



2025:DHC:4939



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 20.05.2025+ **C.R.P. 202/2023**

M/S SIMBA SHOPPING PVT LTD & ORS.Petitioners

Through: Mr. S. Gowthaman, Mr. Sameer
Aslam and Mr. Raju M, Advocates.

versus

AERO CLUB

.....Respondent

Through: Mr. Amit Chadha, Sr. Advocate with
Ms. Poonam Lau, Advocate.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CM APPL. 38699/2023 [Delay in re-filing the Petition]**

1. This is an Application seeking condonation of delay of 220 days in re-filing the present Petition.
2. In the interest of expediency, learned Senior Counsel for the Respondent does not object to the delay being condoned.
3. Accordingly, the delay is condoned and the Application stands disposed of.

C.R.P. 202/2023 & CM APPL. 38697/2023 [Stay]

4. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] seeking to



challenge the order dated 15.10.2022 passed by the learned Additional District Judge-09, Central, Tis Hazari Courts, Delhi [hereinafter referred to as ["Impugned Order"]]. By the Impugned Order, the Application under Order VII, Rule 11, CPC filed by the Petitioners (Defendants before the learned Trial Court) has been dismissed.

5. On the last date of hearing, there was no presence on behalf of the Petitioners. This Court had briefly heard the Respondent on 20.03.2025 and passed the following directions:

“4. Learned Senior Counsel for the Respondent submits that the Petitioners have been intermittently appearing in the matter.

5. Learned Senior Counsel for the Respondent further submits that the Impugned Order has dismissed an Application under Order VII Rule 11 of Code of Civil Procedure, 1908 and that subsequently, the proceedings are going on before the learned Trial Court, which are at the stage of evidence.

6. Learned Senior Counsel for the Respondent also submits that so far as concerns the aspect of maintainability of the Petition, the Petitioners have already subjected themselves to the jurisdiction of this Court.

7. Learned Senior Counsel for the Respondent has also taken us through the Impugned Order.

8. It is settled law that the question of cause of action and jurisdiction is a mixed question of fact and law and cannot be adjudicated under the provisions of Order VII Rule 11 of Code of Civil Procedure, 1908 (CPC). [See **Popat and Kotecha Property v. State Bank of India Staff Assn.**; (2005) 7 SCC 510]

9. Prima facie, on an examination of the same, this Court finds no infirmity with the Impugned Order.

10. However, in the interest of justice, one last opportunity is granted to the Petitioners to make their submissions.”

6. Learned Counsel for the Petitioners today makes the following submissions:



6.1 In the first instance, he submits that his Application as was filed before the learned Trial Court was filed under Order VII Rule 11 read with Rule 10, CPC and that the learned Trial Court had no territorial jurisdiction to examine the matter and pass an order.

6.2 Secondly, it is contended that a “strong” part of the cause of action has not arisen in Delhi and thus, the Courts at Delhi have no jurisdiction to entertain the present Petition. Reliance in this behalf is placed on the judgment of the Supreme Court in ***Kusum Ingots & Alloys Ltd. v. Union of India and Another***¹.

6.3 In addition, it is contended that a larger number of invoices were issued from places other than Delhi. Thus, it is contended that the Impugned Order suffers from infirmity. It is however admitted that three invoices were issued from Delhi.

7. Learned Senior Counsel for the Respondent reiterates his contentions made on the last date of hearing. He submits that the Impugned Order decided the Application of the Petitioners and found that the Courts at Delhi have jurisdiction to entertain the present suit. He further submits that each invoice that has been issued by the Respondent has an exclusive jurisdiction clause which provides that the disputes arising out of the transactions will be settled through the Courts at Delhi. Reliance is placed on one such invoice which is annexed at Page 70 of the case file, which sets out the following:

“1. Any dispute arising out of the transaction will be settled through the courts in Delhi only.”

¹ (2004) 6 SCC 254



8. Learned Counsel for the Respondent further submits that thus, any dispute arising out of the transaction will be settled at the Courts at Delhi only. In addition, it is contended that the cause of action and jurisdiction has been explained in detail by the Respondent/Plaintiff in the plaint. Reliance is placed on Paragraph 11 and 14 of plaint in this behalf.

9. Lastly, learned Senior Counsel for the Respondent contends that the objection that the Court has no territorial jurisdiction is without merit since the Petitioners have subjected themselves to the jurisdiction of the learned Trial Court. He contends that the suit was filed in Delhi and the Petitioners appeared and filed their Written Statement before the learned Trial Court and also have already complied with prayer (b) of the plaint which had prayed for directions for the Defendant to give C-Forms. Reliance is placed on prayer (b) in this behalf which is set out below:

“b) Direct the defendant to give the C-Forms for the year 2010-11 to 2012-13 amounting to Rs 5,14,49,981/- (Rupees Five Crore Forty Lacs Forty Nine Thousand Nine Hundred Eighty One); or in the alternate to pay taxes alongwith interest and penalty levied by the government.”

10. Learned Senior Counsel on instructions submits that these C-Forms were handed over to the Petitioners before the learned Trial Court. Thus, it is submitted that the objections which are being raised by the Petitioners are merely being raised for the purposes of delaying the adjudication of the suit before the learned Trial Court and thus, this Petition should be dismissed.

11. Briefly the facts are that a suit for recovery of Rs.43,03,804/- along with *pendente lite* and future interest was filed by the Respondent/Plaintiff before the learned Trial Court. Pursuant to the filing of the suit, an



Application under Order VII Rule 11 read with Rule 10, CPC was filed by the Petitioners/Defendants.

11.1 By the Impugned Order, the learned Trial Court has held that the cause of action partly arose in Delhi since there were three invoices which were issued from Delhi and has dismissed the Application filed under Order VII Rule 11, CPC.

12. As stated above, it is the case of the Petitioners that a larger part of the cause of action has arisen in Chennai, and thus, the Courts at Chennai have the jurisdiction to entertain the Petition. The submission of the Petitioners is without any merit.

13. In the first instance, so far as concerns the challenge under Order VII Rule 10, CPC, the same is appealable under Order XLIII of the CPC and thus not amenable to revisionary jurisdiction.

14. Secondly, it is admitted by the learned Counsel for the Petitioners that some part of the cause of action has arisen within Delhi. The Petitioners rely on the judgment of the Supreme Court in *Kusum Ingots case* to say that the Court must refuse to exercise discretionary jurisdiction by invoking doctrine of *forum conveniens*. Paragraph 30 of the *Kusum Ingots case* is set out below:

“30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

[Emphasis supplied]



15. However, the reliance on the *Kusum Ingots* case by the Petitioners' is misplaced since the doctrine of forum conveniens has not been invoked by the Petitioners at all.

16. In any event, it is a settled law that the cause of action is a detailed bundle of facts on the basis of which a Plaintiff can file a suit. A perusal of the record reflects that the Respondent in the plaint has stated that the cause of action for filing the present suit arose in favour of the Respondent and against the Petitioners based on a distributorship contract by which the Petitioners were given the task of distributing of the products of Respondent. The Petitioners were initially given sole distributorship for one year and thereafter for subsequent years in 2009-10, 2011-12. Since the Petitioners have failed to make the payment for the products supplied to the Petitioners by the Respondent, it is submitted that the cause of action is still subsisting and continuing/. The plaint further sets out that the registered office of the Respondent/Plaintiff is in Delhi and the cause of action for filing the present suit has arisen in Delhi, thus the suit has been filed in Delhi. The relevant extract of the plaint is below:

"11. That the cause of action for filing the present suit firstly arose in favour of the plaintiff and against the defendant on 18.06.2008 when the- defendant was given the distributorship of the plaintiffs products. It again arose in 2009 when at the instance of the defendant he was given the sale distributorship for one year. It further arose in the year 2009-10, 2011-12 when the defendant could not make the outstanding payments to the plaintiff despite repeated reminders. It arose in the year 2012 when the plaintiff appointed another distributor for the said states. It again arose when the plaintiff gave reminders for the pending C- Forms and was charged with the liability at Rs 34,35,709/- by the department and then ultimately on 12.02.2013 when the plaintiff served a legal notice to the defendant calling upon him to clear the outstanding payments and dispatch the C- Forms. It is still subsisting and



continuing as the defendant has still not cleared the outstanding amount of Rs. 43,03,804/- to plaintiff and yet to submit C-forms amounting to Rs. 5,14,49,981/- for the year 2010-11 to 2012-13.

12. That the amount due towards outstanding payments is to an amount of Rs. 43,03,804/- and C-forms amounting to Rs. 5,14,49,981/- for the year 2010-11 to 2012-13.

13. That the value of the suit for relief of recovery for the purpose of court fee and jurisdiction. is fixed at Rs 43,03,804/- on which the requisite court fees of Rs. 44,350/- is being paid on the plaint.

14. That the plaintiff's registered office is in Delhi; the cause of action for filing the present suit, has also arisen at Delhi. Therefore, this Hon'ble Court. has got the territorial, as well as pecuniary jurisdiction to try and decide the present suit."

[Emphasis supplied]

17. The Respondent/Plaintiff has filed the present suit seeking recovery of outstanding amounts against the invoices which have been issued by the Respondent/Plaintiff. A perusal of these invoices reflect that these contain an exclusive jurisdiction clause has been provided in the terms and conditions mentioned in these invoices. The terms and conditions as mentioned in the invoices are reproduced below:

"TERMS AND CONDITIONS

1. Any dispute arising out of the transaction will be settled through the courts in Delhi only.

2. Interest at the rate of 18% will be charged on unpaid invoices from duration of payment.

3. Goods once sold not be taken back or exchanged.

4. Payment recovery norms & other terms & Conditions as particular dt. 03.05.2005 in supersession all previous notifications etc."

[Emphasis supplied]

17.1 The record further reflects that three invoices dated 18.06.2012, 27.08.2012 and 14.09.2012 have been issued from Delhi itself and thus, a



part of cause of action arises in Delhi.

18. It is settled law that when a certain jurisdiction has been specified in the contract, the parties intend to exclude all other jurisdictions. The Supreme Court in *A.B.C. Laminart Pvt. Ltd. & Anr v. A.P. Agencies, Salem*², has held that when certain jurisdiction is specified in a contract an intention to exclude all others from its operation may be inferred. The relevant extract is below:

“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.”

[Emphasis Supplied]

18.1 In *Swastik Gases Private Limited v. Indian Oil Corporation Limited*³, the Supreme Court has held that where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, an inference may be drawn that parties intended to exclude the jurisdiction of all other courts. The relevant extract reproduced herein below:

“32. For answer to the above question, we have to see the effect of the

² (1989) 2 SCC 163

³ (2013) 9 SCC 32



*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.***

[Emphasis Supplied]

18.2 This principle has further been clarified by the Supreme Court in the case of *A.V.M. Sales Corporation v. Anuradha Chemicals (P) Ltd.*⁴. It has been held that the cause of action comprises of a bundle of facts which are relevant for determination of the *lis* between the parties and the part cause of action may arise at different jurisdictions and thus the suit can be filed at any of the jurisdiction where the cause of action has arisen. The relevant extract of the *A.V.M. Sales Corporation* case is below:

“14. It has often been stated by this Court that cause of action comprises a bundle of facts which are relevant for the determination of the lis between the parties. In the instant case, since the invoices for the goods in question were raised at Vijayawada, the goods were dispatched from Vijayawada and the money was payable to the respondent or its nominee at Vijayawada, in our view, the same comprised part of the bundle of facts giving rise to the cause of action for the suit. At the same time, since the

⁴ (2012) 2 SCC 315



petitioner-defendant in the suit had its place of business at Calcutta and the agreement for supply of the goods was entered into at Calcutta and the goods were to be delivered at Calcutta, a part of the cause of action also arose within the jurisdiction of the courts at Calcutta for the purposes of the suit. Accordingly, both the courts within the jurisdiction of Calcutta and Vijayawada had jurisdiction under Section 20 of the Code of Civil Procedure to try the suit, as part of the cause of action of the suit had arisen within the jurisdiction of both the said courts.

15. This leads us to the next question as to whether, if two courts have the jurisdiction to entertain a suit, whether the parties may by mutual agreement exclude the jurisdiction of one of the courts, having regard to the provisions of Sections 23 and 28 of the Contract Act, 1872. Section 23 of the aforesaid Act indicates what considerations and objects are lawful and what are not, including the considerations or objects of an agreement, if forbidden by law.

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21. This Court has consistently taken the same view in several subsequent cases. We may refer to one such decision of this Court in Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd. [(2004) 4 SCC 671 : AIR 2004 SC 2432], where part of the cause of action arose at both Delhi and Bombay. This Court held that the mutual agreement to exclude the jurisdiction of the Delhi courts to entertain the suit was not opposed to public policy and was valid.

[Emphasis Supplied]

19. As stated above, in the present case, the invoices clearly have an exclusive jurisdiction clause which states that the disputes arising out of the transactions will be settled through Courts in Delhi only. In addition, it is not disputed that three invoices dated 18.06.2012, 27.08.2012 and 14.09.2012 have further been issued from Delhi itself.

19.1 In any event, the Petitioners have already submitted to the jurisdiction of the Courts at Delhi and prayer (b) of the Plaint stands satisfied.

19.2 The plea raised by the Petitioners that the jurisdiction of the Delhi Courts is excluded merely because a larger part of the cause of action lies in



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Chennai is without merit. Thus, the Courts in Delhi will have the jurisdiction to entertain the present suit.

20. In view of the foregoing discussions, the Petition is dismissed. The pending Application shall stand closed.

21. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 20, 2025/pa/jn

Click here to check corrigendum, if any