



2024 : DHC : 4354



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: February 19, 2024

Judgment pronounced on: May 28, 2024

+ CM(M) 1904/2024, CM APPL. 9840/2024-stay

M/S INTERNATIONAL PRINT O PAC LIMITED Petitioner

Through: Mr. Ishaan Karki, Adv.

versus

AVG LOGISTICS LIMITED

..... Respondent

Through: Mr. Aditya Jain, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. Feeling aggrieved and dissatisfied with the order dated 23.11.2023 passed in CS(COMM) 101/2021 by the learned District Judge, Commercial Court-05, Saket Courts, Delhi, the petitioner has chosen to invoke the supervisory jurisdiction of this Court by filing the present petition under Article 227 of the Constitution of India.

2. In order to deal with the present petition, it is important to enumerate the facts to gain a holistic understanding of the issue at hand. The petitioner herein is a company registered under the Companies Act, 1956, which offers publication for printing books, magazines, calendars, annual reports and others. The respondent herein is also a company registered under the Companies Act and is engaged in the business of warehousing, logistics,



transport and shipment. The petitioner herein is the defendant no.1 and the respondent herein is the plaintiff before the learned Trial Court.

3. In June, 2018, the petitioner had hired the respondent to transport its goods to its various clients and the rate for the same was agreed on either through a phone call or an email. The respondent would send its trucks to the factory of the petitioner for loading of the goods, where a consignment note would be prepared and thereafter the goods would be delivered to the customers of the petitioner after an acknowledgment note was taken from them. Once the process was complete, an invoice would be given to the petitioner for the payment.

4. During the course of business, the petitioner defaulted in making payments, amounting to Rs.20, 64,195 which was payable to the respondent. The respondent issued a legal notice dated 25.02.2020 regarding the same. The respondent then filed the present civil suit before the learned trial court on 08.02.2021 whereby the respondent claimed an amount of Rs.25,30,044/- with pendente lite and future interest at the rate of 24% per annum.

5. Refuting the averments of the respondent, the petitioner in its written statement stated that it does not owe any amount to the respondent. On the very same day, the petitioner also filed an application under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC") on the premise that the cause of action had arisen in Noida, Uttar Pradesh.



6. Each of the consignment notes show that the petitioner's goods were loaded at its corporate office bearing the address C-4 to C-11, Hosiery Complex, Noida Phase-II Extension, Uttar Pradesh, 201305. Each of the consignment notes as well as the invoices has been billed to the abovementioned office of the petitioner. Further, all communications as well as dealing have been carried out at the said Noida office of the petitioner.

7. Arguments were further heard on the application under Order VII Rule 10 read with Section 151 of the CPC on 23.11.2023 and learned Trial Court vide the impugned order dismissed the application while stating that in light of the case titled as "*Sonal Kanodia vs Shri Ram Gupta & Anr*" FAO(COMM) 43/2023 dated 20.02.2023, the court has the jurisdiction to entertain and proceed with the present matter. Further a cost of Rs.5000/- was imposed on the petitioner, payable to the respondent herein.

Submissions of the Petitioner:

8. The learned counsel for the petitioner submitted that the impugned order is erroneous in so far as it fails to recognize that the documents filed with the present suit establish the territorial jurisdiction of the Gautam Buddha Nagar Courts and that the statements made in the plaint justifying the territorial jurisdiction of the learned Trial Court are contrary to the documents on record. The cause of action emanating from the Noida office should be coupled with the presence of the corporate office of the petitioner in Noida, which is not a mere factory, as evident from legal notice dated 25.02.2020 sent by the respondent, and therefore the territorial jurisdiction lies with the Gautam Buddha Nagar Courts.



9. The learned counsel places reliance on the judgement of this Court in **“Huntsman International (India) Pvt. Ltd. V Kleur Specialty Chemicals Pvt. Ltd.”** 2018 SCC OnLine Del 11810.

10. Learned counsel submitted that it is mandatory for the Court to consider the documents along with plaint while adjudicating upon an application under Order VII Rule 10 of the CPC. Reliance is placed upon the judgement of the Hon’ble Supreme Court In **M/s RSPL Limited vs Mukesh Sharma & Anr** 2016 SCC OnLine 4285 and **“Dahiben vs Arvindbhai Kalyanji Bhanusali (Gajra) dead &Ors”** (2020) 7 SCC 366.

11. Learned counsel further submitted that the Hon’ble Supreme Court, while construing Section 20(a) of the CPC along with its explanation, has expounded that if the cause of action arises at the place where the subordinate office of the corporate-defendant is situated, the courts of that area shall possess territorial jurisdiction, superseding the courts within the territorial jurisdiction of where the principal office or registered office is located. Hence, the mere existence of the registered office does not *ipso facto* confer territorial jurisdiction on a court. Reliance is placed on **“Patel Roadways Limited v. Prasad Trading Company”** (1991) 4 SCC 270].

12. It is submitted that in contracts for transportation of goods, the place of consignment is the place of performance of the contract and the place where the cause of action emanates. Reliance is placed in the case of **“DHL Express Pvt Ltd. Vs Enchante Jewellery Pvt. Ltd”** 2019 SCC Online Del 7146.



13. The learned counsel submitted that reliance on the judgment of **Sonal Kanodia (supra)** has wrongly been placed by the learned Trial Court as the pleadings in the present plaint are contrary to the documents in support of the plaint itself, which has not been considered by learned Trial Court. Thus, the findings of learned Trial Court are misconceived and liable to be set aside.

Submissions of the Respondent:

14. At the outset, the learned counsel for the respondent submitted that the present petition is nothing but a mere delay tactic since this petition was filed on 14.02.2024, when the next date of hearing before the learned Trial Court was 21.02.2024 for arguments on the application for summary judgement filed by the respondent.

15. The learned counsel submitted that specific averments within the plaint suggest that the cause of action establishes territorial jurisdiction with the Courts in Delhi. Firstly, an oral agreement allegedly occurred between the parties in Delhi and defendants no. 2 to 4, who are residents of Delhi approached the respondent's Delhi office to engage its services. Secondly, the plaint records particular averments against the directors of the Petitioner company regarding having joint and several liability, to pay the outstanding amount. Lastly, the plaint asserts the Petitioner's status as a family-run company, with defendants no. 2 to 4 holding key positions and exercising substantial control, a claim acknowledged by the Petitioner in response to the corresponding paragraph of the plaint. These assertions collectively support that the Courts in Delhi have territorial jurisdiction over the matter.



16. The learned counsel further submitted that the petitioner and the Respondent were engaged in an agreement within Delhi, wherein the respondent committed to transporting goods for the Petitioner, who would reciprocate with payments. Each Consignment Note, utilized for the transportation of goods, expressly stipulated that any disputes concerning the transportation or services shall be resolved within the territorial jurisdiction of Delhi. This provision, articulated as "Subject to Delhi Jurisdiction only," is reiterated in all the Consignment Notes present. These Consignment Notes, inclusive of their jurisdictional clauses, have been acknowledged by the Petitioner in the admission-denial of documents. Consequently, invoices corresponding to these consignment notes were generated, explicitly mentioning the particulars of the consignment notes.

17. Learned counsel in support of above contention placed reliance on **"A.B.C Laminart Pvt. Ltd. & Anr vs A.P. Agencies, Salem"** 1989 (2) SCC 163 and **"M/s Auto Movers vs Luminous Power Technologies"** CM(M) 604/2020.

Reasons and Conclusions:

18. The issue which falls for consideration is whether the Courts at Delhi had territorial jurisdiction.

19. The position of law is well settled that while considering the provision of Order VII Rule 10 of the CPC, regarding the return of plaint, it is only the plaint and the documents filed along with it that are to be seen. The defence raised in the written statement is not to be looked at all.



20. The prime submission of petitioner is that the learned Trial Court has neglected and not appreciated that respondent is a transporter, who would transport in the trucks the goods of the petitioner from the corporate office of petitioner situated in Noida Phase-II Extension, U.P. to the customers of petitioner at various places. The consignment notes and invoices were prepared at the corporate office, thus, the place of commencement of consignment being the corporate office at the Noida being in U.P., the Delhi Court will not have territorial jurisdiction.

21. To the contrary, submissions of respondent are that the business deal between the parties to the lis was orally finalised at Delhi office of respondent and the registered office of the respondent is situated in Delhi. Also, the 'consignment note' specifically provides by virtue of the ouster clause states that only the courts at Delhi will have jurisdiction. Hence, it is only the Delhi Courts that would have jurisdiction to adjudicate this matter.

22. It is not disputed that registered office of petitioner is in Delhi. According to petitioner, it has corporate office in Noida, which is not a 'factory' where the entire cause of action arose. To the contrary, the plea of respondent is that the goods were loaded from the factory of petitioner in Noida, which is not a corporate office. Thus, explanation to Section 20 CPC shall not apply in this case.

23. A reading of paragraph 20 of the plaint elucidates that the transport orders were placed by the petitioner from their office, which is within the jurisdiction of Delhi Courts. The emails were exchanged between the parties from the office of the petitioner, which is within the jurisdiction of Delhi



Courts. The accounts acknowledging its part liability sent by the petitioner through emails dated 08.01.2020 were sent by the petitioner from its office. The respondent has pleaded that evidently, a part of cause of action has also arisen in Delhi.

24. Moreso, the petitioner has relied upon Explanation to Section 20 of CPC to bring home the argument that may be registered office of the respondent is in Delhi but its corporate office is situated in Noida from where the consignments are loaded to be delivered to the customers of the petitioner company. The Courts at Gautam Budh Nagar, Noida shall have authority to adjudicate upon the disputes of the parties and shall have precedence over Courts in Delhi where the registered office is situated.

25. The respondent claims that it is the factory of the petitioner in Gautam Budh Nagar from where the goods were loaded in the trucks for distribution to the clients of the petitioner. The record reveals that the factory and the office of the petitioner are having the same address, as stated by the petitioner.

26. Pertinently, the consignment notes so heavily relied upon by the respondent are to be read as a whole and cannot be bifurcated to be considered in part that is only to ascertain the address of the petitioner mentioned on the same. Reading of the 'consignment notes' clearly provides that by virtue the ouster clause, it ousts the jurisdiction of other Courts and refers only to jurisdiction of Delhi Courts.



27. The Hon'ble Supreme Court has discussed the issue at hand in the case of **“New Moga Transport Co. Vs United India Insurance Co. Ltd.”** 2004 4 SCC 677. The relevant extracts are as follows;

“16. Had it only been indicated in the consignment note that the court at head office city had jurisdiction then in the absence of a precise indication of the place what would have been the consequence, we are not presently concerned, more particularly, when the consignment note itself had indicated that the court at Udaipur alone had jurisdiction.

17. As was observed by this Court in Shriram case [(2002) 9 SCC 613 : AIR 2002 SC 2402] referring to Hakam Singh case [(1971) 1 SCC 286 : AIR 1971 SC 740] an agreement affecting jurisdiction of courts is not invalid. It is open to the parties to choose any one of the two competent courts to decide the disputes. Once the parties bind themselves as such it is not open for them to choose a different jurisdiction.

18. Above being the factual and legal position, the inevitable conclusion is that the High Court was not justified in upsetting the order of the first appellate court. It is not a case where the chosen court did not have jurisdiction. The only question, therefore, related to exclusion of the other courts.

19. The intention of the parties can be culled out from use of the expressions “only”, “alone”, “exclusive” and the like with reference to a particular court. But the intention to exclude a court's jurisdiction should be reflected in clear, unambiguous, explicit and specific terms. In such case only the accepted notions of contract would bind the parties. The first appellate court was justified in holding that it is only the court at Udaipur which had jurisdiction to try the suit. The High Court did not keep the relevant aspects in view while reversing the judgment of the trial court. Accordingly, we set aside the judgment of the High Court and restore that of the first appellate court. The court at Barnala shall return the plaint to Plaintiff 1 (Respondent 1) with appropriate endorsement under its seal which shall present it within a period of four weeks from the date of such endorsement of return before the proper court at Udaipur. If it is so done, the question of limitation shall not be raised and the suit shall be decided on its own merits in accordance with law. The appeal is allowed. No costs.



28. It is relevant to mention the finding in the case titled **A.B.C. Laminart Pvt. Ltd. & Anr. (Supra)**, as the judgment has its distinct facts has been decided on its facts.

21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like “alone”, “only”, “exclusive” and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim “*expressio unius est exclusio alterius*” — expression of one is the exclusion of another — may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed.

29. On the consignment note, it is clearly indicated “subject to Delhi jurisdiction only”, hence the ouster clause is specific and unambiguous. Merely because a part of cause of action has arisen in Noida, U.P., where the corporate office of petitioner is located would not oust the jurisdiction of Delhi Courts in view of specific ouster clause. Therefore, no reason appears to set aside the impugned order, observing that, Delhi Courts have territorial jurisdiction to try the suit.

30. Consequently, the petition along with all pending applications stands dismissed.

SHALINDER KAUR, J.

May 28, 2024/ss