

ORDER SHEET

AO-COM/2/2025
WITH
CS-COM/565/2024
IA NO: GA-COM/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(Commercial Division)

SHAKAMBHARI ISPAT AND POWER PVT. LTD.
VERSUS
BIRAT CHANDRA DAGARA

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date : 6th January, 2025.

Appearance:

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Kumarjit Banerjee, Adv.
Mr. Sourojit Dasgupta, Adv.
Ms. Sanchari Chakraborty, Adv.
Ms. Tanishka Khandelwal, Adv.
...for the petitioner

Mr. Ratnanko Banerji, Sr. Adv.
Mr. Jayanta Sengupta, Adv.
Mr. Rahul Auddy, Adv.
Mr. Saurodip Banerjee, Adv.
Mr. Aditya Gooptu, Adv.
..for the respondent

1. The appellant is the plaintiff.
2. In a suit for recovery of money, the plaintiff filed an application being GA-COM/1/2024 praying, *inter alia*, for judgment upon admission for a sum of Rs.3,37,15,075/- along with interest at the rate of 24% per annum and also an order of injunction restraining the defendants, their men, agents, servants and/or assigns from dealing with and/or disposing of and/or alienating and/or transferring and/or

encumbering their assets and properties. After the said application was heard out and made C.A.V. on 16th July, 2024, the defendant filed an application being GA-COM/2/2024 on 18th July, 2024 praying, *inter alia*, for revocation of leave granted under Clause 12 of the Letters Patent or in the alternative, to return the plaint or rejection of the plaint.

3. The plaintiff filed the suit for recovery of the aforesaid sums due and owing by reason of failure on the part of the respondent to supply, agreed quantities and qualities of iron ore pursuant to several purchase orders issued in this regard by the plaintiff.
4. As stated earlier after the hearing of the application for judgment of admission was concluded an application for revocation under leave under Clause 12 of the Letters Patent was filed. It is further argued that point of jurisdiction was also urged in the affidavit-in-opposition filed in connection with the application for the judgment of an admission. The basis of the application for revocation of the leave under Clause 12 that no part of the cause of action has no jurisdiction of this court. The defendant alleges that the defendant carries on business at Orissa outside the jurisdiction and the factory of the plaintiff is located at Purulia where the iron ore were required to be supplied. It is further submitted that the purchase order would show that they were issued from the factory site of the plaintiff and accordingly the registered office of the plaintiff has no role to play.

5. We have carefully read the plaint. For the purpose of the limited inquiry for leave under Clause 12 of the Letters Patent the following paragraphs are required to be looked into.

4. Pursuant thereto, the parties entered into various discussions and negotiations, during which it was mutually agreed that the Defendant would supply the required iron ore mineral of specified description on the basis of purchase orders issued by the Plaintiff in such regard (hereinafter referred to as the "said materials"). It was agreed by and between the parties that the Plaintiff would make advance payments in respect of the orders, and the Defendant would forthwith deliver and/or supply the materials as per terms and conditions stipulated therein. It was further agreed that in default of supply of the materials by the Defendant, the Defendant would be liable to refund the entire advance amount paid by the Plaintiff in that regard to the Plaintiff with interest at the rate of 24% per annum, at the Plaintiff's registered office situated within the jurisdiction aforesaid. The aforesaid discussion, negotiation and agreement took place and/or were concluded at the office of the Plaintiff situated within the jurisdiction aforesaid.

5. Apropos the various discussions and deliberations by and between the parties the Defendant herein proceeded to issue an offer for supply of iron ore dated, 7th February, 2018 comprising of his offer together with the various terms and conditions upon which such offer was being made. Upon receipt of the aforementioned supply offer, the Plaintiff proceeded to issue a Purchase Order cum Tax Invoice dated 7th February, 2018 setting out the terms and conditions upon which such supply was to be made by the Defendant together with the agreed consideration payable in respect thereof, from its office situated within the jurisdiction aforesaid, for supply of specified quantities of the

contracted material to the Plaintiff at its factory situated at Village Mohuda, P.O. Rukni, P.S. Para, District - Purulia, West Bengal - 712145.

A copy of the said Purchase Order Cum Tax Invoice dated 7th February, 2018 is annexed herewith and marked with the letter "A".

The said Purchase Order Cum Tax Invoice was issued by the Plaintiff from his office within the jurisdiction aforesaid and received by the Defendant outside the jurisdiction aforesaid.

27. Inasmuch as the Defendant is liable to make payment of the admitted sum to the Plaintiff's office situated within the jurisdiction aforesaid, and inasmuch as the Plaintiff is entitled to receive the aforesaid sum at its office situated within the jurisdiction aforesaid, and since the agreement as pleaded in paragraph no. 5 and 7 hereof was entered into and/or concluded at the office of the Plaintiff situated within the jurisdiction aforesaid, a part of cause of action have arose within the Jurisdiction of this Hon'ble Court and inasmuch as the Defendant is situated outside the jurisdiction aforesaid, a part of cause of action of arose outside the jurisdiction aforesaid. The Plaintiff, accordingly seeks leave under Clause 12 of the Letters Patent, 1865 to institute the instant suit before this Hon'ble Court."

6. The bare reading of the aforesaid paragraphs would show that there is a clear averment that the discussion, negotiation and agreement took place and/or were concluded at the registered office of the plaintiff within the jurisdiction of this court. It is not in dispute that the address of the plaintiff mentioned in the cause title is the place where from the plaintiff carries on business. It is the registered office of the plaintiff. Although, it is attempted to be argued that purchase orders

cum tax invoices setting out the terms and conditions and its acceptance by the defendant would decide the jurisdiction and in view of the fact that the purchase orders cum tax invoices raised on the plaintiff were accepted at the registered office of the defendant at Odisha and the contract was performed at Purulia where the factory of the plaintiff is situated, this court has no jurisdiction to try, receive and decide the suit.

7. We are not inclined to accept the said submission having regard to the fact that the purchase order was issued consequent upon a contract concluded at the office of the plaintiff and it is not an independent document for the purpose of deciding the jurisdiction. One of the classes of jurisdiction which the High Court can avail under Clause 12 of the Letters Patent is where the reality or the cause of action is not wholly but only partly occurred within its jurisdiction. It is an inchoate jurisdiction which comes into action upon the court granting the leave to institute the suit. It is the nascent jurisdiction which lies dormant in this court and can only be put into life and operation by an act of the court in granting leave to institute the suit. Here the court has to acquire it. Here the jurisdiction does not depend only on the fact of the court but also on the act of the court. The jurisdiction of a court also does not depend upon the defence taken by the defendant and it is the allegations/averments made in the plaint which decided the forum. The court while considering the application for grant of temporary injunction can however, go into the question

whether prima facie it has jurisdiction or not and for the said purpose not only in the pleadings but the affidavits, documents and other materials on record can be examined. Therefore, for the purpose of forming prima facie opinion, the court can travel beyond what is averred in the plaint.

8. It is elementary that making of contract is a part of cause of action and the suit on contract therefore should be filed at the place where it was made. In this case, it is a clear averment of the plaintiff that the contract was concluded at the registered office of the plaintiff within the jurisdiction of this court. The circumstances under which a suit under Clause 12 of the letters patent would lie has been elaborately discussed in **Chainrup Sampatram v. Punjab & Sind Bank** reported at **2009 (1) CHN 346** at paragraph 24 which reads:-

“24. There are three limbs to Clause 12 of the Letters Patent: the first limb covers suits for land or other immovable property, which is not germane for the present purpose; the second limb speaks of the place of accrual of the cause of action in the suit, requiring no previous leave if the cause of action arises wholly within jurisdiction but requiring previous leave if only a part – however infinitesimal or significant – of the cause of action arises within jurisdiction; and, the third is the situs of the defendant at the time of commencement of the suit. A suit for land (or other immovable property) stands on a different pedestal and it is unnecessary to go into that aspect of Clause 12 here. But in a suit which is not a suit for land (or other immovable property) the plaintiff has a choice of invoking the jurisdiction of this Court on either of the two remaining limbs of Clause 12. If there is a solitary defendant in a suit which is not a suit for land (or other immovable property), the

plaintiff may unquestionably institute it on the Original Side of this Court if the entirety of the cause of action arises within the original jurisdiction of the Court and irrespective of where the defendant may dwell or carry on business or personally work for gain. If there is a solitary defendant in a suit which is not a suit for land (or other immovable property), the plaintiff may institute it on the original side of this Court if a part of the cause of action arises within the original jurisdiction of this Court irrespective of where the defendant may dwell or carry on business or personally work for gain, subject, however, to obtaining prior leave under Clause 12 to institute the suit. If there is a solitary defendant in a suit which is not a suit for land (or other immovable property), the plaintiff may institute it on the original side of this Court if the defendant, at the time of the commencement of the suit, dwells or carries on business or personally works for gain within the original jurisdiction of this Court, irrespective of where the cause of action may be arisen. The second and third limbs of Clause 12 that cover suits other than suits for land (or other immovable property) are, in a sense, mutually exclusive; in that the plaintiff has the choice of either founding territorial jurisdiction on situs of cause of action or on location of the defendant at the time of commencement of the suit. In a suit other than a suit for land (or other immovable property) where the plaintiff sues more than one defendant, either of the last two limbs of Clause 12 of the Letters Patent has to be satisfied in respect of each defendant in the suit for the action to be launched on the Original Side of this Court.”

9. The said judgment has reiterated the principles of leave under Clause 12 as lucidly and authoritatively stated in **Muttra Electric Supply v. Gopal Saran** reported at **59 CWN 419**.

10. It is trite law that for the purpose of deciding an application for revocation, the allegations and/or averments in the plaint must be taken to be correct and the Court shall not enter into disputed questions of facts.
11. We have carefully read the plaint. The application for judgment upon admission is based on the communication dated 28th October, 2021 addressed to the registered office of the plaintiff in which the defendant has clearly acknowledged that a sum of Rs.3,37,15,075/- is lying on account of the plaintiff with accrued interest. However, the defendant expressed its inability to supply the said iron ore of the specifications agreed upon. The defendant prayed for some fund to start the mining operation and despatches. By the said communication, the defendant made a request to arrange to transfer Rs.60 lakhs as advance in addition to the advances which are already lying with the defendant. Since no material was despatched subsequent thereto, the plaintiff filed the suit for recovery of money on the ground of failure of consideration of the quantities covered by the said advance. The principal defence to the said claim appears to be that no part of the cause of action has arisen within the jurisdiction of this Court and in the affidavit-in-opposition to the judgment upon admission, it has been stated that due to government sanctions, the iron ore could not be delivered.
12. Mr. Ratnanko Banerji, learned senior counsel appearing on behalf of the respondent, has submitted that an approval was received on 6th

May, 2024 and the respondent has clearly stated in its affidavit that it expects that the approval which was pending would be granted within a short span of time. The fact however remains that till date no part of the iron ore which the defendant was required to supply under several purchase orders has been delivered. The plaintiff apprehends that in view of the impecunious situation of the defendant and having regard to the fact that the iron ore of huge quantity was not supplied in the meantime, until some protective order is passed in favour of the plaintiff, the decree that is likely to be passed in favour of the plaintiff may be rendered nugatory.

13. Mr. S.N. Mitra, learned senior counsel appearing on behalf of the plaintiff, has referred to the decision in ***Harleen Jairath v. Prabha Surana and Ors.***, reported in **(2019)4 CHN (Cal) 412** and submits that the Court in appropriate cases in exercise of its power under Order 39 Rule 1(b) can even pass orders of injunction. It is submitted that in view of a clear case of admission and the fact that the iron ore has not been supplied till date, there is a clear apprehension that unless there is some protective orders passed at this stage, the plaintiff would suffer irreparable loss and prejudice. Mr. Mitra submits that while the learned Single Judge has dismissed the application for revocation of leave under Clause 12 of the Letters Patent, the learned Single Judge did not decide the issue of judgment upon admission on the ground that unless territorial jurisdiction of the Court is decided, no order could be passed.

14. Mr. Ratnanko Banerji, learned senior counsel, in reply, submitted that unless the Court finally decides on the question of jurisdiction, no interim order could have been passed and the learned Single Judge being in doubt with regard to the territorial jurisdiction has postponed the prayer for judgment upon admission and injunction till the decision is taken in the suit.
15. In the impugned order, the learned Single Judge has mainly focussed on the territorial jurisdiction of the Court although there are some discussions with regard to the claim of the plaintiff. The learned Single Judge did not take any *prima facie* view with regard to the prayer for judgment upon admission or injunction and declined to grant any relief on the ground that having regard to the averments in the plaint and the nature of dispute raised by the defendant, the question of jurisdiction is required to be decided. The learned Single judge although has referred to a Co-ordinate Bench decision in ***Parasram Harnandrai v. Chetandas & Ors.***, reported in **AIR 1952 Cal 82** but while deciding the said issue seems to have overlooked the ratio of the said decision which clearly says that in an application for revocation of leave, the allegations in the plaint must be taken to be correct and the Court will not enter into disputed questions of fact. Unless the application for revocation of leave under Clause 12 of Letters Patent is allowed, the Court retains the jurisdiction to pass all interlocutory orders that may be necessary in the suit so that the plaintiff is not ultimately prejudiced. The defendant has failed in its

application for revocation of Clause 12 of the Letters patent. There is no cross appeal.

16. *Prima facie*, there is failure of consideration. There has been no supply since 2021. The letter of the defendant acknowledges that substantial amount is lying with the defendant for supply of iron ore of the quantities and specifications mentioned in the various purchase orders. Although an averment is made that the defendant is in a position to despatch the iron ores, till date no such despatch was made with regard to any quantity of the balance iron ore.
17. On such consideration, we direct the defendant to file an affidavit of assets in the interlocutory proceeding disclosing all its properties having regard to the unimpeachable claim for money as it appears from the communication dated 28th October, 2021.
18. Since the application for judgment upon admission and injunction was heard and the said matter was made C.A.V., we request the learned Single Judge to decide the said application on merits and till such time, the respondent no.1 shall not deal with its assets and properties without the leave of the learned Single Judge. In the event security is furnished for an amount of Rs.3,37,15,075/- the embargo shall stand automatically vacated.
19. We make it clear that the learned Single Judge shall decide the said application on merits without being influenced by any observation made in this order.

20. The appeal and the application accordingly stand disposed of.

However, there shall be no order as to costs.

21. GA-COM/1/2024 i.e., the application for judgment upon admission shall be heard on the basis of the pleadings which are already on record and is to be decided in view of the order passed above.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)

bp/R.Bhar