ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 23 OF 2020

BATA INDIA LIMITED, THR. AUTHORISED SIGNATORY MR. GYANCHAND S/O. KATWAROO MAURYA, GROUP MANAGER-LEG ....APPLICANT

V/s.

M/S. AGROHA, THR. PARTNER MR. SUNIL MAYARAM AGARWAL .....RESPONDENT

Mr. Shyam Dewani a/w Mr. Chirag Chanani i/b Dewani & Associates Advocate for the Applicant
Mr. Rahul D. Motkari Advocate for the Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 15, 2022.

P.C.:

1) This petition is by Defendant to a Suit for recovery being Special Civil Suit No. 9/2010 pending on the file of Civil Judge Senior Division, Nashik. Application Exh. 33 is taken out by the Applicant for return of Plaint on following grounds:

(a) That Suit claim is barred by limitation as cause of action claimed to have first arose in 1997;

(b) Bundle of facts which lead to cause of action does not disclose any material accrued to Respondent-Plaintiff for preferring Suit in action and

(c) Even otherwise, Suit is barred by territorial jurisdiction.

2) As far as the last issue about territorial jurisdiction is concerned, Mr. Dewani, has sought to rely on the Judgment of the Apex Court in the matter of **Swastik Gases Private Limited V/s. Indian Oil Corporation Limited**[1] particularly paragraphs, 31, 32 & 55. According to him, since the Agreement which is relied on, in express terms confers jurisdiction on Delhi Court, the Court at Nashik is barred from taking cognizance of the Suit claim as the said Court will not have any territorial jurisdiction. As far as the contentions are concerned, my attention is invited to Application to that effect taken out by the Applicant vide Exh. 31 which was ordered to be filed on 08/08/2019 by the Court below in view of amendment to Section 9A of Code of Civil Procedure, 1908. (Hereinafter referred to as 'the Code' for the sake of brevity)

1 **(2013) 9 Supreme Court Cases 32**

3) In the aforesaid background, said issue of jurisdiction can be decided by the Court at appropriate stage.

4) Apart from above, it is required to be noted that said issue was not part of the Application preferred under Order VII Rule 11 of the Code.

5) As far as the subsequent contentions in regard to the bundle of facts and limitation are concerned, Suit for recovery is based on oral understanding on sharing of tax incentives. It is claimed by the Respondent-Plaintiff that incentive package scheme of 1993 permits retention of sales tax for a particular period. According to Respondent-Plaintiff, out of said tax liability, benefit of amount of Rs. 20,00,000/- was enjoyed by the Applicant-Defendant. By efflux of time, same is due and payable to the Government which has resulted into filing of the Suit.

6) Factual matrix pleaded in the Plaint based on which cause of action is claimed to have occurred, in categorical terms establishes lawful disclosure of such cause of action. Plain reading of the entire Plaint depicts that facts and events narrated therein in express terms discloses accrual of cause of action to Respondent-Plaintiff for

bringing Suit in action for recovery of amount of Rs. 26,00,000/- with interest thereon.

7) As regards contention that Suit claim is barred by limitation is concerned, from the rival pleadings, particularly as reflected in the Plaint and written statement, it can be inferred that since the said issue is mixed question of fact and law, can be gone into while deciding the Suit on merit. That being so, no case for interference is made out.

8) Revision As such fails, stands dismissed.

[NITIN W. SAMBRE, J.]