



\$~25

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

%

Date of Decision: 11.03.2024

+ **RFA(COMM) 86/2024**

TRISQUARE SWITCHGEARS PVT LTD APPELLANT

Through: Mr Surinder Goel, Adv.

versus

SH SANYAM KAUSHIK

..... RESPONDENT

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM Appl.14586-87/2024

1. Allowed, subject to just exceptions.

FA(COMM) 86/2024 & CM Appl. 14585/2024

2. At the outset, we may note that Mr Surinder Goel, learned counsel, who appears on behalf of the appellant/defendant, has indicated to us that the record filed by him with the appeal would suffice for proceeding further in the appeal. Accordingly, the appeal is taken up for hearing and final disposal at this stage itself.

3. This appeal is directed against the judgment dated 12.01.2024 passed by the learned District Judge, Commercial Court-5, Central District, Tis Hazari, Delhi.

4. Learned District Judge has decreed the suit for Rs.3,48,420/-, along with interest at the rate of 12% per annum, commencing from the date when the last payment was made i.e., 22.04.2022 till the date of realization.



- 4.1 Besides this, costs have also been awarded to the respondent/plaintiff.
5. The record shows that the respondent/plaintiff had filed a suit for recovery with interest, as a result of the appellant/defendant's failure to pay the entire consideration against the goods supplied.
- 5.1 The record also shows that the goods supplied by the respondent/plaintiff to the appellant/defendant comprised nuts and bolts.
- 5.2 In support of his case, the respondent/plaintiff had placed the relevant material on record.
- 5.3 The learned District Judge, after appraising the evidence placed on record, concluded that the books of account produced by the respondent/plaintiff were reliable.
- 5.4 Significant findings returned by the learned District Judge are extracted hereafter:

“...Even DW-1 admitted in cross-examination that the ledger balance Ex. PW-1/1 was correct and the entries made in the column of debit, credit and balance were also correct. He further admitted that defendant had received legal notice Ex. PW1/4 and had sent reply vide email Ex. PW-1/3. So, case of the defendant is that the goods, whose description mentioned in ledger account, were supplied to it. The defence is that the goods were of inferior quality for which the plaintiff had undertaken to replace but later, he refused. But to prove that defence, the defendant did not place on record any document.

DW-1 deposed in cross-examination that the end users had sent them complaint on email about sub-standard quality of the goods. He admitted in so many words that copy of those emails have not been annexed with the case. Next deposition is that defendant had received complaints from the end users in October 2022 and thereafter, the plaintiff was told about substandard quality of goods. He again admitted in clear terms that the defendant did not annex any document with the case about sending of goods to the end users.

Had the goods been of poor quality, the defendant would have communicated the same to the plaintiff by email or by sending any letter etc. But none of such document is on file...”

[Emphasis is ours]



6. Thus, as would be evident, the appellant/defendant did not dispute the fact that monies were payable against supplies made.

6.1 In fact, the appellant/defendant i.e., DW-1 in his cross-examination admitted that the entries made in the ledger balance Ex. PW-1/1 were correct. The only defence on merits that the appellant/defendant seems to have raised concerned the quality of the goods. It was asserted that the goods supplied were of poor quality.

6.2 The learned District Judge has returned a finding of fact that no such communication was served on the respondent/plaintiff by the appellant/defendant with regard to the quality of the goods.

7. Based on appreciation of evidence placed before him, the learned District Judge concluded that the claim made by the respondent/plaintiff had to be sustained.

8. Against this backdrop, Mr Goel has advanced the following three (03) submissions in support of his plea that the impugned judgment deserves to be set aside.

(i) First, the trial court had no territorial jurisdiction in the matter. The goods were supplied by the respondent/plaintiff from Sonipat, Haryana and were delivered to the appellant/defendant at a designated place in Kundli, Sonipat. Although the appellant/defendant has its registered office in Delhi i.e., 4574/15 Padam Chand Marg, Ansari Road, Daryaganj, New Delhi-110002, the condition stipulated in the invoices stated that only courts in Haryana would have jurisdiction in the matter.

(ii) Second, the goods were of poor quality and negotiations were on between the disputants prior to the institution of the suit action to reach resolution *qua* the said issue.



(iii) Third, the interest awarded to the respondent/appellant was unreasonable.

9. Having heard Mr Goel, we are unable to persuade ourselves that any interference is called for with the impugned judgment for the reasons given hereafter.

9.1 As regards Mr Goel's contention that the court did not have territorial jurisdiction in the matter, we would like to advert to the following undisputed facts:

(i) Concededly, the appellant's/defendant's registered office is located at 4574/15 Padam Chand Marg, Ansari Road, Daryaganj, New Delhi-110002 [hereafter referred to as "Daryaganj Office"].

(ii) The invoices raised by the respondent/plaintiff set forth the bank details to facilitate remittance of monies by the appellant/defendant.

(iii) Meetings did take place at the Daryaganj Office before the orders were finalised. In this regard, the testimony of DW-1 is vital, which has been noticed by the learned District Judge in paragraphs 8 and 9 of the impugned judgment. For convenience, the relevant paragraphs are set forth hereafter:

"8. It is mentioned in all invoices Ex. PW-l/7 to Ex. pWl/ 15 that the premises of the plaintiff is situated at Ansal Sushant City, Kundli, Sonipat, Haryana. It is further mentioned that goods were shipped to the defendant to its premises located in Piau Manihari, Narela Road, Kundli, Distt. Sonipat, Haryana. These invoices prove and PW-l also admitted in cross-examination that goods were dispatched from Kundli to the premises of the defendant located in the same area. So, part cause of action has arisen in Kundli, Sonapat.

But in invoices, the detail of bank of plaintiff is mentioned as under:-

Bank of India,
Jhandewalan Extension Branch,
New Delhi- 110 005.



Mention of bank account detail of plaintiff on invoices suggests that there was an agreement between plaintiff and defendant that payment was to be made to Bank of India branch located in Jhandewalan Extension, New Delhi. So, the part cause of action arose in that area also which is in territorial jurisdiction of this court. In, Satyapal Vs Slick Auto Accessories Pvt. Ltd. & ors. (supra), Hon'ble Delhi High Court held that if no place of payment was specified, the principle of debtor must seek creditor shall apply and the recovery suit would be maintainable at the place where the creditor resides or works for gain because part cause of action can be said to have arisen at that place also. In the present case, the bank detail of the plaintiff is mentioned on and every invoice suggesting that the parties had agreed that the payment of the goods would be made by the defendant in that account. Hence, it can be said with certainty that part cause of action has arisen in the area of this court and due to that reason, this court has territorial jurisdiction to decide the case.

9. DW-1 admitted in cross-examination that the defendant does business from its office located at premises bearing no.4574/15, Padam Chand Marg, Ansari Road, Darya Ganj, Delhi. He deposed that the orders are finalized and meetings are held with the parties and customers in that office. Next deposition is that the head office of the defendant is located in Daryaganj area. These answers prove that head office of the defendant is situated in Daryaganj which is in the jurisdiction of this court. Part cause of action had arisen in the area of Jhandewalan where the Bank of India Branch of the plaintiff is situated. So, even with the help of Ultra Home Construction Pvt. Ltd. Vs Puroshottam Kumar Chaubey & ors. (supra) (relied by the defendant itself), this court has jurisdiction to decide the case."

[Emphasis is ours]

10. Mr Goel, however, argues that the fact that the appellant's/defendant's registered office was within the territorial jurisdiction could not have conferred jurisdiction on the trial court. It is, therefore, Mr Goel's contention that since the goods were transported from the respondent's/plaintiff's premises in Kundli to the appellant's/defendant's premises, which is also located in Kundli, only the courts in Haryana would have jurisdiction in the matter.

11. In our view, such an argument is misconceived. As noticed



hereinabove, if, as portrayed by the appellant/defendant, the registered office of the appellant/defendant was in Daryaganj i.e., in Delhi, the trial court certainly had jurisdiction in the matter.

11.1 Furthermore, it is well-settled that if the cause of action arises within the territorial jurisdiction of two courts, parties can with consent exclude one of the courts. However, the parties by consent cannot confer jurisdiction on one court which otherwise has no jurisdiction to entertain, try and decide the case [See *Hindustan Metals Jodhpur vs Vishal Goods Transport Co. and Anr.* AIR (2002) Raj 248; *The Special Secretary to Government of Rajasthan & Anr vs Vedakantara Venkataramana Seshaiyer* AIR (1984) AP 5; *State of Gujrat vs Savitri Devi*, (1996) AIR 937].

12. Reliance placed by Mr Goel on the so-called condition contained in the invoices, in our opinion, cannot shore up the appellant's/defendant's stance that the courts in Delhi had no jurisdiction, as the condition is inchoate. The said condition in the invoices served on the appellant/defendant reads as follows:

“*Subject to Haryana jurisdiction only*”

13. The condition stipulated in the invoice, which is construed as an agreement between the disputants by Mr Goel, clearly does not advert to court(s). It does not even use the expression “dispute”. A clause in a contract ousting the jurisdiction of a Court, which, in law, is otherwise empowered to entertain and try a suit, has to be clear, explicit and unambiguous [See *A.B.C. Laminart (P) Ltd. and Another vs A.P. Agencies, Salem* (1989) 2 SCC 163]. The condition relied upon by the appellant/defendant is part of an invoice; whether it could have bound the respondent/plaintiff is a moot issue. Assuming it did (about which we have



doubts), it is vague, to say the least. Therefore, to say that this condition would confine the jurisdiction to the courts in Haryana, in the event of a dispute erupting between the parties is, in our view, a submission that is untenable in law. We have, thus, no hesitation in holding that the trial court in Delhi had jurisdiction in the matter. As noted hereinabove, the invoices did set out particulars of the respondent's/plaintiff's bank to which the sale consideration had to be remitted.

14. Insofar as the merits of the matter are concerned, as noted hereinabove while narrating the facts, there is nothing on record which would establish that a dispute obtained as regards the quality of the goods.

15. We had called upon Mr Goel to demonstrate the error, if any, committed by the trial court in that behalf by referring to the material evidence placed on record by him, in support of his plea.

15.1 Mr Goel has not been able to draw our attention to any evidence on record which would demonstrate that the trial court had either failed to notice or appreciate such evidence concerning the alleged poor quality of the subject goods.

16. This brings us to the third aspect i.e., the interest. The record show that the respondent/plaintiff had sought for (simple) interest at the rate of 18% per annum. This was in line with condition no.2 stipulated in the invoices on which even the appellant/defendant had relied. The trial court, however, pared down the simple interest to 12% per annum (simple).

16.1 According to us, the rate of interest awarded is reasonable and therefore, need not be disturbed.

17. Thus, having regard to the foregoing discussion, we are not inclined to interfere with the judgment of the trial court.



2024:DHC:2490-DB



18. The appeal is, accordingly, closed.
19. Consequently, pending application shall also stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MARCH 11, 2024/pmc

Signature Not Verified

Digitally Signed By: ATUL
JAIN

Signing Date: 01.04.2024
11:23:10

RFA(COMM)No.86/2024

Page 8 of 8