



2024 : DHC : 3152



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

%

Judgment reserved on: 25.01.2024

Judgment pronounced on: 23.04.2024

+ CM(M) 766/2022, CM APPL. 33934/2022--stay

M/S BAJAJ PLASTO INDUSTRIES & ANR. Petitioners
Through: Mr. Basant Agarwal and Mr. Utsav
Jain, Advs.

versus

M/S PENDO PLAST PVT LTD Respondent
Through: Mr. Purvesh Buttan with Mr. Fahed
Imtiaz, Mr. Prateek Narwar, Ms.
Jaspreet Kaur and Ms. Antara
Choudhary, Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The limited question that arises in the present petition filed under Article 227 of the Constitution of India invoking the supervisory jurisdiction of this Court is whether the Commercial Court at Delhi has jurisdiction to try the commercial suit filed by the respondent. The learned District Judge (Commercial Court)-01, West, Tis Hazari Courts, Delhi (hereinafter referred to as "Trial Court") in suit bearing no. CS (COMM) 236/2020 titled as "*M/s Pendo Plast P. Ltd. vs. M/s Bajaj Plasto Industries*" dismissed the application filed by the petitioner no.1 herein under Section 11 of the Commercial Courts Act read with Order VII Rule 10 & 11 and Section 151



of Civil Procedure Code, 1908 (hereinafter referred to as “CPC”), on the ground that the plaint revealed a part of cause of action has arisen in Delhi inter alia, that the petitioner no.1 herein was working for gain in Delhi and passed the impugned order dated 13.04.2022.

2. The facts necessary for the disposal of the petition are that the respondent herein filed a suit for recovery of Rs. 24,28,850/- titled as “*M/s Pendo Plast P. Ltd. vs. M/s Bajaj Plasto Industries*” against the petitioners.

3. The respondent is a company incorporated under the Companies Act, with its registered office at Rajpura Kalan, Rohini, New Delhi 110085 and is engaged in manufacturing of calendared rigid PVC Films. On the other hand, the petitioner no.1 is a firm operated and controlled by petitioner no.2 with their principal office at Ramesh Nagar, New Delhi 110015. Petitioner no.2 is the sole proprietor of petitioner no.1.

4. On 15.03.2016, petitioners approached the respondent for business and thereafter vide its email dated 21.03.2016 wrote to the respondent for manufacturing and supplying of food grade PVC films with a promise to make timely payments against the work undertaken for them and to clear the raised invoices within a period of 60 days from the date of said invoices. Further, on account of late payment, interest at the rate of 24% was also to be charged, which was agreed between the parties.

5. Accordingly, respondent agreed to manufacture and supply the food grade PVC film and the purchase orders were made, invoices were raised on various occasions, the goods were delivered. It is the case of the respondent



that the petitioners received the final manufactured goods after due verification of its specifications along with relevant quality checks and accepted the invoices raised by the respondent.

6. Respondent had also allowed for a 15-days period from the date of its invoice for raising any grievance with respect to the quality, quantity and/or any specification of the food grade PVC film supplied by it to the petitioners. On account of due payments accumulating to the tune of Rs. 70 lakhs (*Approx.*) till 31.03.2017, the respondent changed the terms of the payment scheme and subsequently modified it to be “*Pay on Order*” basis thereby withdrawing the initial credit period of 60 days as provided in the earlier payment scheme. Given the on-going business relationship, petitioners are stated to have agreed to the same.

7. The dispute arose on 18.12.2017, when the respondent communicated and requested the petitioners to share their payment plan with regards to the outstanding dues payable by them to the respondent. As a response, on 19.12.2017 the petitioners through its email disputed the invoices and raised its grievances with respect to the invoices in the backdrop of quality, quantity and specifications of the goods. As per the statement of accounts maintained by respondent, the outstanding dues amounted to Rs. 19,36,009/- since 04.04.2019 against the goods supplied to and received by petitioners.

8. Consequentially, despite several follow-ups, respondent sent a legal notice on 26.06.2020 to the petitioners seeking payment of the outstanding dues along with interest at the agreed rate of interest.



9. Thereafter, the suit before the learned Trial Court came to be filed seeking recovery of money. It was averred in the plaint before the learned Trial Court with respect to the jurisdiction that it has territorial jurisdiction to entertain the suit since petitioners work for profit from their office at Ramesh Nagar, Delhi and reside at Kirti Nagar, Delhi which is within the territorial limits of the learned Trial Court.

10. During the pendency of the aforesaid suit before the learned Trial Court, the petitioners herein filed an application under Section 11 of the Commercial Courts Act, 2015 read with Order VII Rule 10 & 11 and Section 151 of CPC and averred that the invoices raised are subject to the jurisdiction of Bahadurgarh, Haryana and the learned Trial Court had no jurisdiction to adjudicate the case at hand.

11. Learned counsel for the petitioners has placed reliance on the judgements rendered in the case of *M/s Swastik Gases P. Ltd. vs. Indian Oil Corporation Limited: 2013(8) SCALE 433*; & *M/s Mittal Extrusion Works Private Limited vs. M/s Biogenetic Drugs Pvt. Ltd. in CS(OS) 960/2008*.

12. In the reply to the aforesaid application, the respondent refuted the contentions as put forth by the petitioners and stated that admittedly, a major part of cause of action has arisen in Delhi, thus, the learned Trial Court has territorial jurisdiction to try the suit.

13. In the reply filed by the respondent to the petition before this Court, is a reiteration of the grounds taken in the reply to the application before the learned Trial Court.



14. It was submitted that barring the reiteration, also stated in the reply to the present petition that petitioners till date have not filed its affidavit of admission/denial of document filed by respondent herein, which ought to have been filed along with written statement on 20.03.2021. Further, the suit is in its initial stage and issues are yet to be framed and that the present petition has been filed on 28.07.2022 against the order dated 13.04.2022 which is after the expiry of statutory period of 90 days, hence, the petition should be dismissed on this ground alone.

15. The moot point put up by the petitioners before this Court is that the invoices raised by the respondent are subject to the jurisdiction of Bahadurgarh, Haryana and it is settled law that if parties to a dispute agree to choose jurisdiction of a particular Court, that Court alone has jurisdiction to decide the dispute. Since the agreed jurisdiction is of Courts at Bahadurgarh, therefore, the said Court has jurisdiction to adjudicate the case at hand.

16. To confute the said submissions, the plea raised on behalf of the respondent is that the learned Trial Court does not lack territorial jurisdiction to entertain the suit since petitioners worked for profit from their office at Ramesh Nagar, Delhi and resided at Kirti Nagar, Delhi. Further the purchase orders were issued by the petitioners from Delhi along with the payments being made from Delhi. Since various correspondences took place in Delhi, a major part of cause of action has arisen in Delhi. Merely because one of the standard printed terms of the invoices mentioned the jurisdiction qua



Bahadurgarh, Haryana, it cannot exclude the jurisdiction of the Court at Delhi.

17. Reliance is placed on the judgements rendered by the Hon'ble Supreme Court in the case of *M/s. Baldev Steel Ltd. vs. M/s. The Empire Dyeing and Manufacturing Co. Ltd. & Anr.*: AIR 2001 DELHI 391; and *Victoria Motors Pvt. Ltd. vs. Rai Automotive Systems*: 2014 LawSuit(Del) 2814.

18. Pertinently, all the invoices being relied upon by the respondent form the basis of this suit. In the invoices, the printed term is mentioned as "*all disputes connected with this invoice are subject to Bahadurgarh jurisdiction*". Additionally, the invoices further provide instructions for payment as "*Yes Bank Limited, Bahadurgarh*".

19. A reading of Section 20 CPC reveals that under clauses (a) to (c) of Section 20, the petitioners have a choice of forum to file its suit where the cause of action arises. For ready reference, Section 20 CPC is reproduced herein below:

"20. Other suits to be instituted where defendants reside or cause of action arises. Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at



the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation. A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

20. The position of law has been settled that where two or more Courts have jurisdiction under CPC to try a suit, an agreement between the parties that the dispute between them shall be tried in any one of the Courts is not contrary to public policy.

21. Through a conjoint reading of Section 20 of CPC and Section 23 & 28 of Contract Act, 1872, there is a scope for partial restriction by limiting the parties to take recourse to one forum. Exclusion of jurisdiction clauses occupy this space between absolute restraint and convenience based forum.

22. It is not disputed that in the present case, the Courts at Bahadurgarh as well as in Delhi have jurisdiction to try the present suit as a part of cause of action has arisen within the jurisdiction of the Courts at both the places. The record reveals that the purchase orders were issued by the petitioners to the respondent at its address "94, HSIIDC, Sector-16, Bahadurgarh, Haryana-125407." The invoices were issued by the respondent from the aforementioned address in favour of the petitioners. The goods were



manufactured in Bahadurgarh and supplied from there to Rudrapur, Uttarakhand by the respondent. As mentioned in the emails exchanged between the parties, the respondent was communicating from its address at Bahadurgarh, Haryana. Moreso, the payments were to be made in the 'Yes Bank Limited' at Bahadurgarh, Haryana.

23. On the other hand, the cause of action also arises within the territorial limits of Delhi Courts as the respondent company is registered under RoC-Delhi with CIN: U25203DL2013PTC262012 and petitioner no.1 which is a proprietorship firm being operated, controlled and managed by petitioner no.2 is having their principal office at 8/55, Ramesh Nagar, New Delhi-110015. The respondent is having its registered office at B-04/405, Sector-8 Rajpura Kalan, Rohini, New Delhi-110085. Undisputedly, the petitioners worked for gain at Delhi and various correspondences took place in Delhi.

24. In *Hakam Singh v. Gammon (India) Ltd.: 1971 SCR (3) 314*, the contractual validity of choice of forum clauses was discussed. In that case, the terms and conditions were stipulated in a written tender between the parties which provided that the Courts of Bombay alone will have jurisdiction to adjudicate upon a dispute having been arisen between the parties. The Trial Court at Varanasi held that the entire cause of action had arisen in Varanasi and the parties could not by agreement confer jurisdiction on the Courts of Bombay. However, the Hon'ble Supreme Court observed that when two Courts have the jurisdiction to entertain a dispute, a choice of one by agreement, would not amount to restraint of legal proceedings or violate public policy under Sections 28 and 23 of the Contract Act. Further,



the Hon'ble Supreme Court clarified that the parties cannot by way of an agreement confer jurisdiction on a Court that would otherwise not have jurisdiction in law to adjudicate the dispute. This position has been consistently upheld in various Supreme Court decisions.

25. In **A.B.C. Laminart Pvt. Ltd. & Anr vs. A.P. Agencies, Salem: 1989 SCR (2) 1**, the contract specified that the Courts of Kaira will have jurisdiction to try the disputes. However, the plaintiff instituted a suit for recovery of money in the Court at Salem. The Hon'ble Supreme Court held as under:-

“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.”

26. In the case of **M/S Swastik Gases Pvt. Ltd v. Indian Oil Corp. Ltd.: (2013) 9 SCC 32**], the Hon'ble Supreme Court observed that:-

“32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement—is clear and



unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.”

27. In the view of aforesaid discussion, the facts of the case at hand have to be looked into.

28. Admittedly, a part of cause of action, in the present case, arises within the territorial jurisdiction of both the Courts i.e. at Bahadurgarh and Delhi. The intention of the parties can be inferred from use of the exclusion of jurisdiction clause as well as the places where the payments were to be received. From the printed invoices, it is clear that the respondent has exhibited its intention that in case of any dispute with respect to the invoices raised, the jurisdiction of Courts at Bahadurgarh, Haryana, is to be invoked. Furthermore, as specifically mentioned on the invoices, the payments of the said invoices were to be received at Bahadurgarh, Haryana.

29. Moreso, the intention of the petitioners is reinforced by the fact that the said invoices have been duly acknowledged by the petitioners. Also, they have accepted the jurisdiction of Bahadurgarh Courts by filing an application under Order VII Rule 11 CPC emphasising that the Courts at Bahadurgarh have the jurisdiction. The respondent, therefore, cannot try and



wriggle out of the ouster of jurisdiction clause printed on its own invoices to discard the jurisdiction of Bahadurgarh Courts. Seemingly, the learned Trial Court did not keep the relevant aspects in view while dismissing the application of the petitioners.

30. On due consideration of the above, the impugned order is set aside. The learned Trial Court shall return the plaint to the respondent, which it shall present within a period of four weeks from the date of return before the proper Courts at Bahadurgarh.

31. Accordingly, present petition is allowed. Pending application, if any, stands disposed of.

SHALINDER KAUR, J.

APRIL 23, 2024

ab