

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

COMMERCIAL APPEAL NO. 2 OF 2022

M/s Shah Nanji Nagsi Exports Pvt.Ltd.

A Company incorporated under the

Companies Act, 1956

having its Registered Office at

Plot No. 72, 2nd floor, Block No.202

Salasar Palace Apartment

Gangabai Ghat Square

Old Bagadganj

Nagpur -440 009 (Maharashtra)

Through its Director

Shri Ashwin s/o Sudhir Shah

..APPELLANT

versus

Gurukrupa Shipping & Logistics (I) Pvt.Ltd.

having its Registered Office at

Block No.705 &706 ,7th floor

Shelton Cubix, Plot No. 86

Sector 15 CBD Belapur Navi Mumbai 400 614

Also at:

Office No.203, Second floor

Plot No.336, 337, 342

Ward No.12-B. Om Corner

Gandhidham -370201

Dist.Kutch, Gujarat

E-mail : info@gurukrupalogistics.com

Through its Director

..Respondent

Mr.Sahil S.Dewani, Advocate for the Appellant
Mr.Ashish Verma, Advocate for Respondent

....

CORAM: NITIN JAMDAR &
ANIL L. PANSARE,JJ

DATED : 18 APRIL 2022.

JUDGMENT: (PER NITIN JAMDAR, J.)

By this Commercial Appeal filed under Section 13 (1A) of the Commercial Courts Act 2015, the appellant/plaintiff challenges the order passed by the learned District Judge / Commercial Court Judge, Nagpur (Below Exh.15) in Commercial Suit No. 21/2020 dated 8 November 2021. By the impugned order, the learned Commercial Court Judge has allowed the application filed by the Respondent/Defendant under Order VII Rule 10 of the Code of Civil Procedure and has directed that the plaint be returned to the Appellant/Plaintiff for presentation before the competent Court at Navi Mumbai. The Commercial Appeal, therefore, is filed under the provisions of the Commercial Courts Act, 2015 read with Order 43 Rule 1(a) of the Code of Civil Procedure.

2. The Appellant (referred to as 'Plaintiff') is a company incorporated under the provisions of the Companies Act. The Respondent (referred to as 'Defendant') is also a company

incorporated under the Companies Act. The Plaintiff filed the commercial suit bearing No.21/2020 for recovery of ₹ 2,63,14,876 along with interest at the rate of 9.85 per cent *per annum* from the Defendant.

3. The case of the Plaintiff in the plaint is that it deals in export of foodgrains, oils seeds and pulses. The main business of Plaintiff is export of rice. The Defendant entered in the business transaction with Plaintiff and under the terms dated 26 November 2019 certain obligations were entered into regarding the transportation. The Defendant was called upon to undergo the work of logistics with the buyers of the Plaintiff namely, MAERSK and Safmarine. 23 bill of Lading were issued. The Defendant did not adhere to the payment terms and did not pay necessary charges for enabling the buyers to get the cargo released. Plaintiff noticed that there were certain charges which were illegally charged by the Plaintiff which the Plaintiff were not obligated. As per invoices generated to the tune of ₹ 1,25,60,264.57 works to be carried out of Defendant and payment was to be made. The Defendant failed to rectify the mistake and carry out the obligations under the terms agreed. Due to the negligence on the part of Defendant, the Plaintiff had to bear additional payment of ₹ 1,31,36,588. Apart from the invoices the Plaintiff also claimed that the excess payment was made by the Plaintiff to the tune of ₹ 1,10,01,468 even though Defendant was not entitled and, therefore, the Plaintiff is entitled to recover

the amount. The Registered office of the Plaintiff is in Nagpur. Terms of entering into contract with the Defendant was also exchanged from Nagpur. The amount was transferred from Bank of the Plaintiff from Nagpur. The dispute also arose in Nagpur and, therefore, the Court had jurisdiction, accordingly claiming an amount of ₹2,63,14,876 along with interest the Plaintiff filed the suit on 9 November 2020. The Plaintiff annexed the contractual terms and invoices to the plaint.

4. The Defendant took out an application under Order VII Rule 10 for return of claim on the ground that no cause of action arose within the jurisdiction of the Court at Nagpur and, therefore, the Court did not have territorial jurisdiction and the plaint will have to be returned. The Application was filed in August 2021. The Plaintiff filed reply to the Application. One of the grounds taken in the reply was that the Plaintiff had sought recovery of the additional amount, apart from the invoices and, therefore, the Court at Nagpur would have jurisdiction in light of Section 20 of the Code of Civil Procedure.

5. The learned Commercial Court Judge held that in the invoices annexed to the plaint show that the jurisdiction will be of the Court at Navi Mumbai and this is the condition of the contract. Accordingly, the learned Commercial Court Judge observed that in view of the provisions of Section 20 of the Civil Procedure Code it

did not have jurisdiction and returned the plaint to be presented before the competent Court at Navi Mumbai.

6. We have heard Mr.S.S.Dewani, learned Counsel for the Appellant and Mr.Ashish Verma, learned counsel for the Respondent.

7. The Appeal is admitted. The Respondent waives service. As per the order passed earlier, taken up for final for disposal.

8. The averments in Plaint which would be material to determine jurisdiction refers to invoices and claims the amount on the said basis. The Plaint refers to 22 invoices out of which six invoices make a reference to jurisdiction. These invoices state that in case of any dispute jurisdiction would be of the Court at Navi Mumbai. We find that the learned Commercial Court Judge has solely based the decision on the six invoices to hold that the Court at Navi Mumbai would have jurisdiction. The learned Counsel for the Plaintiff is right in contending that the plaint also contain a claim regarding excess payment made to the Defendant. This claim is independent of the invoices. However there is no discussion whatsoever as regards this claim and its implication on the territorial jurisdiction. It has been the case of the Plaintiff that part of the cause of action would arise at Nagpur. This ground was taken in the reply to the application taken out by Respondent/Defendant.

However it does not find in the impugned order. What is the implication of claim made for recovery of excess amount on the territorial jurisdiction is not adverted to by the learned Commercial Court Judge. It is the contention of the Plaintiff that if for recovery of excess amount paid the suit is maintainable at Nagpur then the part of the cause of action arises at Nagpur and, therefore, even though some of the invoices may mention Navi Mumbai, the plaint cannot be returned. The learned counsel for the Defendant has not been able to show us from the impugned order that this aspect has been considered by the learned Commercial Court Judge. According to us, before returning the plaint under Order VII Rule 10 of the CPC, the learned Commercial Court Judge ought to have considered this aspect. Since this has not been done, the impugned order will have to be quashed and set aside, the application filed by the Defendant will have to be restored to file, to be decided in light of what is observed above.

9. Accordingly, the Commercial Appeal is allowed. The impugned order dated 30 October 2021 is quashed and set aside. The application filed by the Defendant under Order VII Rule 10 of the Code of Civil Procedure is restored to file. The learned District Judge/Commercial Court Judge will decide the Application as per law, in light of what is observed above.

10. There shall be no order as to costs.

[ANIL L. PANSARE,J.]

[NITIN JAMDAR,J.]

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