



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

994 WRIT PETITION NO. 4615 OF 2022

**MARATHWADA AUTO COMPO PVT LTD THOROUGH ITS AUTHORISED
SIGNATORY AJIT SOUNDALGIKAR**

VERSUS

**SAME DEUTZ FAHR INDIA PVT LTD THROUGH ITS AUTHORISED SIGNATORY
TAMILSELVAM JGM FINANCE**

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Advocate for the Petitioner : Mr. Vakil Laharimanohar D

Advocate for Respondent No.1 : Mr. Palod Lalitkumar Bansilal

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 10.12.2025

PER COURT :

. Heard learned counsel for the respective sides.

2. By way of present petition, the petitioner challenges the order dated 29.10.2021 passed by the District Judge, Aurangabad below Exhibit-119 in Commercial Suit No. 05 of 2019 whereby, the application filed by the original defendant under Section 10 of C.P.C. came to be allowed.

3. Learned counsel for the petitioner submits that though the parties are same, the issue raised in the suit O.S. No. 41 of 2016 is altogether different to the issue raised in Commercial Suit No.05 of 2019. The suit O.S.No.41 of 2016 relates to supply of draw bars and in Commercial Suit No.05 of 2019, the supply of draw bars was one of the issue. He further submits that ground of jurisdiction raised by the petitioner was also not dealt with by the learned trial court and therefore, he submits that learned trial court has committed apparent

error while allowing the application.

4. Learned counsel for the respondents supports the order by pointing out that the issue of the supply of the goods is one and the same and it was already raised before the Ranipeth Court, District Vellore in O.S.No.41 of 2016. Even in the application filed by original defendant, the issue of supply of goods as well as invoices was mentioned and therefore, he submits that to avoid the multiplicity of proceedings and to avoid conflicting orders, the application was filed and it was rightly allowed.

5. I have considered rival submissions of the parties. Considering the pleadings in both the suits, it reveals that the transactions between the parties and issue involved in both the suits are identical one. The learned trial court recorded the findings in paragraph Nos. 5 and 6 which reads thus :

“5. From the rival submissions it appears that plaintiff filed this suit on 22.1.2018 for recovery of Rs.17243766/- alongwith the interest @ 24% p.a. The plaintiff alleged that plaintiff agreed to provide draw bars to defendant company. The defendant company is manufacturing tractors. The plaintiff manufactures various components of the tractor. Plaintiff agreed to provide swinging draw bars and other goods to the defendant worth Rs. 137,597,029/- and also provided service of job work for Rs.2,29,31,452/-. The defendant has paid Rs. 14,91,75,730/-to the plaintiff. The last payment was made on 30.8.2014. Thereafter the defendant filed suit bearing O.S.No. 41/16 for recovery of Rs. 3,47,96,675 Plaintiff, the raised objection on the ground of territorial jurisdiction in O.S.No.41/16. The plaintiff contested that suit and filed written statement. The suit was fixed for evidence. It was dismissed for want of prosecution on 27.3.2018. On 11.4.2018 defendant filed the application for restoration of O.S.No.41/16 suit. The plaintiff objected the restoration by filing say on 1.3.2019. On 2.7.2018 the

plaintiff filed evidence affidavit in present suit and further chief was recorded since 16.2.2019. Thereafter parties did not adduce the evidence for one or other pretext. Thereafter present defendant filed this application on 20.4.2019 before C.J.S.D. Aurangabad.

6. The pleadings show that the O.S. 41/16 was pending before Rani Peth Court between the plaintiff and defendant for same cause of action. On 22.1.2018, plaintiff Marathwada Auto Com. presented the plaint before Ld. C.J.S.D. Aurangabad. The suit was transferred to District Court and re-registered as Commercial Suit No. 5/2019. However the fact can not be ignored that on 22.1.2018 when the plaint was presented before Lal. C.J.S.D. Aurangabad O.S.No. 41/16 was not dismissed. Section 10 of C.P.C. provides to stay subsequent suit between the same parties where the issues are substantially same. Admittedly O.S. 41/16 is previously instituted suit. Commercial suit No.5/19 is subsequent suit.”

6. I have gone through the findings recorded by the learned trial court and the documents which are placed along with the petition. Considering the fact that issues involved, parties concerned, transactions alleged and relief claimed are identical one in both the suits, I do not find any reason to interfere with the order dated 29.10.2021 passed by the District Judge, Aurangabad below Exhibit-119 in Commercial Suit No. 05 of 2019 under Article 227 of the Constitution of India.

7. In view thereof, the Writ Petition is dismissed. No order as to costs.

(SIDDHESHWAR S. THOMBRE, J.)

vsj..