefore, the parties cannot invest jurisdiction in a Court which does not otherwise possess jurisdiction. If two or more Courts would have jurisdiction, the parties are free to agree upon one such Court.

39. If we are to examine the case on hand, in the light of the law settled, the parties have agreed to invest jurisdiction in the Courts at Chennai City. If the parties want to invest the jurisdiction on the Courts within Chennai City, they must be able to demonstrate that this Court would otherwise have jurisdiction to entertain and decide upon the dispute.

40. A close examination of the facts of this case shows that the plaintiff and the 1st defendant are operating from Mumbai. Though, the 1st defendant has an Office in Manapakkam, at Chennai, the situs of the Office does not fall within the original jurisdiction of this Court. Therefore, the plaintiff cannot take advantage by existence of an office at Manapakkam to maintain the suit in this Court. The situs of construction is at New Delhi. Therefore, it becomes necessary for the plaintiff to demonstrate that some part of the cause of action had arisen within the jurisdiction of this Court. The plaintiff cannot by merely relying upon Clause 25 of the Work Order, maintain the suit in this Court.

41. If we are to examine the evidence pointed out by Mr.T.K.Bhaskar, to contend that some portion of cause of action had arisen within the

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jurisdiction of this Court, I am afraid that the evidence is not sufficient to conclude that this Court would have jurisdiction to entertain the suit.

42. As rightly pointed out by Mr.R.Murari, learned Senior Counsel appearing for the 1st defendant, the plaint is completely silent about any negotiations having taken place at Chennai. All that is stated in paragraph 3 of the plaint is that the Clause 25 of the terms and conditions invest jurisdiction in this Court and the cause of action paragraph viz., paragraph 17 also refers only to Clause 25 of the Work Order. Therefore, there is no pleading in the plaint, which would justify the filing of the suit in this Court on the ground that the part of the cause of action had arisen within the jurisdiction of this Court. Even, the evidence that is available is not strong enough or sufficient to conclude that the part of the cause of action had arisen within the jurisdiction of this Court.

43. As pointed out by Hon'ble Mr.Justice Manmohan Singh of Delhi High Court in ***Unimers India Limited Vs. The IFCI Limited and others*** *(supra),* a fact inorder to constitute cause of action must be a material fact which would provide the basis for the plaintiff to claim the relief he seeks for in the suit. Not all incidental and connected facts would give cause of action to the plaintiff to claim the relief. Of course, there is some evidence where PW1 admits that some part of the negotiations had taken place in Chennai, but, the said admission by itself would not be a material fact which

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would provide cause of action to the plaintiff to launch a suit for recovery before this Court. I am therefore of the considered opinion that the issue relating to jurisdiction has to be answered against the plaintiff.

44. The next question that would arise is what is to be done when this Court finds that this Court has no jurisdiction to entertain the suit on original side. Order 49 Rule 3 of the Code of Civil Procedure excludes the applicability of order VII Rule 10 and 10A to the original side of this Court. Does it mean that this Court have no power to return the plaint if it finds that it has no jurisdiction. The Hon'ble Division Bench in ***RPC'Connor Vs. PG Sampath Kumar*** *(Supra)* has held that even if order VII Rule 10 and 10A are not applicable to the original side of this Court, since this Court is a Court of records, this Court can still return the plaint exercising inherent powers under Section 151 of the Code of Civil Procedure. The question for decision that was framed in the said case is as follows:-

> *Whether a Chartered High Court has not got inherent powers under Section 151, C.P.C. to return a plaint entertained by it in the exercise of its ordinary or extraordinary original jurisdiction for presentation to the proper court for the ends of justice despite the provisions of Order 49, Rule 3, C.P.C.*

45. The said question was answered by the Hon'ble Chief Justice Rajamannar in the following words:-

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After giving my full consideration to the matter I am of opinion that it is open to this Court to direct the plaint to be returned to the plaintiff for presentation to the proper Court when this Court finds that it has no jurisdiction to entertain it.

For the purpose, however, of preserving the proceedings taken in this Court a verified copy of the plaint can be made and filed in place of the original which is returned. I accordingly direct the plaint in this case to be returned after a copy of the plaint has been made and filed in place of the original.

46. In view of the above authoritative pronouncement of the Division Bench, the inherent powers of this Court to return the plaint *de hors* the in-applicability of Order VII Rule 10 or 10A of the Code of Civil Procedure is preserved

47. The next question that would crop up is as to what is the stage from which the Court to which the plaint is to be re-presented should proceed with the case. The Hon'ble Supreme Court in ***M/s.EXL Careers and another Vs. Frankfinn Aviation Services Private Limited*** *(supra)* has held that once a plaint is returned under Rule 10 or 10A of Order VII of the Code of Civil Procedure, there is no discretion available to the Court and the proceeding has to commence *de novo*.

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48. Mr.T.K.Bhaskar, learned counsel for the plaintiff would submit that since the plaint is not returned under order VII Rule 10 or 10A of the Code of Civil Procedure, I can direct the Court to which the plaint is to be re-presented to proceed with the suit from the stage at which the plaint is returned and not opt for a *de novo* trial.

49. I do not think that I will be justified in doing so. Once I have held that this Court has no jurisdiction to try the suit, I do not think that it will be proper for me to suggest as to how the case should be proceeded with in the Court having jurisdiction. Therefore, I choose to leave the question open to be decided by the Court to which the plaint is re-presented.

50. For the foregoing reasons, I direct the plaint to be returned to the counsel for the plaintiff to be re-presented to proper Court within a period of three (3) months from the date of return. The parties are to bear their own costs in this Court.

Sd./-R.S.M.J.

03/09/2021

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Dated at Madras this the day of 2021.

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List of the Witnesses examined on the side of the Plaintiff:

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PW1 – Amit Klinger

PW2 – Ravindra Shankar Kumbhar

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List of Exhibits marked on the side of the Plaintiff:

Sl.No.	*Exhibits*	*Description of documents*
1	Ex.P1	The extract of the Board Resolution
2	Ex.P2	The photocopy of letter of intent dated 06.12.2002
3	Ex.P3	The original of work order dated 11.02.2003
4	Ex.P4	The photocopy of transcript minutes of the meeting dated 15.05.2002 and 16.05.2003
5	Ex.P5	The photocopy of transcript minutes of the meeting dated 15.05.2002 and 16.05.2003
6	Ex.P6	The Office copy of the letter dated 19.05.2003 from the plaintiff to the defendant
7	Ex.P7	The true copy of the letter dated 31.03.2003 from the plaintiff to the defendant
8	Ex.P8	The true copy of the letter dated 19.07.2003 from the plaintiff to the defendant
9	Ex.P9	The true copy of the letter dated 25.07.2003 from the plaintiff to the defendant
10	Ex.P10	The true copy of the letter dated 19.07.2003 from the plaintiff to the defendant
11	Ex.P11	The true copy of the letter dated 19.07.2003 from the plaintiff to the defendant
12	Ex.P12	The true copy of the letter dated 11.09.2003 from the plaintiff to the defendant
13	Ex.P13	The true copy of the letter dated 12.09.2003 from the plaintiff to the defendant
14	Ex.P14	The photocopy of invoice dated 03.07.2003
15	Ex.P15	The photocopy of invoice dated 03.07.2003
16	Ex.P16	The photocopy of invoice dated 19.09.2003
17	Ex.P17	The photocopy of invoice dated 12.01.2004
18	Ex.P18	The photocopy of invoice dated 12.01.2004

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Sl.No.	*Exhibits*	*Description of documents*
19	Ex.P19	The photocopy of invoice dated 25.04.2004
20	Ex.P20	The photocopy of invoice dated 24.06.2004
21	Ex.P21	The minutes of the meeting held at DLRO Regional Manager's Office on 11.05.2004
22	Ex.P22	The original letter dated 11.05.2004 from the plaintiff to defendant
23	Ex.P23	The minutes of the meeting held at L&T's Regional office on 24.05.2004
24	Ex.P24	The letter dated 14.08.2004 from the defendant to the plaintiff
25	Ex.P25	The photocopy of letter dated 16.08.2004 from the plaintiff to the defendant
26	Ex.P26	The photocopy of minutes of the meeting held on 20.08.2004
27	Ex.P27	The photocopy of letter dated 26.08.2004 from the plaintiff to the defendant
28	Ex.P28 (Series)	The photocopy of letter dated 27.08.2004 along with annexure of the running bills
29	Ex.P29	The original letter dated 14.02.2003
30	Ex.P30	The letter dated 19.05.2003 from the plaintiff to the defendant
31	Ex.P31	The letter dated 19.07.2003 from the plaintiff to the defendant
32	Ex.P32	The letter dated 19.07.2003 from the plaintiff to the defendant
33	Ex.P33	The letter dated 02.08.2003 from the plaintiff to the defendant
34	Ex.P34	The letter dated 21.08.2003 from the plaintiff to the defendant
35	Ex.P35	The letter dated 22.08.2003 from the plaintiff to the defendant
36	Ex.P36	The letter dated 23.09.2003 from the plaintiff to the defendant

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Sl.No.	***Exhibits***	***Description of documents***
37	Ex.P37	The letter dated 30.09.2003 from the plaintiff to the defendant
38	Ex.P38	The letter dated 07.10.2003 from the plaintiff to the defendant
39	Ex.P39	The letter dated 08.10.2003 from the plaintiff to the defendant
40	Ex.P40	The letter dated 13.10.2003 from the plaintiff to the defendant
41	Ex.P41	The letter dated 16.10.2003 from the plaintiff to the defendant
42	Ex.P42	The letter dated 16.10.2003 from the plaintiff to the defendant
43	Ex.P43	The letter dated 17.12.2003 from the plaintiff to the defendant
44	Ex.P44	The letter dated 01.03.2004 from the plaintiff to the defendant
45	Ex.P45	The letter dated 03.03.2003 from the plaintiff to the defendant
46	Ex.P46 (Series)	The e-mail dated 09.03.2004 along with attachment
47	Ex.P47	The letter dated 11.03.2004
48	Ex.P48 (Series)	The e-mail dated 14.03.2004 with letter attached
49	Ex.P49	The letter dated 04.03.2004
50	Ex.P50	The letter dated 04.05.2004
51	Ex.P51	The letter dated 06.05.2004
52	Ex.P52	The letter dated 15.05.2004
53	Ex.P53	The letter dated 17.05.2004
54	Ex.P54	The letter dated 26.05.2004
55	Ex.P55	The letter dated 26.05.2004
56	Ex.P56	The letter dated 26.05.2004

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Sl.No.	***Exhibits***	***Description of documents***
57	Ex.P57	E-mail dated 07.05.2004
58	Ex.P58	The letter dated 06.05.2004
59	Ex.P59	The letter dated 03.06.2004
60	Ex.P60	The letter dated 07.06.2004
61	Ex.P61	The letter dated 12.07.2004
62	Ex.P62	The letter dated 06.08.2004
63	Ex.P63	The letter dated 16.08.2004
64	Ex.P64	The letter dated 30.08.2004
65	Ex.P65	The letter dated 09.09.2004
66	Ex.P66	The letter dated 18.10.2004
67	Ex.P67	The letter dated 15.05.2004
68	Ex.P68	The letter dated 31.03.2005

List of the Witnesses examined on the side of the Defendant:

DW1 - R.Ravichandhar

DW2 – C.Sunil Kumar

List of Exhibits marked on the side of the Defendant:

Sl.No.	***Exhibits***	***Description of documents***
1	Ex.D1	Authorisation letter dated 24.02.2015
2	Ex.D2 (series)	E-mail enclosing the Bank statement account No.7029101 for the period from 01.01.2003 to 10.09.2005.
3	Ex.D3	Tabulation prepared by the applicant based on the statements issued by Citibank
4	Ex.D4 (series)	List of documents being bills and receipts
5	Ex.D5	Letter of authority authorising DW2 to adduce

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Sl.No.	***Exhibits***	***Description of documents***
		evidence dated 04.09.2019

Sd./-R.S.M.J.

03/09/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

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