

(2014) 12 CAL CK 0069

Calcutta High Court

Case No: G.A. No. 3294 of 2013 and C.S. No. 86 of 2013

Sahaj E-Village Limited

APPELLANT

Vs

Oracle India Pvt. Ltd.

RESPONDENT

Date of Decision: Dec. 3, 2014

Citation: (2015) 1 CALLT 23 : (2015) 2 CHN 477 : (2015) 2 WBLR 503

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: S.N. Mukherjee, Sr. Advocate and Satarup Banerjee, Advocate for the Appellant; Ranjan Bachawat, Sr. Advocate and Shreyea Basu Mallick, Advocate for the Respondent

Judgement

Soumen Sen, J.

This is an application in the nature of demurer taken out by Oracle India Pvt. Ltd., the defendant No. 1.

2. The defendant No. 1 applicant has prayed for dismissal of the suit on the ground that no part of the cause of action has arisen within the jurisdiction of this court inasmuch as the agreement forms the basis of the claim in the suit contains a jurisdictional clause which ousts the jurisdiction of this court.

3. Mr. Ranjan Bachawat, the learned senior Counsel appearing on behalf of the petitioner-applicant submits that the plaintiff has instituted the suit as a preemptive action. The plaintiff owes a large sum of money to the defendants which the plaintiff has failed to pay. In order to prevent the defendant No. 1 from initiating any such recovery proceeding, this suit has been instituted. It has been argued that the suit is vexatious and frivolous.

4. Mr. Bachawat refers to the cause title of the plaint and submits that the plaintiff is having its office outside the jurisdiction of this Court. The other defendants are also having their offices outside. The office of the defendant No. 1 as mentioned in the cause title is a branch office of the defendant No. 1 which is unconnected and has

nothing to do with the transactions. It is submitted that for the purpose of invocation of jurisdiction of this Court the plaintiff has relied upon Paragraphs 8 and 15 which on a true and meaningful reading could not give any cause of action to the plaintiff for invoking the jurisdiction of this Court. Paragraph 8 refers to negotiation which has ultimately culminated in an agreement entered into by and between the parties on 24th August, 2009. Once a contract is executed pre-negotiation discussion is immaterial and does not and cannot give a cause of action to the plaintiff. The learned senior counsel has referred to a decision reported in [V. Sreedharan Vs. T.T. Nanu and Another](#), for the proposition that preliminary negotiations would not form part of the cause of action or determine the jurisdiction of the Court. It is submitted that the contract was entered outside the jurisdiction of this Court. The entire mass of evidence are outside and the witnesses that are required to be examined in the suit are also residing outside the jurisdiction of this Court. In referring to Paragraph 15 it is submitted that the electronic transfer of fund from the banker of the plaintiff within the jurisdiction to the bank account of the defendant at Connaught Place, New Delhi would also not constitute any cause of action. It is submitted that even on the balance of convenience the plaint is required to be returned to the appropriate forum for presentation. The learned Senior Counsel has referred to Paragraph 17 of the Petition and the sub-paragraphs thereunder to submit that the entire transaction had taken place at Gurgaon outside the jurisdiction of this Hon"ble Court and all record documents and/or evidence in the event of trial of the suit in this Court would be required to be brought from different offices of the plaintiff from Mumbai, New Delhi and/or Gurgaon. The petitioner would be required to bring senior officers who are stationed at Gurgaon and Mumbai. The prolonged presence of such persons in Calcutta from time to time for the purpose of deposing would cause serious prejudice and inconvenience. In this regard the learned Senior Counsel has referred to the following decisions:--

"I) [Parasram Harnandrai Vs. Chitandas and Others](#), ;

II) 1994 (2) CHN 472 (Sambhu Prasad Agarwal versus I.C.D.S. Ltd. & Ors)."

5. The petitioner refers to the documents signed by the plaintiff on 28th April, 2010 and by the defendant on 29th April, 2010 appearing at page 221 of the Petition which refers to the Oracle service agreement dated 24th August, 2009 that would be effective from 29th August, 2009. The said document was referred to in order to show that the said ordering document incorporates by reference the terms of the agreement. The agreement dated 24th August, 2009 appearing at page 208 of the Petition and more particularly Clause M(3) of the said agreement has been referred to show that the defendant No. 1 has agreed to submit to the exclusive jurisdiction of courts at New Delhi in case of any dispute arising out of or relating to this agreement. It is submitted that in view of such exclusive ouster clause in the agreement this Court may not proceed with the suit any further and return the

plaint to the appropriate court for presentation after revoking the leave under Clause 12 of the Letters Patent.

6. Mr. Bachawat has referred to the decisions reported at [Swastik Gases P. Ltd. Vs. Indian Oil Corporation Ltd., , Jokai \(Assam\) Tea Co. Ltd. and Another Vs. Bhawani Shankar Bagaria, , Sri Rajendra Mills Ltd. Vs. H.V.M. Hazi Hasan Dada and Another,](#) and submits that in view of the well-settled law that once a party has agreed to submit to the exclusive jurisdiction of a Court which is otherwise competent to try and determine the suit, the natural forum should be that Court only and jurisdiction of all other Courts by implication are excluded.

7. Per contra, Mr. S.N. Mukherjee, the learned Senior Counsel appearing on behalf of the plaintiff submits that the causes of action in the suit are for breach of contract and tort. The plaintiff entered into the contract on inducement held out by the defendants that they are capable of executing the contract. One of the causes of action in the suit is not the contract but is based on tort refers to paragraph 8 of the plaint to show that the representations we. In fact, both the defendants are tortfeasors. The learned Senior Counsel re made by the representatives of the defendant at the Camac Street Office of the plaintiff within the jurisdiction. The defendant No. 1 is founded on contract whereas the cause of action against the defendant No. 2 is based on tort. It is submitted that joinder of the parties is permissible in law and in this regard, reference is made to Order 1 Rule 3 which is enabling provision. If separate suits are brought against these two separate entities common question of law and fact would arise. Since the commons questions of law and fact would arise and common set of witnesses and evidence would be required, it is submitted that the said defendants are joined in this suit. It is submitted that where a plaintiff has a distinct and separate causes of action against two defendants and the cause of action against the defendant arose within and that against the other outside the jurisdictions of the Court and the plaintiff has brought a suit against both of them claiming relief against both the two defendants can be joined in one suit. The cause of action against the defendant No. 2 is an action in tort. The learned Senior Counsel has referred to [Bengal and North-Western Railway Co. Ltd. Vs. Sadaram Bhairoran,](#) .

8. Mr. Mukherjee has referred to the observation of Justice Woodroffe where His Lordship has held that Order 1 Rule 3 is a provision which relates to joinder of parties and it assumes the existence of a suit in a proper forum, the Court having jurisdiction to try the suit. If the Court has such jurisdiction then Order 1 Rule 3 might come into play. It is submitted that it cannot be doubted that the causes of action have arisen within the jurisdiction of this Court and, accordingly, the joinder of parties are permissible. The defendants are joint tortfeasors. In dealing with the submission of Mr. Ranjan Bachawat that the suit is required to be transferred to an appropriate Court at Delhi and in terms of the agreement between the plaintiff and the defendant No. 1, it is submitted that no case of balance of convenience has been

made out by the defendant No. 2. The only ground taken by the defendant No. 2 that the plaint does not disclose any cause of action. That the plaint, in fact, discloses cause of action against the defendant No. 2 would be more than evident from Paragraph 8 and the other paragraphs. It is the meaningful reading of the plaint that is necessary to decide an application for demurer. In view of such specific arguments it is submitted that it cannot be contended that this Court has no jurisdiction. Mr. Mukherjee has referred to *Roneleigh Ltd. v. Mill Exports INC.* reported at 1989 (1) WLR 619 for the proposition that in order to decide the balance of convenience, the Court should have due regard to the cost and expenses that the plaintiff would be required to incur if the suit is tried at Delhi. The plaintiff would be required to pay far larger court-fees. It is submitted that the software was developed for being used at different village level units. The contract is to be performed in Calcutta and the breach has taken place at Calcutta. In view thereof, it is argued that the Court at Calcutta is the natural forum.

9. The plaintiff has instituted the suit against the defendants for recovery of large sums of money for breach of contract. The plaintiff has also alleged inducement on the part of the defendants, more particularly the defendant No. 2, in entering into the said contract with the defendant No. 1. The defendant No. 2 is to supply the required technology to the plaintiff through the defendant No. 1. The defendant No. 1 was entrusted to do various works under the agreement dated 24th August, 2009. This agreement is been referred to at various invoices exchanged between the parties. This agreement admittedly was entered into between the plaintiff and the defendant No. 1. The dispute has arisen between the plaintiff and the defendant No. 1 out of this agreement. The said agreement under Clause M (3) provides a jurisdictional clause which reads:--

"This agreement is governed by the substantive procedural laws of India and you and Oracle agree to submit to the exclusive jurisdiction of and venue in the Courts in New Delhi in any dispute arising out of or relating to this agreement."

10. Mr. Mukherjee would submit that jurisdictional clause would not stand in the way of continuation of the suit against the defendant No. 2. The learned Senior Counsel would submit that the decision of the Hon'ble Supreme Court in [A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem](#), does not take care of a situation that has arisen in this matter. The law laid down in the said decision cannot be extended in a situation where there is an exclusive jurisdictional clause in respect of one of the defendants and when the causes of action are distinct and separate. That the aforesaid jurisdictional clause would exclude the jurisdiction of this Court notwithstanding any findings that may be arrived at by this Court to hold that this Court would be the natural forum, which finding, however, in my view, is not necessary in this case as it cannot be doubted that irrespective of such finding in view of the clear pronouncement of law by the Hon'ble Supreme Court in *A.B.C Laminart (supra)* and the latest decision on this point in [Swastik Gases P. Ltd. Vs.](#)

[Indian Oil Corporation Ltd.,](#), the jurisdiction of this Court is ousted. The parties with their eyes wide open had agreed to submit their dispute to a Court which otherwise would have jurisdiction to decide the lis between the parties. The balance of convenience in such a situation takes a back seat. Accordingly, there cannot be any doubt that all the disputes between the plaintiff and the defendant No. 1 are required to be tried at Delhi arising out of the agreement of 24th August, 2009. Mr. Mukherjee is correct in contending that the defendant No. 2 possibly cannot have any say with regard to the balance of convenience since wherever the suit is filed, the defendant No. 2 has to go and defend its action. This Court is also in agreement with the submission of Mr. Mukherjee that it cannot be said that the plaint does not disclose any cause of action against the defendants. In fact, substantial part of the cause of action has arisen in Calcutta but for the jurisdictional clause this Court loses its jurisdiction. Having regard to the nature of the dispute and the averments made in the plaint, in my view, the entire dispute is required to be heard and decided by a single forum instead of splitting the parties and the suit being tried at two places. Since the substantial claim in the suit is arising out of breach of the agreement of 24th August, 2009 and having regard to the exclusive jurisdictional clause mentioned in the said agreement, in my view, all such issues are required to be decided by the Court agreed upon by and between the parties, that is to say, the plaintiff and the defendant No. 1. The defendant No. 2 cannot have any say in this regard.

11. In view thereof, the leave under Clause 12 of the Letters Patent is revoked and the plaint filed in the suit is returned to the plaintiff in order to enable the plaintiff to institute the suit before the appropriate Court in New Delhi upon furnishing an authenticated copy of the plaint in the department concerned.

12. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.