



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.04.2021	Pronounced on: 30.04.2021
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THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

A.Nos.6149 & 6150 of 2019
in C.S. No.236 of 2019

1. M/s.R.L.STEELS AND ENERGY LIMITED,

Having its Corporate Office Address at,
Gut Nos.78 to 81, Panga Shivar, Paithan Road,
Chitegaon, Aurangabad,
Maharashtra - 43110

... Applicant
in A.Nos.6149 & 6150 of 2019

/versus/

1. BHADRESHWAR VIDYUT PRIVATE LIMITED,

Formerly known as
OPGS Power Gujarat Pvt. Ltd.,
Through its Authorised Signatory,
Mr.S.Swaminathan, Senior Manager Accounts,
No.6, Sardar Patel Road, Guindy,
Chennai – 600 032.

2. Mr.RAGHUNANDANLAL GUPTA,

Director No.58-59, N-1, CIDCO, Aurangabad,
Maharashtra – 431 003

.... Respondents
in A.Nos.6149 & 6150 of 2019

Prayer in A.No.6149 of 2019:-Application is filed under Order XIV and Rule 8 of Original Side Rules read with under Clause 12 of the Letter's Patent and Order III Rule 1 of the Original Side Rules.

To Revoke the leave granted to the 1st respondent on 25.03.2019 in

Application No.2297 of 2019 in CS D.No.7162 of 2019 to file the suit against the applicant.

Prayer in A.No.6150 of 2019:- Application is filed under Order XIV and Rule 8 of Original Side Rules read with Section 151 of the code of Civil Procedure, 1908.

To stay the suit in C.S.No.236 of 2019 against the applicant pending on the file of this Hon'ble Court and pending disposal of the revoke the leave application No.6149 of 2019.

For Applicant : Mr.Anirudh Krishnan
in both applications

For R1 : Mr.Rahul Balaji
in both applications

COMMON ORDER

The suit filed for recovery of money to a tune of Rs.8,08,72,330/- and interest thereon at the rate of 15% per annum from 30.08.2016 till the date of realisation.

2. As per the plaint, the plaintiff is an Electricity generating company having its registered Office at No.6, Sardar Patel Road, Guindy, Chennai – 600 032. The defendants approached the plaintiff during the month

of December 2015 for supply of power for the defendants industrial need. After negotiation, letter of intent dated 19.12.2015 was issued to the defendant to purchase/consume 8 MW from the plaintiff. Subsequent to letter of intent, the defendants issued a cheque for Rs.2,96,400/- towards transfer of shares @ Rs.37,050/- per MW. Security deposit of Rs.1,33,92,000/- and Rs.2,67,84,000/- by way of cheque issued by the defendants. However, the defendants subsequently vide letter dated 04.07.2016 requested his bank to stop payment. Therefore the cheques not realised. Power Supply agreement was entered between the parties on 24.07.2016. Based on the Power Supply Agreement (PSA), the plaintiffs started supplying the power to the defendants from 01.07.2016 and monthly invoice was raised for the power supplied. As per the PSA, the defendants has to pay the plaintiff by 10th of every month failing which interest at the rate of 15% p.a to be paid for the delayed period. Two LC's provided by the defendants for a sum of Rs.1,77,56,157/- and Rs.27,56,157/- were not in proper format. Therefore, the plaintiff requested the defendants to issue fresh LC as per the terms of the power purchase agreement. While fact being so, for the power supplied to the defendants between the month of July to September 2016, the defendants has not paid any money and therefore, the plaintiff stopped supplying power to the defendants from 01.10.2016. When the defendants requested for resumption of power supply, the

plaintiff informed the defendants vide e-mail dated 13.10.2016 that the power supply will be resumed on payment of the arrears. Soon thereafter, the defendants unilaterally terminated the PSA on 20.10.2016. The cheques issued by the defendants towards the payment of outstanding dues and security deposit were bounced on presentation. Under these circumstances, the plaintiff issued a demand notice under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) on 12.09.2017 requesting the defendants to pay the outstanding dues of Rs.6,98,03,036/-. In response to the notice, the defendants vide communication dated 27.09.2017 issued a debit note to the plaintiffs claiming that the plaintiffs owe money to the defendants for non fulfilment of CGP status. In the said circumstances, the suit filed for recovery of money.

3. The cause of action for the suit as stated in the plaint, arose in the following manner:-

“The plaintiff submits that a major portion of the cause of action for the present suit has arisen within the jurisdiction of this Hon'ble Court where the contract was executed by the plaintiff, where the plaintiff has its office, where the negotiations took place and where payments under the contract were due and payable when the cheque were dishonored in Malapare, Chennai. Additionally, the plaintiff states

that clause 8.2 of the PSA clearly states that any dispute which is not resolved through mutual discussions can be adjudicated upon only in the courts of either Chennai or Mumbai. Therefore, the plaintiff submits that this Court has necessary jurisdiction to hear the present suit.

4. This Court, granted leave to sue vide order dated 25.03.2019 and caused summon to the defendants. On receipt of the summon, the 1st defendant has filed the Applications Nos.6149 & 6150 of 2019 for the following relief.

(i). To revoke the leave granted to the 1st respondent on 25.03.2019 in A.No.2297 of 2019 in C.S.D.No.7162 of 2019 to file the suit against the applicant.

(ii). To stay the suit in C.S.No.236 of 2019 against the applicant pending on the file of this Hon'ble Court and pending disposal of the revoke the leave application No.6149 of 2019.

5. According to the 1st defendant, entire substantial cause of action for this suit arose outside the territorial jurisdiction of this Court. This Court has

no jurisdiction to try this suit. Based on the same transaction, between same parties the suit for recovery of money has been initiated against the plaintiff herein by the 1st defendant before the Civil Court of Aurangabad in RCS No.15/2017, wherein, the plaintiff herein has filed the written statement and an application under Order VII Rule 11 of C.P.C., to determine the jurisdiction to hear that suit. In the said suit, issues framed and the matter is pending for trial. While so, when a previous suit RCS No.15 of 2017 pending in the other Court, wherein, the issues are directly and substantially be same, the subsequent suit C.S.No.236 of 2019 pending before this Court has to be stayed following the principle of *res sub judice*.

6. It is contended that the continuation of present suit before this Court will lead to multiplicity of proceedings and likelihood of conflicting orders being passed by different Courts apart from causing hardship and prejudice.

Application No.6149 of 2021

This application is filed by the 1st defendant to revoke the leave granted. The contention of the 1st defendant in this application is that the defendant has already initiated suit for recovery of money based on the very

same power supply agreement dated 24.07.2016. The Court at Chennai inherently lacks jurisdiction to try the issue and therefore, the exclusive jurisdiction conferred under clause 8.2 of the Power Supply Agreement cannot be enforced in view of the dictum laid by the Hon'ble Supreme Court in **ABC Laminarts (P) Ltd -vs- A.P.Agencies Salem** reported in **1989 (2) SCC 163**. Even according to the plaintiff herein in their written statement filed before the City Court at Aurangabad in the connected suit, they admit that power supply agreement was executed at Gujarat and the parties signed the deed at Gujarat, contrary to their admission in the written statement filed in RCS No.15 of 2017 on the file of City Court, Aurangabad, the suit is filed before this Court alleging that consideration made within the jurisdiction of this Court and issuance of termination notice as cause of action. These actions will not confer jurisdiction to this Court therefore, leave granted to be revoked.

8. To buttress the plea to reject the plaint, the following judgments were relied upon.

(i). **ABC Laminart Pvt Ltd and another -vs- A.P.Agencies Salem** reported in **(1989) 2 SCC 163**.

(ii). **Mytrah Energy (India) Limited -vs- Gamesa Renewable**

Private Limited reported **(2016) 4 LW 86**.

(iii). ***Goomo Orbit Corporate and Leisure Travel (I) Private Limited -vs- G.I.Retail Private Limited*** reported in **2019 (5) CTC 914.**

(iv). ***M/s.Dayal Fertilizers Pvt Ltd -vs- Sulphur Mills Limited in A.Nos.4916, 4920 & 4923 of 2019 in C.S.No.410 of 2019.***

(v). ***CIT, Bombay -vs- Ogale Glass Works*** reported in **AIR 1954 SC 429.**

(vi). ***Bodh Raj Mahesh Kumar -vs- Earl Chawla*** reported in **AIR 1972 PB & H 2.**

(vii). ***Degremont Limited -vs- Kolkatta Municipal Corporation*** reported in **MANU/DE/2270/2013.**

(viii). ***A.L.Mathialagan -vs- V.Balasundaram and another*** reported in **(2014) 2 LW 575.**

9. The Learned Counsel appearing for the plaintiff would submit that regarding the suit pending before the Aurangabad Court, already application has been filed to reject the plaint for want of jurisdiction and same is pending.

10. Section 10 of C.P.C., can be invoked only if the previous suit is

pending in respect of issues which are directly and substantially between the

same parties and such Court should have jurisdiction to grant the relief claimed. When the jurisdiction of the Aurangabad Court to grant the relief sought is under challenge by way of proper application under Order VII Rule 11 of C.P.C., stay of the present suit is beyond the scope of Section 10 of C.P.C.

11. As far as the application to reject the plaint is concerned, the Learned Counsel submitted that the plaintiff carrying on business at Chennai. While finalising the power supply agreement, under clause 8.3, the parties have decided to resolve the dispute under the jurisdiction of Indian Court at Mumbai/Chennai. Later, the cheques issued for invoice and security deposit were presented at Chennai where the plaintiff is having its account. In the invoice raised by the plaintiff, it was specifically stated that payment to be paid in the account of the plaintiff maintained at Punjab National Bank, Mylapore, Chennai. The suit claim covers the invoice amount raised for supply of power. Though, the letter of credit was not in the proper format, it was drawn by the defendant mentioning the plaintiff bank at Chennai. Hence the Learned Counsel submitted that to decide the jurisdiction, the statement made in the plaint alone has to be considered and in the light of the exclusive jurisdiction agreed by the parties and major portion of cause of action having arisen within the jurisdiction of this Court, this Court has jurisdiction to hear the suit and the application to

reject the plaint is liable to be dismissed.

12. This Court, gave its anxious consideration to the rival submission and the judgments relied. When the parties have agreed to confer jurisdiction on a particular Court and part cause of action arisen within jurisdiction of this Court, the suit filed based on the previous consent of the other side should not be dishonoured, just because the other party wants to retract the consent given. Choice of forum is subject to the limitation such as connecting factor and part cause of action relevant to decided the suit. Conferring jurisdiction in a contract not per se unlawful or illegal unless it is hit by Section 23 or 28 of the Indian Contract Act or any other law in force.

13. The Full Bench of this Court in ***Duro Flex Pvt Limited -vs- Duroflex sittings system*** reported in **2014 (6) CTC 577**, had concluded that application for grant of leave or revocation thereof, the appropriateness or suitability of forum would be material and to that extent, principle akin to forum and conveniens would apply. For reference, the observation of the Full Bench relevant to decide the application in hand is extracted below:-

Clause 12 of the Letters Patent deals with the territorial jurisdiction of the Court. This Court assumes jurisdiction, when part of the cause of action

arises within the jurisdiction. Considering the said issue, a Full Bench of this Court in Duro Flex Pvt. Limited v. Duroflex Sitings System 150 (AIR 2015 Madras 30) has held as follows:

“34....The question of convenience cannot be thus excluded from consideration. This view was cited with approval in Madanlal Jalan v. Madanlal reported in AIR 1949 Cal. 495, where the Judge has held that the balance of convenience is a material consideration in the exercise of discretion under Clause 12 of the Letters Patent and has enunciated the following legal principles:

“a) that the application lies for revoking the leave granted under Clause 12 of the Letters Patent;

b) that such an application should be made at an early stage of the suit and delay and acquiescence may be a bar to such an application;

c) that if the application depends on difficult questions of law or fact, the Court should not revoke leave on a summary application but should decide the question at the trial;

d) that if the defendant shows clearly that no part of the cause of action arose within jurisdiction, the leave should be revoked as a matter of course;

e) that if only a part of the cause of action arose

within jurisdiction, then it is a question of discretion for the Court to give or refuse leave or where leave has already been granted to revoke or maintain the leave;.....

g) that in giving or refusing leave or maintaining or revoking leave, the Court will ordinarily take into consideration the balance of convenience and may, if the balance is definitely in favour of the defendant, apply the doctrine of forum conveniens;

h) that the Court may refuse leave or revoke leave on the ground of balance of convenience, although there be no evidence of bad faith or abuse of process on the part of the plaintiff;.....

j) that if the Court is satisfied that the suit has been filed mala fide for the purpose of harassing or oppressing the defendant or might result in injustice, the Court should in all cases readily refuse leave or if leave has already been granted, revoke the leave as a matter of course”.

14. As per the terms of the agreement under the power supply

agreement (PSA), the parties agreed for the jurisdiction to Court at Chennai and Mumbai. It is not the case of the 1st defendant that no cause of action arisen within the jurisdiction of this Court, or they have not agreed for the exclusive

jurisdiction of Chennai/Mumbai. Their case is, the cause of action stated are

not substantial cause of action.

15. In this case, the plaintiff registered office is at Chennai. The defendants Corporate Office is at Aurangabad. The letter of intent dated 19.12.2015 between the plaintiff and the defendants has been finalised after negotiation held in Mumbai. The Power Supply Agreement signed at Gujarat. The parties have consciously chosen the jurisdiction of Mumbai or Madras to resolve any dispute arising from the Power Supply Agreement. The power supply invoice were raised at Chennai with specific instruction for payment at Chennai. Therefore, this Court holds that the leave granted has to sustain in the light of the fact that part cause of action arisen within the jurisdiction of this Court and the parties have agreed to agitate their dispute before the Courts in Chennai. The solemn agreement of the parties entered with consensus ad idem, need not be interfered, in the absence of any illegality or act offending public policy.

Application No.6150 of 2021

In support of the stay petition filed under Section 10 of C.P.C., the learned Counsel for the applicant/1st defendant rely upon the following judgments.

(i). *National Institute of MH & NS -vs- C.Parameshwara* reported in *2005 (2) SCC 256*.

(ii). *Mehta Gandhi & Associates -vs- Shree Pipes Ltd* reported in *AIR 1990 Delhi 139*.

(iii). *Shorab Merwanji Modi and others -vs- Mansata Film Distributors and others* reported in *AIR 1957 Cal 727*.

(iv). *Jai Hind Iron Mart -vs- Tulsiram Bhagwandas* reported in *AIR 1953 Bom 11*.

17. As far as the application for stay is concerned, as pointed out by the learned counsel for the plaintiff that both the suits filed for recovery of money and the genesis of the dispute is the power purchase agreement. However, the issues cannot be considered as substantially and directly same one suit is for breach of agreement and then is recovery of money for the goods sold. Furthermore, the very jurisdiction of the Court at Aurangabad to hear the previous suit itself a challenged and preliminary issue raised and pending.

Section 10 of C.P.C reads as below:-

“10. Stay of suit:- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between

parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.— The pendency of a suit in a foreign court does not preclude the Courts in [India] from trying a suit founded on the same cause of action.”

18. The plain and simple reading of Section 10 of C.P.C., clearly mandates, the issues in the prior suit and subsequent suit must be directly and substantially same. The Court, in which the prior suit pending must have jurisdiction to grant the relief. Therefore, unless it is certain that the Court in which the prior suit pending (in this case the Court at Aurangabad) have jurisdiction to grant relief, Section 10 of C.P.C cannot be pressed into service.

19. In the said circumstances, when the jurisdiction of the Aurangabad Court to grant relief sought in the previous suit is under challenge and it is one of the issues framed for trial, the subsequent suit laid in the Court where part cause of action has arisen and the place where the parties have

mutually agreed to have jurisdiction to try the suit cannot be stayed.

20. In the result, the *Application Nos.6149 and 6150 of 2019 are dismissed.* No costs.

Sd/-G.J.J
30.04.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

JJ 18/05/2021

COURT OFFICER(O.S.)

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