

(2013) 02 DEL CK 0216

In the Delhi High Court

Case No : CS (OS) 960 of 2008 and I.As. 6209 of 2008, 14309 of 2009, 11215 of 2010 and Criminal M.A. 12523 of 2012

M/s. Mittal Extrusion Works Private Ltd.

APPELLANT

Vs

M/s. Biogenetic Drugs Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Contract Act, 1872 — Section 23, 28

Citation : (2013) 134 DRJ 723

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Amit Gupta with Mr. Sakin Rana, for the Appellant; Amrit Kaur Oberoi, Advocate for defendants No. 1 to 5, Mr. Mukesh Kumar, Advocate with Ms. Tanu Priya, Advocate for defendant No. 6, for the Respondent

Judgement

Manmohan, J.—The plaintiff has filed the present suit seeking a decree against the defendants to the tune of Rs. 33,04,501/- along with pendent lite and future interest. The facts as stated in the plaint are that the defendant No. 1-company of which defendant Nos. 2 to 5 are directors, placed certain purchase orders for supply of printed aluminum collapsible tubes on the plaintiff-company at its Delhi office. Pursuant to the purchase order, the plaintiff-company made deliveries to the defendant no. 1 at its work site at Baddi, Himachal Pradesh and raised number of invoices. It is the case of the plaintiff that even after receipt of the goods, defendant No. 1-company has failed to make payments for the goods supplied. Hence the present suit for recovery of Rs. 33,04,501/-.

2. In the written statement, the defendants apart from the other defences taken, have raised a preliminary objection with regard to territorial jurisdiction of this Court to try the present suit. Vide order dated 19th July, 2012, the following preliminary issue was framed for consideration:-

(i) Whether this Court has no territorial jurisdiction to entertain and try the present suit? OPD.

3. Ms. Amrit Kaur Oberoi, learned counsel for defendant No. 1 company submitted that this Court has no territorial jurisdiction to try and entertain the present suit as no cause of action arose in Delhi and merely because the plaintiff has its registered office in Delhi would not confer upon this Court with jurisdiction to try the present suit.

4. Ms. Oberoi further submitted that the purchase orders were issued by the defendants No. 1-company from Baddi, Himachal Pradesh and the goods were manufactured and dispatched from the factory premises of the plaintiff at Ghaziabad in Uttar Pradesh to Baddi in Himachal Pradesh. She submitted that in view of the above either the Courts at Baddi, Himachal Pradesh or Ghaziabad, Uttar Pradesh could have had jurisdiction. However, she further submitted, that given the ouster clause contained in the invoices issued by the plaintiff, courts in Ghaziabad, Uttar Pradesh alone have jurisdiction to try the present case.

5. Mr. Amit Gupta, learned counsel for plaintiff vehemently contradicted the stance of the defendants and submitted that the purchase orders placed by the defendant No. 1-company were received and accepted by the plaintiff at its office in Delhi and therefore, the contract in fact came into existence in Delhi. He further submitted that all the payments were also received by the plaintiff in Delhi and this Court has jurisdiction to try the present suit.

6. Mr. Gupta admitted to the fact that the invoices issued by the plaintiff contained an ouster clause. He, however, submitted that these invoices would not have any bearing qua jurisdiction as the same were unilateral communications on behalf of the plaintiff which were not accepted by the defendants. He submitted that in absence of consensus ad idem between the parties, the said clause would not be binding upon the parties and therefore, the said clause cannot oust the jurisdiction of this Court. In this connection, Mr. Gupta, learned counsel for plaintiff relied upon the judgments of this Court in Dura-Line India Pvt. Ltd. Vs. BPL Broadband Network Pvt. Ltd., ; Taipack Limited and Others Vs. Ram Kishore Nagar Mal, and Wollaque Ventilation and Conditioning Pvt. Ltd. Vs. Sterling Tools Ltd., .

7. This Court has gone through the paper book and heard the learned counsel for parties. In the present case, the purchase orders were issued from Baddi which were received at Delhi and subsequently the goods were dispatched by the plaintiffs from the Ghaziabad to defendant No. 1- company"s work site at Baddi, Himachal Pradesh. In view of the aforesaid, this Court is of the opinion that since parts of the cause of action has arisen at all of the above mentioned three places, the Courts at all these places would be competent to entertain any dispute arising out of these transactions between the parties.

8. However, the Court has to examine the legal consequences of the ouster clause "Subject to Ghaziabad Jurisdiction Only" contained in the invoices issued by the plaintiff to the defendants. Insofar as the issue regarding the principles of forum selection is concerned, it is a settled law that where there may be more

than one competent Court which can entertain a suit consequent upon a part of the cause of action having arising therein, the parties to the contract can agree to vest jurisdiction in one of such competent courts to try the dispute which might arise between the parties and such an agreement would be valid and binding upon the parties. The Supreme Court in *A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem*, held as under:-

16. So long as the parties to a contract do not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the Court. If under the law several Courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. Would this be the position in the instant case ?

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18...Thus it is now a settled principle that where there may be two or more competent Courts which can entertain a suit consequent upon a part of the causes action having arisen there within, if the parties to the contract agree to vest jurisdiction in one such court to try the dispute which might arise as between themselves the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague it is not hit by Sections 23 and 28 of the Contract Act This cannot be understood as parties contracting against the Statute. Mercantile Law and practice permit such agreements.

9. This Court is of the opinion that the contention of the plaintiff that the ouster clause contained in the invoice issued by it, would not be binding upon the parties, is misconceived. As soon as the invoices were sent by the plaintiff and the defendant No. 1-company admittedly accepted the goods under the said invoices without any protest, the contract between the parties stood completed and both parties were bound by the said ouster clause.

10. The reliance upon the judgments by the learned counsel for plaintiff is misplaced insofar as the judgments cited by the plaintiff deal with situations wherein there had been contrary stipulations with regard to conferment of exclusive territorial jurisdiction in the purchase order placed by one party and the invoices by the other party. Moreover, in the cases relied upon by the plaintiff, one party has sent a communication containing "a right determining clause" and the other party has raised an objection to it. This is, however, absent in the

present case whereby the defendants have not raised any objection to the ouster clause. In fact, even during the course of hearing, Ms. Oberoi, learned counsel for defendant No. 1-company took a specific stand that defendants No. 1 to 5 never protested as far as the ouster clause is concerned and are willing to submit to the jurisdiction of the courts in Ghaziabad as contained in the invoices raised by the plaintiff.

11. This Court is further of the opinion that it is not open for the plaintiff now to raise an objection to the validity of the ouster clause as the plaintiff itself has debarred/precluded itself from going to any other Court except Courts at Ghaziabad in Uttar Pradesh. The ouster clause contained the invoices issued by the plaintiff operates as estoppels against the plaintiff and it would not be just to allow the plaintiff to wriggle out from it. The plaintiff cannot be allowed to have the cake and eat it too. Consequently, the preliminary issue is decided in favour of defendants and against the plaintiff. Accordingly, it is held that this Court has no jurisdiction to entertain the present suit. The plaint is directed to be returned to the plaintiff with liberty to file it in an appropriate court having the jurisdiction to deal with the same. The pending applications and suit stand disposed of.