Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6848 OF 2023

Mita India Private Limited ...Petitioner

Versus

Rhenus Logistics India Private Limited …Respondent

Mr. B. B. Sawhney, Senior Adv a/w Indra Sawhney & Mr. Lakshay Sawhney, Ms. Shraddha Jadhav & Ms. Priyanka Dadpe i/b Aagam Doshi.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : AUGUST 3, 2023

P. C. :

1. Heard.

2. The challenge in the Petition is to the order dated 1st February, 2023 whereby Trial Court has framed an issue of territorial jurisdiction in an application filed by the Petitioner for return of the plaint under Order 7 Rule 10 of CPC.

3. The records indicate that on 13th Jun, 2023, notice was issued to the Respondent and the Petitioner was permitted to serve by alternate mode of service and file affidavit of service.

4. Office noting shows that the notice was issued to the sole Respondent on 28th June, 2023 but the service report is awaited.

5. Learned senior counsel appearing for the Petitioner submits that the affidavit of service has been filed and has also tendered the E-mails showing the service upon the Respondent. He would further submit that the E-mails were sent not only to the Respondent Company but also to the Advocate representing the Respondent before the Trial Court. As none appears in spite of being duly served by private notice, the Petition was taken up for hearing.

6. For the sake of convenience, the parties are referred to by their status before the Trial Court. Commercial Suit No. 1052 of 2021 was instituted by the Plaintiff seeking money decree in the sum of Rs. 7,11,670/- along with the interest thereon. The case of the Plaintiff was that the Plaintiff is a reputed transport and logistic company engaged in transport, logistic and freight forwarding services and doing business from the address which is mentioned in the cause title. The cause title of the plaint shows two addresses one at Masjid Bundar East, Mumbai being the registered address and the corporate office at Bandra Kurla Complex, Bandra, Mumbai.

7. The case of the Plaintiff is that, in the year 2016 the Defendant approached the Plaintiff and asked for quotation for delivering from Gaziabad to Germany in respect of twenty containers. It is stated that e-mails were exchanged between the parties and after receipt of final quotation, the Plaintiff cleared all issues vide its e-mail dated 17th May, 2016. In paragraph No. 6 of the plaint, it is pleaded that the meeting between the Plaintiff and the Defendant was held on 18th May, 2016 at factory office of the Defendant. It is pleaded that after approval of the rate quotation by the Defendant, Plaintiff provided satisfactory transportation and other services to the Defendant and the consignment was delivered to the consignee. The case of the Plaintiff is that, the Plaintiff raised numerous invoices upon the Defendant and payments were released from time to time except in respect of two invoices. As these invoices were not cleared on the ground that there was some damage to the product during the transportation legal notices were exchanged between the parties. Paragraph No. 19 of the plaint which is the jurisdictional clause reads as under :

> "19 The Plaintiff submits that, the Plaintiff registered office at Masjid, Mumbai within the jurisdiction of this Hon'ble Court. The Plaintiff states that all the work done under the supervision, instructions and management of registered office at Mumbai. The quotation of freight forwarding and allied services were sent from the plaintiff's office at Mumbai. The invoices raised by the plaintiff specifically shown the jurisdiction of Mumbai jurisdiction and Bills of services were raised from Mumbai. Therefore

> the cause of action for filing the present suit arose within the jurisdiction of this Hon'ble Court and hence this Hon'ble Court, has the necessary jurisdiction to try and entertain the present suit."

8. After filing of the written statement, Notice of Motion was moved seeking return of the plaint by invoking power under Order 7 Rule 10 of the CPC. The affidavit in support of the Notice of Motion asserted that the purchase order was issued from the Defendant's Office at Gaziabad. It was further asserted that the delivery of the consignment was from Gaziabad unit of the Defendant to Germany and that the invoices in questions are raised and stamped by the Plaintiff from its Gurgaon office.

9. This Application was opposed by Plaintiff contending that all the services provided by the Plaintiff have been provided from their Mumbai address and that the invoices filed by them specifically states that the subject matter is subject to Mumbai Jurisdiction. The Trial Court disposed the Application by framing a preliminary issue as regards the territorial jurisdiction, giving rise to the present Petition.

10. Heard Mr. Sawhney learned senior counsel appearing for the Petitioner.

11. Learned senior counsel appearing for the Petitioner has taken this Court through the averments in the plaint and would contend that it is admitted that the negotiations in question were held in the factory office of the Defendant which is at Gaziabad. However, in the reply to the Application, it has been falsely stated that the negotiations were held between the parties at factory of the Plaintiff at Mumbai. He would further contend that there is no factory premises of the Plaintiff at Mumbai and it is only the registered office and the corporate office which is shown to be situated in Mumbai. He would further contend that the e-mails by which the negotiations were concluded as regards the purchase orders originated from the regional center of the Plaintiff at Gurgaon. He has also pointed out that the tax invoices raised by the Plaintiff, which are annexed at page 43 and 44 of the Petition, have been raised from the Gurgaon office of the Plaintiff. He would submit that the Plaintiff had deliberately annexed the unstamped tax invoices and in the written statement the stamped tax invoices of the Plaintiffs have been annexed which indicate that the same has been issued from Gurgaon office. He has also tendered the admission and denial statement on behalf of the Plaintiff which admits the copies of invoices which are marked as Exhibit-D to the written statement. He would contend that these invoices which is stamped with Gurgaon address indicates that these invoices has been raised from Gurgaon. He would submit that taking into consideration the provisions of section 20 of the CPC, the existence of the Plaintiff's office at Mumbai will not give jurisdiction to the Civil Court in Mumbai. He would further submit that no part of cause of action arises in Mumbai and as such, the plaint is required to be returned and there is no necessity of framing a preliminary issue as there is no disputed question of fact arising in the present case.

12. Considered the submissions and perused the papers.

13. The suit in question has been instituted seeking recovery of certain amount from the Defendant under the invoices raised by the Plaintiff. The cause title of the suit shows that the registered office and the corporate office of the Plaintiff at Mumbai. In paragraph No. 5 of the plaint it is pleaded that the quotation was sought for local transport from Gaziabad and that the negotiations were also held in the month of May, 2016 at the factory office of the Defendant. There no dispute that the factory of the Defendant is in Gaziabad. The plaint further pleads that the Plaintiff had provided satisfactory transportation and other services to the Defendant. This necessarily implies that the services were provided for transporting the products from Gaziabad to Germany and there was no service which was provided from Mumbai. In paragraph No. 10 of the plaint it is pleaded that the Plaintiff raised numerous invoices upon the Defendant and two of these invoices were not cleared. If we take a look at the tax invoices which are annexed at page 43 and 44, on the upper left hand corner, which is the letter of head of the Plaintiff, the address given is as under :

> "RHENUS LOGISTICS INDIA PRIVATE LIMITED PLOT NO. 816, UDYOG VIHAR, PHASE V, GURGAON, HARYANA, 12015 INDIA"

14. The provisions of section 20 of the CPC gives the jurisdiction of the Civil Court where the defendants or each of the defendants where there are more than one at the time of commencement of the suit resides or carries on business or any of the defendants where there are more than one at the time of commencement of the suit resides or carries on business provided that in such a case either the leave of the Court is given, or the defendant who do not reside, carry on business as aforesaid, acquiesce in such institution. For our purpose clause (c) of section 20 is relevant which state that the Court will have jurisdiction where the cause of action wholly or in part arises. The cause of action is stated to be a bundle of fact which are relevant for the purpose of deciding the lis in question. In response to the application seeking return of the plaint, the contention of the Plaintiff is that all services have been provided by the Plaintiff from their Mumbai office and that the invoices filed by them states specifically that the subject matter is subject to Mumbai jurisdiction. The invoices as indicated above clearly shows that the same has emanated from Gurgaon and not from Mumbai.

15. In the terms of payment mentioned in the tax invoices it has been stated "subject to Mumbai Jurisdiction". The tax invoice in my view cannot be construed to be a contract by which the parties had agreed to confer the exclusive jurisdiction upon the Mumbai Courts. There is no document produced on record to show that there was acceptance of the terms of payment and the conferment of jurisdiction upon the Mumbai Courts. The tax invoice appears to be a unilateral document which has been issued by the Plaintiff and as such, the Plaintiff by this unilateral document cannot confer the jurisdiction on Mumbai Courts. This apart from the fact that even the parties cannot by consent confer jurisdiction upon a Court which otherwise would not have jurisdiction for the reason that no part of cause of action arises within the territorial jurisdiction of the Court. If the averments in the plaint are read along with the documents which are annexed thereto, it can be said that no part of cause of action arises in Mumbai.

16. The negotiations were held at Gaziabad in the factory of the Defendant, the goods were transported from Gaziabad to Germany and invoices were raised from Gurgaon. There is nothing on record to demonstrate that any part of the cause of action leading to the recovery of the amount emanated within the territorial jurisdiction of Mumbai. As the documents produced on record amply demonstrate the absence of cause of action, in my view, there is no necessity of framing an issue of territorial jurisdiction. It does not appear that there is any disputed question particularly when the jurisdictional clause states that the invoices raised by the Plaintiff shows the jurisdiction of Mumbai.

17. As indicated above, there is nothing on record to demonstrate that the terms conferring the jurisdiction on Mumbai Court was accepted by the parties. The admission of the invoices by the Plaintiff also indicate that the invoices which are annexed to the written statement are accepted by the Plaintiff, which shows the rubber stamp of Gurgaon, and as such, the invoices had also originated from Gurgaon.

18. In light of the discussion above, the impugned order framing issue of jurisdiction is quashed and set aside. As a consequence the Notice of Motion seeking return of the plaint under Order 7 Rule 10 stands allowed.

19. The Trial Court is directed to take consequential steps for issuing necessary direction for return of the plaint. Writ Petition stands allowed.

(SHARMILA U. DESHMUKH, J.)