



2025:DHC:4881



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 20.05.2025

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C.R.P. 52/2019**GOPAKUMAR GOPINATHEN**

.....Petitioner

Through: Mr. G.V. Rao, Advocate.

versus

BERGEN ASSOCIATES P LTD

.....Respondent

Through: None.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The matter was substantially argued by the learned Counsel for the Petitioner on the last date of hearing i.e. 30.04.2025 pursuant to which a detailed order was passed by this Court. On 30.04.2025, multiple requests for adjournment were made on behalf of learned Counsel for the Petitioner.
2. Given the fact that the matter was filed in the year 2019 and a Coordinate Bench of this Court by an order dated 27.02.2019 directed that the proceedings before the learned Trial Court shall remain in abeyance, this Court deemed it apposite to hear the Petitioner.
3. This Court had on 30.04.2025 directed that on a *prima facie* examination this Court found no infirmity with the Impugned Order which would merit interference under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"].
4. On 30.04.2025, learned Senior Counsel for the Petitioner requested for some time to place on record some judgments and synopsis and at his request, the matter was adjourned to today. It is apposite to set out the relevant part of the order dated 30.04.2025 in this behalf:

"1. The present Petition has been filed on behalf of the Petitioner



under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as the “CPC”] seeking to challenge the order dated 11.08.2018 passed by the learned Judge, MACT-1, West District, Tis Hazari Court, Delhi [hereinafter referred to as “Impugned Order”]. By the Impugned Order, an Application under Order VII Rule 11 of the CPC filed by the Petitioner has been dismissed.

2. None appears for the Respondent.

3. A Coordinate Bench of this Court, by an order dated 27.02.2019, had directed that the proceedings before the learned Trial Court shall remain stayed. The matter has continued as is since then.

4. Learned Senior Counsel for the Petitioner raises two contentions. Firstly, it is submitted that the entire cause of action arose within the city of Bangalore and thus this Court has no jurisdiction. In addition, it is contended that all documents in relation to the employment of the Petitioner was signed at Bangalore and that a service bond dated 14.08.2016, which was executed by the Respondent, also did not contain the exclusive jurisdiction clause.

5. Since there was no appearance on behalf of the Respondents on multiple dates, a Coordinate Bench of this Court had on 22.05.2024 directed that Court Notice be issued to the Respondent for 20.09.2024.

5.1 The report of the Registry is that Respondent stands served. Accordingly, and in view of the non-appearance of the Respondent, the Respondent is proceeded ex parte.

6. By the order dated 20.09.2024, the parties were directed to file their written submissions. The written submissions have not been filed.

7. A perusal of the record shows that neither the Application under Order VII Rule 11 of the CPC has been filed on record before this Court nor have the documents which the Petitioner seeks to rely upon been placed on record. The present Petition has been filed along with typed copies of some documents.

8. The learned Trial Court had, by the Impugned Order, found that, in view of an exclusive jurisdiction clause in the bond/contract executed between the parties, which is Clause 9(m), the Courts at New Delhi shall have the exclusive jurisdiction, and thus the Application under Order VII Rule 11 of the CPC filed by the Petitioner, was dismissed by the learned Trial Court. The finding also records the fact that the execution of a bond between the plaintiff and the defendant in which clause exists is not disputed.



9. Learned Senior Counsel for the Petitioner submits that the documents that the learned Trial Court has referred to is a document dated 14.08.2013, however there was a “fresh service bond” signed by the Respondent/defendant on 14.08.2016.

10. From the documents available on record, the Court finds that the exclusive jurisdiction clause does appear in two documents. One is a non-disclosure agreement dated 14.08.2013 [hereinafter referred to as the “NDA”] executed by the Petitioner/employee. Clause 4 of the NDA, which is a clause on Governing Law and Dispute Resolution, reads as under:

“4. GOVERNING LAW AND DISPUTE RESOLUTION

This will be governed by and construed in accordance with the laws of India and shall be submitted to the exclusive jurisdiction of the courts in New Delhi.”

[Emphasis Supplied]

10.1 Thus, the NDA, which was signed by the Petitioner at the time of executing the contract provides for exclusive jurisdiction of the Courts at Delhi.

11. In addition, Annexure-I filed by the Petitioner is Terms and Conditions of the Appointment dated 14.08.2013. This document contains Clause 9(m) which has been relied upon by the learned Trial Court and which reads as follows:

“m) This letter will be governed by and construed in accordance with the laws of India and shall be submitted to the exclusive jurisdiction of the courts in New Delhi.”

[Emphasis Supplied]

11.1 This document is admittedly signed by both the parties and is dated 14.08.2013.

12. The Respondent/Plaintiff has in its plaint stated that the bond which was signed and executed by the Petitioner/Defendant was executed at the office of the Respondent/Company situated within the jurisdiction of this Court and thus, the Court has jurisdiction to entertain the suit. In this regard, paragraph 11 of the plaint is reproduced below:

“11. That the office of the plaintiff company is situated within the jurisdiction of the Hon'ble Court, offer of appointment was given at the address mentioned in the plaint, the bond was signed and executed by the defendant at the office of the plaintiff company situated within



the jurisdiction of Hon'ble Court; as such the Hon'ble Court has jurisdiction to try and entertain the present suit. The suit is otherwise within limitation."

12.1 Sections 15 to 20 of the CPC provide for territorial jurisdiction of the Courts. Section 19 of the CPC provides that a suit for compensation for wrong done to the person or to movable property is within the jurisdiction of one Court and the defendant resides within the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the Courts. Section 19 of the CPC is reproduced below:

"19. Suits for compensation for wrongs to person or movables.— Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts."

13. The Supreme Court in **A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem**; (1989) 2 SCC 163, 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]

13.1 In **Swastik Gases Private Limited v. Indian Oil Corporation Limited**; (2013) 9 SCC 32, 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 is below:

*“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.***

[Emphasis Supplied]

14. The learned Trial Court had examined the plaint and the documents annexed with it and found that paragraph 11 of the plaint, which contains jurisdictional clause, stated that the office of the Respondent/Company were situated at Delhi and that the offer of appointment was executed at Delhi by the Petitioner. Thus, it was held that the Court has jurisdiction to entertain the present Suit. In addition, reliance was placed on the exclusive jurisdiction clause i.e., 9(m) in the service bond to dismiss the Application.

15. It is settled law that for an examination under Order VII Rule 11 of the CPC, only the plaint and the documents with the plaint have to be examined by the Court. The Respondent/Company has in the plaint averred that the part of the cause of action has arisen within the jurisdiction of the Court at Delhi, and thus, the Suit has been filed in Delhi.

16. Prima facie, on an examination of the Impugned Order and the documents on record, this Court finds no infirmity with the Impugned Order, which merits interference under Section 115 of the CPC.



16.1 CM APPL. 8625/2019 is accordingly dismissed.

17. Learned Senior Counsel for the Petitioner submits that the Petitioner was unable to place on record the written synopsis despite the directions of the Court on 20.09.2024, and requests for some time to place the following on record.

17.1 At his request, let a brief note of contentions, not exceeding two pages, be filed at least three days before the next date of hearing, along with the compilation of judgments, if any, relied upon. All judgments sought to be relied upon shall be filed with an index which also sets out the relevant paragraph numbers and the proposition of law that it sets forth.

18. List the matter for hearing and disposal on 20.05.2025 at the end of Supplementary list.”

5. In terms of Paragraph 18 of the order dated 30.04.2025, the matter had been listed for hearing and final disposal today. However, once again, learned Counsel for the Petitioner requests for an adjournment.

6. Given the fact that the proceedings before the learned Trial Court have been kept in abeyance since 2019 and what is stated above, the request for adjournment is denied.

7. As has been recorded on 30.04.2025, the only grievance of the Petitioner is that the learned Trial Court does not have the territorial jurisdiction to entertain the Suit. The learned Trial Court examined the plaint that was filed before it and found that part of the cause of action had arisen within the territorial jurisdiction of the learned Trial Court. In addition, reliance was placed on the exclusive jurisdiction clause i.e., 9(m) in the service bond executed between the parties. Hence, while adjudicating the Application filed by the Petitioner under Order VII Rule 11, CPC, the learned Trial Court has held that it has the jurisdiction to entertain the Suit in view of the contentions of the Respondent/Plaintiff regarding jurisdiction as



have been set out in the plaint.

8. It is the contention of the Petitioner (Defendant before the learned Trial Court) that the entire cause of action arose within the city of Bangalore, Karnataka and thus the Courts in Delhi do not have the territorial jurisdiction to entertain the suit.

9. It is settled law that for an examination under Order VII Rule 11 of the CPC, only the plaint and the documents with the plaint have to be examined by the Court. The Supreme Court in the case of ***Saleem Bhai & Ors. v. State of Maharashtra & Ors.***¹ has held that:

“7. The short common question that arises for consideration in these appeals is, whether an application under Order 7 Rule 11 CPC ought to be decided on the allegations in the plaint and filing of the written statement by the contesting defendant is irrelevant and unnecessary.

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9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

[Emphasis Supplied]

9.1 The Respondent/Plaintiff has in the plaint averred that the part of the cause of action has arisen within the jurisdiction of the Court at Delhi, and thus, the Suit has been filed in Delhi. The relevant extract of the plaint in

¹ (2003) 1 SCC 557



this behalf is reproduced below:

“11. That the office of the plaintiff company is situated within the jurisdiction of the Hon'ble Court, offer of appointment was given at the address mentioned in the plaint, the bond was signed and executed by the defendant at the office of the plaintiff company situated within the jurisdiction of Hon'ble Court; as such the Hon'ble Court has jurisdiction to try and entertain the present suit. The suit is otherwise within limitation.”

[Emphasis Supplied]

9.2 It is the contention of the Respondent/Plaintiff that since the office of the Respondent/Plaintiff is situated within the jurisdiction of the learned Trial Court, the offer of appointment was given to the Petitioner at this address, the bond was signed and executed by the Petitioner at the office of the Respondent/Plaintiff, thus the learned Trial Court has the jurisdiction to try and entertain the suit and the suit was filed in Delhi.

10. Learned Counsel for the Petitioner has on the other hand in this Petition relied on an undertaking of service dated 06.08.2016 [hereinafter referred to as “Undertaking”] executed by the Petitioner at Bangalore to submit that this document does not have any jurisdiction clause and since the Petitioner was working in Bangalore, the Courts at Delhi have no jurisdiction to try and entertain the suit.

11. This Court on 30.04.2025 has already examined the exclusive jurisdiction clause which appears in two documents. One is a non-disclosure agreement dated 14.08.2013 [hereinafter referred to as “NDA”] executed by the Petitioner with the Respondent/Company wherein clause 4 provides that that the NDA would be subject to exclusive jurisdiction of the courts in New Delhi. In addition, Annexure-I as filed by the Petitioner is the Terms and Conditions of his Appointment dated 14.08.2013 in which clause 9(m) provides that the Appointment letter shall be subject to the exclusive



jurisdiction of the Courts in New Delhi. This letter has been signed by both the parties.

11.1 The Supreme Court in *Swastik Gases Private Limited v. Indian Oil Corporation Limited*², 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 is below:

“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.”

[Emphasis Supplied]

12. By the Impugned Order, the learned Trial Court has held that based on the exclusive jurisdiction clause which forms part of the letter of appointment, the Courts at Delhi have jurisdiction and thus, the suit cannot

² (2013) 9 SCC 32



be dismissed under Order VII Rule 11 of the CPC. However, the question of jurisdiction has been left open and the same shall be taken up for disposal after the evidence and trial along with other issues.

13. The Court has examined the Undertaking on which, reliance is placed by the Petitioner in this Petition. The undertaking has been executed by the Petitioner in pursuance of an international training programme which the Petitioner was required to attend from August 08 to August 20, 2016 at Germany. The Undertaking sets out that the Respondent/Plaintiff is going to incur expense on the Petitioner and that the Petitioner agrees not to leave the services of the Respondent/Plaintiff before the completion of three years from the date of commencement of the said training. The Undertaking also contains a non-compete clause.

13.1 The Undertaking cannot however be termed as the contract of employment of the Petitioner. It is a document executed by the Petitioner as an additional document during the course of his employment for securing the money spent by the Respondent/Company on training the Petitioner. The extract of the Undertaking reflecting this, is set out below:

"2. The Company is, as part of the Company's policy of encouraging its employee's to gain international exposure and training, sending me for training to the facility of (1) ERSa GmbH, Leonhard-Karl-Str. 24, D-97877 Wertheim, Germany (2) M/s Kolb Cleaning Technology GmbH, Karl-Arnold-Str. 12, D-47877 Willch, Germany and (3) LPKF Laser & Electronics Ag, Osteriede 7, D-30827 Garbsen, Germany for a period of from August 08 to August 20, 2016.

3. I understand that the Company is going to fund my training and is incurring an expenditure of more than INR 3,00,000 (Rupees Three lacs only) ("Training Cost") towards the same, including making arrangement for my travel, tickets, lodging etc.

4. In consideration for the Training Cost being incurred by the Company in providing me with the aforesaid training, I agree that shall not leave the services of the Company before the completion of 3 (Three) years from



the date of commencement of the said training. In the event that I leave the services of the Company prior to the completion of the said 3 (Three) period, I shall be liable to pay back to the Company, an amount equivalent to the Training Cost.

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9. I agree that if the restriction envisaged herein is held to be void by a Court of competent jurisdiction, the same would be valid and enforceable if modified or altered to the extent necessary to permit its enforcement and such restriction shall apply on me with such modification.”

[Emphasis Supplied]

14. In any event, and as stated above, for the purposes of examination of the Application under Order VII Rule 11 of the CPC, only the plaint and the documents filed with the plaint are required to be looked into. The defences raised by the pleas taken by the defendant in the written statement would be wholly irrelevant at the stage of adjudicating an Application under Order VII Rule 11.

15. The Supreme Court in ***Ambadas Khanduji Shinde & Ors. v. Ashok Sadashiv Mamurkar & Ors.***³, has held that the revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. The Supreme Court in ***Ambadas Khanduji*** case has held:

*“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. **It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to***

³ (2017 14 SCC 132)



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root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

[Emphasis Supplied]

16. As is stated above, the examination by this Court shows that the Impugned Order does not suffer from any irregularity which would merit interference by this Court.

17. Accordingly, the Petition is dismissed. It is, however, made clear that the order passed today will not preclude the Petitioner from raising all contentions before the learned Trial Court. The rights and contentions of both the parties are left open in this behalf.

18. The parties will act based on the digitally signed copy of the order

TARA VITASTA GANJU, J

MAY 20, 2025/pa/r

[Click here to check corrigendum, if any](#)