

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 85 of 2012****Reserved on 06.04.2021****Pronounced on 08.06.2021**

- Itarasi Oil And Flour Limited A Co. Regi. Under The Pro. Of The Co. Act, 1956 Through Its Director Shri Dharendra Shri Shrimal, Having Its registered office at K.N. Building Subhash Road, Ganj Para, Raipur, Chhattisgarh. **---- Appellant**

Versus

- And Agro Services Private Limited, A Company registered Under the provisions of the Companies Act, 1956 Through Its Director Now known As Noble Resources And Trading India Private Ltd. Having Its Office At 622, C-Wing, 215, Atrium, Andheri Kurla Road, Andheri East- Mumbai – 400093. **---- Respondent**

For Appellant: : Shri Ankit Singhal appears along with
Shri Om Kukreja, Advocate

For Respondent : Shri Sourabh Sharma appears along with
Shri Shailesh Tiwari, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal
CAV Judgment/Order

1. Challenge to this appeal preferred by the Plaintiff under Order 43 Rule 1 (a) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') is the order dated 01.03.2011 passed in Civil Suit No.05-B/2009, whereby the trial Court, while exercising the powers enumerated under Order 7 Rule 10 of C.P.C., has returned the plaint for its presentation before the Court having its territorial jurisdiction.
2. Briefly stated the facts of the case are that the Plaintiff Itarasi Oil & Flour Limited (hereinafter referred to as 'the Plaintiff'), a company registered under the provisions of the Companies Act of 1956, a manufacturer and seller of Soya Oil and Soya D.O.C., has instituted a suit claiming a total sum of Rs.11,96,706/- submitting *inter alia* that the Defendant And Agro Services Private Limited (hereinafter referred to as

'the Defendant') has agreed to purchase 1900 metric tons of soyabean D.O.C. at the rate of Rs.195 US \$ per metric ton plus 5% of the export performance premium under a contract dated 21.03.2006, which was duly signed and executed through its broker namely, Puja Commodity having its registered office at Raipur. According to the Plaintiff, it supplied 1901.100 metric tons of Soya D.O.C. to the Defendant which was the total consideration of Rs.1,73,20,922/- at the rate of Rs.9,111/- per metric ton plus 5% premium under the invoice dated 27.03.2006. It is pleaded further that the Defendant has paid only a sum of Rs.1,63,47,371/- in pursuance of the said invoice through pay order dated 21.04.2006, while Rs.93,620/- through pay order dated 18.01.2007 against the said amount of Rs.1,73,20,922/- and has failed to deposit the rest of the amount of Rs.8,79,931/- despite issuance of legal notice dated 05.07.2007, giving rise to the institution of the suit for the recovery of dues of Rs.11,96,706/-, i.e. Rs.8,79,931 plus interest thereon at the rate of 12% per annum, instituted on 26.03.2009.

3. Despite service of summons of the suit, the Defendant has failed to appear and vide order dated 27.01.2011, it was proceeded *ex parte* and Plaintiff's evidence was thereafter recorded on 15.02.2011.
4. The trial Court has, however, returned the plaint vide its order impugned dated 01.03.2011 in exercise of the powers under Order 7 Rule 10 of C.P.C. for its presentation before the competent Court having its territorial jurisdiction on finding that Defendant's registered office, as mentioned in the plaint, is beyond its jurisdiction and while referring to the Cash/Credit Memo (Ex.P-3) wherein jurisdiction was shown to be "subject to Itarasi jurisdiction", it was, therefore, observed that the suit is

instituted beyond its jurisdiction. This is the order which has been impugned by way of this appeal.

5. According to the learned counsel for the Appellant/Plaintiff, since the contract was made at registered office of the Plaintiff's company at Raipur, and, therefore, the part of the cause of action has arisen within the territorial jurisdiction of the Court below and the suit as framed was, therefore, not liable to be returned as such. It is contended further that since the demand notice was made from Raipur, therefore, cause of action has arisen when Defendant's company has failed to honour the same. It is contended further that merely on the basis of the condition printed on the Bill (Ex.P-3), it cannot be said that the Court below has no jurisdiction to entertain the suit, particularly, when the alleged contract was made at Raipur. In support, a reliance has been placed upon the decision rendered by the Supreme Court in the matter of ***A.B.C. Laminart Pvt. Ltd. and another vs. A.P. Agencies, Salem*** and ***R.S.D.V. Finance Co. Pvt. Ltd. vs. Shree Vallabh Glass Works Ltd.***, reported in (1989) 2 SCC 163 and (1993) 2 SCC 130 respectively.
6. On the other hand, learned counsel for the Respondent/Defendant, while placing its reliance upon the decision rendered in the matter of ***Swastik Gases Private Limited vs. Indian Oil Corporation Limited*** reported in (2013) 9 SCC 32 has supported the order impugned as passed by the trial Court.
7. I have heard learned counsel for the parties and perused the entire record carefully.
8. From perusal of the record, it appears that the suit relates to the

recovery of amount payable by the Defendant with regard to the items supplied to it under the contract made on 21.03.2006 at the registered office of the Plaintiff's company at Raipur. Unrebutted statement of the Plaintiff would also show that it was executed at Raipur. It appears further that despite issuance of Demand Notice from Raipur, it was not honoured by the Defendant. The cause of action, thus, arises at Raipur and, therefore, by virtue of clause (c) of Section 20 of the CPC the Court below has a territorial jurisdiction to entertain the same and it cannot be, in any manner, held to be instituted beyond its jurisdiction merely on the basis of the condition printed in the said Cash Memo Bill marked as Ex.P-3, as observed by the trial Court.

9. Section 20 of CPC, except the illustration, is relevant for the purpose which reads as under:-

“20. Other suits to be instituted where defendants reside or cause of action arises.--Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution;or

(c) the cause of action, wholly or in part, arises.

[Explanation.]--A corporation shall be deemed to carry on business at its sole or principal office in

[India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

10. Clause (c) of the aforesaid provision enables the Plaintiff to institute a suit against the Defendant within the local limits from whose jurisdiction the cause of action “wholly or some in part arises”. It means that if a part of the cause of action arises within the local limits of the jurisdiction of the Court, such Court would have jurisdiction to entertain and try such a suit. Thus, a suit based on the contract can be filed at the place where it is executed. It was, therefore, incumbent upon the Court below to examine as to whether cause of action wholly or partly has arisen within the local limits of its jurisdiction or not. However, even without examining the alleged contract made on 21.03.2006 (Ex.P-8), the Court below has held that it has no jurisdiction to entertain the same.
11. It was, however, reflected from a bare perusal of the alleged contract (Ex.P-8) that the cause of action has arisen at Raipur and its jurisdiction has not been excluded specifically by any of the terms and conditions of the alleged contract. Even then, the claim has been directed to be returned for its presentation before the Court having its jurisdiction merely on the basis of the condition printed on the Cash Memo Bill (Ex.P-3). The approach of the Court below is, therefore, not sustainable and liable to be set aside in view of the principles laid down by the Supreme Court in the matter of **A.B.C. Laminart Pvt. Ltd. and another vs. A.P. Agencies, Salem** (supra) wherein at paragraphs 20 and 22 it was held as under:-

“20. When the court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the ousting expression or clause properly.

Often the stipulation is that the contract shall be deemed to have been made as a particular place. This would provide the connecting factor for jurisdiction to the Courts of that place in the matter of any dispute on or arising out of that contract. It would not, however, ipso facto take away jurisdiction of other courts. Thus, in *Salem Chemical Industries v. Bird & Co.* (AIR 1979 Mad 16), where the terms and conditions attached to the quotation contained an arbitration clause provided that : “any order placed against this quotation shall be deemed to be a contract made in Calcutta and any dispute arising therefrom shall be settled by an arbitrator to be jointly appointed by us”, it was held that it merely fixed the situs of the contract at Calcutta and it did not mean to confer an exclusive jurisdiction on the court at Calcutta, and when a part of the cause of action had arisen at Salem, the court there had also jurisdiction to entertain the suit under Section 20(c) of the Code of Civil Procedure.”

“22. Coming to clause 11 we already found that this clause was included in the general terms and conditions of sale and the order of confirmation No.68/59 dated October 2, 1974 with the general terms and conditions was sent from Udyognagar, Mohmadabad, Gujarat to the respondent's address at 12 Suramangalam Road Salem, Tamil Nadu. The statement made in the special leave petition that Udyognagar, Mohamadabad, Gujarat is within the jurisdiction of the civil court of Kaira has not been controverted. We have already seen that making of the contract was a part of the cause of action and a suit on a contract therefore could be filed at the place where it was made. Thus Kaira court would even otherwise have had jurisdiction. The bobbins of metallic yarn were delivered at the address of the respondent at Salem which, therefore, would provide the connecting factor for court at Salem to have jurisdiction. If out of the two jurisdictions one was excluded by clause 11 it would not absolutely oust the jurisdiction of the court and, therefore, would not be void against public policy and would not violate Sections 23 and 28 of the

Contract Act. The question then is whether it can be construed to have excluded the jurisdiction of the court at Salem. In the clause 'any dispute arising out of this sale shall be subject to Kaira jurisdiction' ex facie we do not find exclusionary words like 'exclusive', 'alone', 'only' and the like. Can the maxim '*expressio unius est exclusio alterius*' be applied under the facts and circumstances of the case? The order of confirmation is of no assistance. The other general terms and conditions are also not indicative of exclusion of other jurisdictions. Under the facts and circumstances of the case we hold that while connecting factor with Kaira jurisdiction was ensured by fixing the situs of the contract within Kaira, other jurisdictions having connecting facts were not clearly, unambiguously and explicitly excluded. That being the position it could not be said that the jurisdiction of the court at Salem which court otherwise had jurisdiction under law through connecting factor of delivery of goods thereat was expressly excluded. We accordingly find no error or infirmity in the impugned judgment of the High Court."

12. While reiterating the aforesaid principles, it has been observed further by the Supreme Court in the matter of **R.S.D.V. Finance Co. PVT. LTD. Versus Shree Vallabh Glass Works Ltd.**(supra) at paragraph 9 as under:-

".....The endorsement 'Subject to Anand jurisdiction' does not contain the ouster clause using the words like 'alone', 'only' 'exclusive' and the like. Thus the maxim '*expressio unius est exclusio alterius*' cannot be applied under the facts and circumstances of the case and it cannot be held that merely because the deposit receipt contained the endorsement 'Subject to Anand jurisdiction' it excluded the jurisdiction of all other courts who were otherwise competent to entertain the suit. The view taken by us finds support from a decision of this Court in **A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem, (1989) 2 SCC 163.**"

13. In the instant matter, as observed herein above, the cause of action for the institution of the suit has arisen at Raipur where the alleged contract was executed. Therefore, in the light of the aforesaid principles laid down by the Supreme Court, the Court below has jurisdiction to deal with the matter and the jurisdiction of it cannot be said to be taken away, as observed by the trial Court, while returning the plaint for its presentation before the Court having its jurisdiction under Order 7 Rule 10 of CPC.
14. In so far as the principles laid down in the matter of **Swastik Gases Private Limited vs. Indian Oil Corporation Limited** (supra), as relied upon by the learned counsel for the Respondent/Defendant, are concerned, the same are, however, noted to be distinguishable from the facts involved in the present matter. As in the said matter, an application was made by the appellant before the Rajasthan High Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator in respect of the disputes arising out of the agreement executed between the parties, where an objection was made regarding territorial jurisdiction of the said court as the clause contained therein with regard to the jurisdiction of the Court was "subject to jurisdiction of the Courts at Kolkata". The said objection was upheld as there was no dispute between the parties with regard to the territorial jurisdiction of the Kolkata High Court as well, apart from the Rajasthan High Court. In view of that and, particularly, when one or more Courts have jurisdiction, it was, therefore, held to be open for the parties to choose any one of it. However, in the instant matter, the Court of Itarsi has no jurisdiction as no cause of action has arisen

therein so as to exclude the territorial jurisdiction of the Raipur Court where the alleged agreement (Ex.P.8) was executed between the parties on 21.03.2006 merely on the ground that the cash/credit memo (Ex.P.3) contained "subject to Itarsi jurisdiction".

15. In view of the foregoing discussions, the appeal is allowed and the impugned order dated 01.03.2011 passed in Civil Suit No.5B of 2009 of the concerned trial Court is hereby set aside with a direction to the said Court to take the plaint on file and dispose of the suit on merits in accordance with law. The parties are directed to remain present before the said Court and/or the concerned Court on 08.07.2021, who shall decide the suit accordingly.

No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE