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**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

**C.O. 64 of 2025
M/S. PAT-FAB Engineers Private Limited
-Vs-
M/s Darjeeling Cements Limited**

Mr. Arjun Sheth (VC),
Mr. Somraj Paul

... for the petitioner

Mr. Suresh Kumar Mitruka (VC),
Mr. Aayush Mitruka (VC),
Ms. Shruti Yadav,
Mr. Sujit Swami

... for the opposite party

This revisional application arises out of an order dated 31st January, 2025 by which the application filed by the petitioner being the defendant in the suit being M.S(COM) No. 05 of 2022 under the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC') on 4th January, 2025 was dismissed. The suit was initially instituted on 15th June, 2013 and now has been renumbered in view of the provisions of the Commercial Courts Act, 2015. In the suit, the defendant has filed its written statement on 13th February, 2014.

On a perusal of the application filed under Order VII Rule 10 of CPC, it appears that the main ground on which the defendant has objected to the jurisdiction of

the Commercial Court at Siliguri is that the tax invoice raised by the petitioner (defendant) on the opposite party (plaintiff) contains a jurisdiction clause by which, according to the petitioner (defendant), parties had agreed to confer jurisdiction in the Court at Ahmedabad.

It is the case of the petitioner (defendant) that the opposite party (plaintiff) on having accepted the said invoice and having acted thereupon by making payment has accepted the jurisdiction clause. On having accepted such jurisdiction clause, it has to be according to the petitioner (defendant) construed that jurisdiction of other Courts have been excluded by the parties. In that view of the matter, the jurisdiction of the Commercial Court at Siliguri had been excluded. The records also reveal that the petitioner, prior to institution of the suit by the opposite party in Siliguri Court had instituted a suit on the self-same cause before the District Court at Ahmedabad. It also appears from the record that the said suit stood dismissed and an application for restoration of the said suit is pending. It is, therefor, clear that at the present there is no suit pending before the District Court at Ahmedabad.

The petitioner says that an application under Order VII Rule 10 of CPC can be filed at any stage and in support thereof, the petitioner has relied upon a

judgment reported in ***Manu/KA/1089/2024***. This judgment was delivered by a Single Judge of the Karnataka High Court.

The opposite party (plaintiff) has objected to this application on the ground that the learned Commercial Court at Siliguri after due appreciation of law and fact has passed an order assigning reasons for rejecting the petitioner's application. Moreover, the opposite party says that the application under Order VII Rule 10 of CPC is a belated one, filed after 12 years from the date of institution of the suit. The suit has progressed to the trial stage and witness action is going on. At this stage, with an ulterior motive and mala fide intent, the application was filed by the petitioner (defendant) for return of the plaint. Furthermore, the opposite party says that in the written statement, nothing has been pleaded about the exclusion of the jurisdiction. No specific assertion has also been made regarding lack of territorial jurisdiction in respect of Court at Siliguri. It is also the case of the opposite party that the petitioner (defendant) has not denied the jurisdiction of the Court while dealing with the averments made in the plaint. In this context, the opposite party refers to paragraph 23 of the plaint which has been dealt with by the petitioner (defendant) in paragraph 18 of its written statement.

The opposite party therefor, says that this application should be rejected.

In response, the learned Advocate for the petitioner has submitted that there is no necessity for taking the point of jurisdiction in the written statement. The point of jurisdiction can be orally raised and the Court is precluded from looking into the defence i.e., the written statement, while hearing and deciding an application under Order VII Rule 10 of CPC.

After hearing the parties and considering the materials on record, I find that the issue of jurisdiction has to be raised at the threshold as per the settled provisions of law. In the instant case, the same has been raised after 13 years and that too without any pleading to that effect in the written statement on the basis whereof the trial has commenced and proceeded to a substantial extent. The petitioner is also participating in the trial. Ordinarily, the jurisdiction of a suit both pecuniary and territorial is governed by the provisions of Section 9 and Sections 15 to 20 of the CPC. The Ordinary forum for filing a suit which does not relate to adjudication of right in respect of immovable property is where the defendant(s) reside or carries on business. In the instant case, the plaintiff is admittedly carrying on business at Siliguri. So, under ordinary course the petitioner (defendant) if it had to file

a suit, has to file the same in Siliguri. The exception carved out of the aforesaid provisions is under Section 20 of CPC. If part cause of action has arisen within the jurisdiction of a particular Court, the plaintiff may institute the suit in one of such Courts pleading the reasons for filing the same in that Court.

The transaction between the petitioner and the opposite party in the instant case relates to sale of goods. The cause of action of which arises, if not, otherwise agreed between the parties at the place where the plaintiff carries on business or at the place where the defendant resides or carries on business or from the place of supply or in the place where it has been supplied. Part Cause of action in a sale transaction, therefor, arises at a place wherefrom the invoices are raised, the goods are supplied, the invoices are received and the goods being delivered. The making of payment and receipt thereof also comprises a part cause of action. Going by this rule, the Court in Ahmedabad as also the Court in Siliguri have the jurisdiction to receive, entertain and determine a suit. It cannot, therefor, be said that the Court in Siliguri completely lacks territorial jurisdiction to receive, try and determine a suit between the petitioner and the opposite party.

It is correct that exclusion of jurisdiction contained in the invoices upon having been accepted and acted upon confers jurisdiction to the forum selected therein. It appears that the jurisdiction clause in the tax invoice on having been accepted and acted upon, the petitioner is entitled to contend that the jurisdiction of the Court in Siliguri got excluded. The petitioner was, however, required to take this jurisdiction issue at the threshold even without filing the written statement when the Court could have decided on the exclusion of jurisdiction as now contended by the petitioner. It is no more *res integra* that even if an application filed under Order VII Rule 10 of CPC is permitted to be made at any stage but the same has to be made at the threshold. The petitioner in the instant case has challenged the jurisdiction after 13 years and that too after filing the written statement and participating in the trial. On a conjoint reading of paragraph 23 of the plaint and paragraph 18 of the written statement, I find that there is no assertion that the Court in Siliguri does not have the jurisdiction to receive, try and determine the suit. The exclusion of jurisdiction of Siliguri Court has also not been specifically pleaded in the written statement by citing the tax invoices as has now been sought to be done. The petitioner in its written statement has not denied

the jurisdiction of Siliguri Court or asserted that Siliguri Court completely lacks the jurisdiction in any part or portion of the written statement for the exclusion clause. It is also well-settled that the jurisdiction clause between the parties can be waived either expressly or by way of conduct. The petitioner as the defendant has participated in the suit for 13 long years which has proceeded to the stage of trial. The petitioner, therefore, by its conduct and having not raised the jurisdiction issue at the threshold or even in its written statement is to be considered to have waived the objection to the jurisdiction of the Siliguri Court.

That apart and in any event, the balance of convenience is one of the factors regarding the jurisdiction. The petitioner while entering into the transaction with the opposite party was well aware that the petitioner may have to either prosecute or defend in connection with any dispute between the parties at Siliguri particularly when the purchase orders did not contain any jurisdiction clause. The petitioner has participated for 13 long years before the Siliguri Court and as such the petitioner cannot also say that the Court at Siliguri is forum inconvenient to the petitioner. Furthermore, the petitioner has not objected to the jurisdiction of the Siliguri Court at the threshold but submitted to it by filing written statement and

participating at the trial. Considering all these aspects, I find that the Trial Judge was correct in rejecting the petitioner's application under Order VII Rule 10 of CPC.

In the light of the discussions made hereinabove and on close scrutiny of the order impugned, I also do not find any infirmity in the said order. The revisional application, therefor, fails and is accordingly, dismissed.

(Arindam Mukherjee, J.)