



A.No.3118 of 2021
in C.S.No.158 of 2021

S.SOUNTHAR, J.

The instant application has been filed by the applicant/2nd defendant seeking revocation of the leave granted to the 1st respondent/plaintiff to institute the suit before this Court by order dated 15.03.2021 made in A.No.1045 of 2021.

2. The 1st respondent/plaintiff has laid the present suit seeking a direction to the applicant and the 2nd respondent herein to pay the plaintiff jointly and severally a sum of Rs.1,34,78,814/- together with interest. The 1st respondent also sought for a compensation of Rs.25,00,000/-. The suit was laid by the 1st respondent mainly on the ground that 1st respondent/plaintiff imported certain goods in 145 containers. Due to some reason attributable to the applicant and the 2nd respondent, there was a delay in clearing the cargo in 145 containers within the 14 days detention free period and consequently, the 1st respondent was made to pay detention charges of Rs.1,34,78,813/-. The applicant herein raised 9 invoices dated 29.05.2020 on the 1st respondent for the above said detention charges. It was further claimed by the 1st respondent in the plaint that they made payments under these 9 invoices on the representation that the applicant and the 2nd respondent would refund the said amount to the 1st respondent. In spite of request made by the 1st respondent to refund the amount as promised, they failed to refund the amount and hence, they were constrained to file the present suit. After entering



appearance, the applicant/2nd defendant has come up with this instant application seeking revocation of the leave on the ground that the relationship between the 1st respondent and the applicant was governed by 14 invoices dated 13.05.2020 and 9 invoices dated 29.05.2020 raised by the applicant/2nd defendant on the 1st respondent/plaintiff. The said invoices contain an express clause confining jurisdiction to the Courts at Mumbai and consequently, the jurisdiction of all other Courts over the disputes arising under the invoices got excluded. Hence, it is the main contention of the 1st respondent that this Court has no jurisdiction to entertain the suit in view of the exclusion clause contained in invoice raised by the applicant. It was further averred that the applicant has got registered office at Mumbai and all payments made by the 1st respondent were paid to the bank account of the applicant at Mumbai. Therefore, the applicant sought for revocation of the leave.

3. The learned counsel appearing for the applicant mainly contended that the payments made by the 1st respondent/plaintiff was paid into the bank account of the plaintiff maintained at Mumbai and hence, the Courts at Mumbai as well as Chennai have got jurisdiction to entertain the suit. However, by virtue of exclusion clause found in the invoices under which payment was made, the parties to the suit agreed to confine the jurisdiction to the Courts at Mumbai and consequently, this Court has no jurisdiction to entertain the suit. The learned counsel in this regard



relied on the following judgments:-

- (i) ***Excel Dealcomm Pvt. Ltd. vs. ARCIL and others*** reported in **(2015) 8 SCC 219**.
- (ii) ***CTS Industries Ltd. vs. Gammon India Ltd., and another*** reported in **2019 SCC Online Cal 2023**.
- (iii) ***Zee Entertainment Enterprises Ltd. vs. Nirmal Kumar Maheshwari*** reported in **MANU/2040/2020**.
- (iv) ***Caravel Shipping Services Pvt., Ltd., vs. Premier Sea Foods Exim Pvt. Ltd.,*** reported in **(2019) 11 SCC 461**.
- (v) Unreported judgment of this Court in ***Arb.O.P.(Com.Div).24 of 2023, dated 30.03.2023***.

4. Per contra, the learned counsel for the 1st respondent submitted that all the payments were made by the 1st respondent through RTGS transaction from Chennai and merely because amount was paid into the account maintained at Mumbai, it cannot be said part of the cause of action for the suit arose at Mumbai. The learned counsel submitted that containers were containing the cargo of the 1st respondent were delivered to 1st respondent at Chennai. The invoices were raised by the applicant from his office at Chennai and amount was paid by the 1st respondent through RTGS transaction from Chennai. In these circumstances, the



whole of the cause of action for the suit arose at Chennai and no part of the cause of action arose within the territorial limits of the Courts at Mumbai. When Courts at Mumbai has no jurisdiction to entertain the suit, the parties by their consent cannot confer jurisdiction on the Court which does not possess one. In this regard, the learned counsel for the 1st respondent relied on the following judgments:-

- (i) ***Hindustan Corporation (Hyd) Private Ltd vs. SSB Industries Ltd*** reported in ***2013 (1) CTC 279***.
- (ii) ***Road Transport Corporation and others vs. Kiroloskar Brothers Ltd and others*** reported in ***1980 SCC Online Bom 92***.
- (iii) ***United India Insurance Co Ltd vs. Associated Transport Corporation Pvt Ltd and others*** reported in ***1987 SCC Online Ker 13***.
- (iv) ***Sri Durga Lodge Pvt Ltd vs. M/s.Federal Lloyd Corporation Ltd***, reported in ***2011-4-LW-149***.

5. It is not in dispute that the suit was laid by the 1st respondent/plaintiff seeking recovery of detention charges paid by it based on the invoices raised by the applicant. The 1st respondent claimed that detention charges were paid based on the representation made by the applicant and 2nd respondent that the said amount would be refunded later.

6. A reading of plaint averment would suggest that the imported cargo delivered to 1st respondent at Chennai, invoices for detention charges was raised by



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the applicant through its office situated within the territorial limits of Chennai. It is averred by the 1st respondent in the plaint that the invoices were raised by the applicant from their office at Chennai, the same can be gathered from a perusal of the invoices raised by the applicant also. In the invoice raised by the applicant, the Chennai address of the applicant is clearly mentioned. It also bears the Tamil Nadu GST Number. There is no doubt that the invoice of the applicant was raised only at Chennai. It was further averred by the 1st respondent that the payment was made to the applicant through its Banker, HDFC Bank Ltd., situated at Cenotaph Road, Chennai. Therefore, the payment was also made by 1st respondent from Chennai.

7. The learned counsel for the applicant by taking this Court to the name of applicant's banker mentioned in the invoice, submitted that the payments were made to the current account of the applicant maintained with Hongkong and Shanghai Banking Corporation Limited at Mumbai. Since the payment was received by bank at Mumbai through RTGS Transaction, part of cause of action arose at Mumbai.

8. The learned counsel further by taking this Court to exclusion clause contained in invoice to the effect that in case of any dispute, the same shall be subjected to the jurisdiction of Mumbai Courts only, submitted that parties by their agreement excluded the jurisdiction of the other Courts from adjudicating the



dispute arising under the invoice.

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9. A perusal of the invoices raised by the applicant would suggest that the same was not signed by the 1st respondent. However, there is no doubt the 1st respondent paid the detention charges as per the invoice raised by the applicant. Therefore, the only question which has to be decided is whether the exclusion clause with regard to the jurisdiction of the Courts found in the invoice raised by the applicant would bind the 1st respondent when it is not signed by him. It is the contention of the applicant that when 1st respondent paid the detention charges acting on invoices, it is not open to him to say that the exclusion clause contained therein would not bind him. When invoice is not signed by the 1st respondent, we cannot readily presume that he had knowledge of the invoice and he agreed for confining the jurisdiction to the Courts at Mumbai. There is nothing on record to suggest that the exclusion clause in the invoice was brought to the notice of the 1st respondent. When a clause restricting the jurisdiction to only one Court is sought to be enforced, there must be something on record to show that the attention of the 1st respondent was drawn to the said exclusion clause. In this regard, it would be useful to refer to the judgment of the Division Bench of the Bombay High Court in ***Road Transport Corporation and others vs. Kiroloskar Brothers Ltd and others*** reported in ***1980 SCC Online Bom 92***. The relevant observation of the Division



Bench of Bombay High Court found therein reads as follows:-

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“46. The most important question that has to be answered is: Did the defendant do what was sufficient to draw the plaintiff's attention to the relevant condition before the contract was concluded? In the facts of the present case the last condition was to restrict the jurisdiction to a particular court out of the two courts having concurrent jurisdiction. In order that terms or conditions on the overleaf of a consignment note passed by common carrier be binding on the consignor or consignee and in order that it should operate as special contract between the consignor or consignee on the one hand and the carrier on the other hand, the consignment note must be signed by the consignor and consignee and constitute a contractual document or at least must be identified as an integral part of the contractual document. In cases of unsigned consignment notes containing clauses limiting the liability of the carriers as well as excluding the jurisdiction of certain courts and restricting it to specific court only, such clauses or terms or conditions must be brought to the notice of the consignor of the goods. If such terms and conditions are not brought to the notice specifically and adequately then the consignor or consignee would not be bound by these terms and it would be open for them to file a suit in any competent court having jurisdiction other than one mentioned in the clauses excluding jurisdiction of other courts. When more than one court have concurrent jurisdiction to try a suit in order to exclude jurisdiction of one court such condition required explicit warning. It must be brought to the notice before hand and preferably printed in red ink or pointed by a hand in the red ink on the face of the document as observed by Lord Denning M.R. In the present case no sufficient and adequate notice was given to the consignor or



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consignee by the carrier of the term excluding the jurisdiction of the Sangli Court and restricting it to the Calcutta Court alone and therefore it was not binding on the plaintiffs i. e. the consignees in this case. It was therefore, open to the plaintiffs to have its claim instituted and settled in any one out of the two or more competent courts having territorial jurisdiction in respect of the subject matter in dispute.”

10. In ***United India Insurance Co Ltd vs. Associated Transport Corporation Pvt Ltd and others*** reported in ***1987 SCC Online Ker 13***, a Division Bench of Kerala High Court had taken a similar view:-

“5. We are in respectful agreement with the view expressed in the above decision. Ext. B1 series in this case also contain printed words "subject to Bombay jurisdiction alone"; Apart from the existence of these printed words, respondent has no case that there was a meeting of minds between the consignor and the carrier and there was a specific agreement in that behalf. The consignment was delivered to the carrier; the carrier took custody of the goods and thereafter issued the receipt or consignment note which contained the printed words. The note was signed only by an employee of the respondent. No doubt, they were handed over to the consignor. But there was nothing to indicate that there was an agreement between the parties to confer exclusive jurisdiction to Bombay Court. These printed words by themselves and without anything more would not be sufficient to constitute an agreement to oust the jurisdiction of all Courts other than the Court specified. ...”

11. In ***Sri Durga Lodge Pvt Ltd vs. M/s.Federal Lloyd Corporation Ltd,***



reported in **2011-4-LW-149**, this Court had an occasion to consider the impact of unilateral declaration confining jurisdiction to one of Court when invoice containing such a declaration was not signed by the other person. The relevant observation of this Court in this regard is as follows:-

“41. After referring various decisions including the decision of the Hon'ble Supreme Court in Hakam Singh v. Gammon (India) Ltd. reported in 1971 SC 740 it is held that;

"When there, is choice of forum, it is certainly open to the parties to agree on an exclusive forum for settlement of disputes. But such an agreement must be clearly spelled out either by express words or by necessary implication. Ouster of jurisdiction of courts cannot be lightly assumed or presumed. If there is such a concluded agreement it will certainly operate as estoppel against the parties to, the contract. If it is merely a unilateral affirmation or statement made by one of the parties, as long, as it is not shown that the statement has been accepted by the other party as a term or condition of the agreement, it cannot be held that there is an agreement to confer exclusive jurisdiction on any court. Particular caution is necessary in regard to such a clause contained in a printed form, as in this case. Where the printed form is signed by both the parties or where a form printed by one party is signed by the other party and forwarded by the latter to the former and the printed form contains clear words conferring exclusive jurisdiction on a Court at any particular place or ousting jurisdiction of the Court at any other place, it may not be difficult to hold that the parties have agreed on such a term. Even in such cases, courts must remember that people often sign order forms containing a good deal of printed matter without caring to read



what is printed. It cannot always- be said that everything which is printed may be deemed to form part of the contract."

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42. On coming to the present case on hand as already observed, the printed inscription in Clause 3 in Ex.A9 (Invoice) seems to be unilateral one and has not been agreed or signed by the defendants and therefore it cannot be heard to say that there is an agreement to confer exclusive jurisdiction to Gujarat. ...”

12. The analysis of case laws mentioned above would make it clear that even if there is a clause in the invoice raised by a party confining jurisdiction to one particular court, when the same is not signed by the other party, it cannot be presumed that other party agreed for such exclusion clause unless there is a positive evidence to suggest such an exclusive clause was really brought to the notice of the non-signing party. In the case on hand, the invoices raised by the applicant was not at all signed by the respondent/plaintiff.

13. Ofcourse, in response to the invoice, he paid the amount therein to the applicant. However, when the invoice is not signed by the 1st respondent, we cannot presume it agreed for confinement of jurisdiction to Court at a faraway place namely Mumbai. As mentioned above, as seen from the invoice, it was raised by the applicant from Chennai office and 1st respondent paid the amount through



its banker at Chennai. Substantial portion of the cause of action for the suit arose within the jurisdiction of the territorial limits of this Court.

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14. When there is nothing to suggest notice of the 1st respondent was drawn to the exclusion clause found in the invoice, we cannot presume it agreed for exclusion of jurisdiction of such a Court. Hence, I hold there is no consensus *ad idem* between the parties with regard to exclusion of jurisdiction of Courts at Chennai.

15. In view of the discussions made earlier, the application for revocation of leave to sue granted by this Court deserves to be dismissed.

16. Accordingly, the A.No.3118 of 2021 is dismissed. No costs.

20.06.2023

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