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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 173/2021**

VIRINDER ENGINEERING AND CHEMICALS PVT LTD

..... Plaintiff

Through: Mr. R.M. Sinha, Mr. P.M.
Sinha, Ms. Namita Sinha, Ms.
Nandni Harsh, Advs.

versus

VIP INDUSTRIES LIMITED

..... Defendant

Through: Mr. Ajay Kohli, Ms. Dipika
Prasad, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

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08.05.2023

I.A. 8645/2021(U.O. VII R. 10 r/w S. 151 CPC)

1. The present application has been moved by the defendant for directions being framed for return of the plaint and for its consequential presentation before the Court having the requisite territorial jurisdiction to try the suit.

2. The applicant defendant contends that the suit has been wrongly instituted before this Court since no part of the cause of action arises within the territorial jurisdiction of this Court. Mr. Kohli, learned counsel appearing in support of the application, submitted that as would be ex facie evident, the suit relates to a claim for recovery of alleged arrears of rent and user charges as well as for damage stated to have been caused to the property. The attention of the Court was drawn to the reliefs claimed in the suit which read as under: -

“I. a decree of a sum of Rs. 2,28,16,629/- i.e., (i) lease rent from July 2019 to November 2019, (ii) monthly unauthorized use and occupation charges @ Rs 12,54,568 Per month w.e.f. December 2019 till January 2021 i.e., after termination of the leased deed & till the date of filing of the suit, (iii) along with pendente-lite & future unauthorized use and occupation charges till handing over the



possession of the leased premises pursuant to the table of rent agreed in the lease deed.

II. a decree of mandatory injunction may be passed directing the defendant Lessee to restore the leased premises i.e., premises admeasuring approximately 74,600 sq.ft. carpet area which is equivalent to 75,862 sq.ft. built up area situated at Khasra. No. 2900-2904, Dhoom Manikpur, Dadri, Gautam Buddh Nagar, Uttar Pradesh, to its original position i.e. as on the date of handing over the possession pursuant to lease deed dated 30.03.2019 in favour of the plaintiff along with the adjoining Portion of the property of the plaintiff measuring 58300 Sq ft.

iii. Cost of the litigation may also be awarded.

iv. Such other or further orders as this Hon'ble Court may deems fit and proper under the circumstances of the case may be passed in favour of the plaintiff and against the defendants. Prayed accordingly.”

3. It was pointed out by learned counsel that the Lease Agreement dated 30 March 2019 [“Lease Deed”] was executed at Dadri falling in District Gautam Budh Nagar, in the State of Uttar Pradesh. The leased premises are stated to be situate at Khasra No. 2900-2904, Dhoom, Manikpur, Dadri, Gautam Budh Nagar, Uttar Pradesh. It was further pointed out that as per the plaintiff’s own case, the principal office of the defendant is situated at DGP House, 5th Floor, 88C, 4 Prabha Devi Road, Mumbai.

4. According to Mr. Kohli, as per the averments made in the plaint the cause of action for institution of the suit arose on 03 April 2019 when it was alleged that owing to the negligent acts of the defendant, a fire broke out in the premises as a result of which the entire property collapsed. It was contended that in light of the undisputed fact that the leased premises are situate in the State of Uttar Pradesh, the Lease Deed was executed in Uttar Pradesh coupled with the fact that the defendant does not reside within the territorial limits of this Court, the suit has been wrongly instituted.

5. It was further submitted that Clause 15(L) of the Lease Deed



which purports to confer jurisdiction upon courts at New Delhi would be of no avail since even though it is well settled that parties could designate one or more proper courts which would otherwise have jurisdiction as being the court of choice for the purposes of all litigation that may ensue, the discretion so vested in parties cannot extend to the selection or designation of a court which would otherwise have no jurisdiction at all.

6. Reliance, in support of the aforesaid submissions was placed on the decision of the Supreme Court in **A.B.C. Laminart (P) Ltd. v. A.P. Agencies**¹ and more particularly to the following paragraphs: -

“10. Under Section 23 of the Indian Contract Act the consideration or object of an agreement is lawful, unless it is opposed to public policy. Every agreement of which the object or consideration is unlawful is void. Hence there can be no doubt that an agreement to oust absolutely the jurisdiction of the court will be unlawful and void being against the public policy. *Ex dolo malo non oritur actio*. If therefore it is found in this case that clause 11 has absolutely ousted the jurisdiction of the court it would be against public policy. However, such will be the result only if it can be shown that the jurisdiction to which the parties have agreed to submit had nothing to do with the contract. If on the other hand it is found that the jurisdiction agreed would also be a proper jurisdiction in the matter of the contract it could not be said that it ousted the jurisdiction of the court. This leads to the question in the facts of this case as to whether Kaira would be proper jurisdiction in the matter of this contract. It would also be relevant to examine if some other courts than that of Kaira would also have had jurisdiction in the absence of clause 11 and whether that would amount to ouster of jurisdiction of those courts and would thereby affect the validity of the clause.

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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

¹ (1989) 2 SCC 163



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?”

7. Appearing for the plaintiff, Mr. Sinha learned counsel refuted the aforesaid submissions and contended that Clause 15(L) of the Lease Deed embodies the clear intent of parties to designate this Court as the proper court for the purposes of institution of all legal proceedings. In view of the aforesaid, it was contended that the plaint is not liable to be returned.

8. Additionally, learned counsel referring to the provisions contained in Sections 16 and 20 of the Code of Civil Procedure, 1908 **[the Code]** submitted that the Proviso as appearing in Section 16 would clearly be applicable and consequently it must be held that the suit has been validly instituted before the Court. Learned counsel submitted that the provisions of Section 20 are prefaced by the words “*subject to the limitations aforesaid*”. It is in the aforesaid backdrop that it was submitted that the Proviso to Section 16 would prevail. The plaintiff places reliance upon the Proviso to Section 16 principally on account of the asserted presence of the defendant within the territorial jurisdiction of this Court by virtue of them having maintained a subordinate office at 301-305 Pragati Towers, Rajendra Place, New Delhi. According to learned counsel since that subordinate office is situate in Delhi, the plaintiff was clearly entitled to institute the present suit before this Court.

9. Mr. Kohli, in rejoinder has pointed out that the subordinate office of which reference is made was a premises taken on lease by the defendant during the period between 15 April 2013 to 12 July 2014. Learned counsel submitted that the premises has, thereafter, been vacated and in any case has not been in possession of the defendant since 12 July 2014. It was also pointed out that the Lease Deed itself



came to be executed years ~~the~~ ^{earlier} and more particularly on 30 March 2019. It is the aforementioned rival submissions which fall for determination by this Court.

10. As would be manifest from a reading of the reliefs which are claimed in the suit, the same essentially relates to the recovery of arrears of rent and damage caused to property. As per Section 16 of the Code, suits relating to the determination of rights or interest in immovable property may be instituted in the court within the local limits of whose jurisdiction the property is situate. The Proviso to Section 16 deals with suits which seek compensation for wrongs committed upon immovable properties. For suits of that nature, the Proviso enables the plaintiff to institute proceedings either in the court within the local limits of whose jurisdiction the property is situate or before a court within the local limits of whose jurisdiction the defendant may actually and voluntarily reside, carry on businesses or personally work for gain.

11. It becomes pertinent to observe that the latter part of the Proviso noticed hereinabove, would have had application provided the defendant could be held to be actually or voluntarily residing or carrying on business within the territorial jurisdiction of this Court. However, and as per the undisputed facts which emerge from the record, the office of which the plaintiff had made reference and described to be the subordinate office of the defendant, is one which has not been occupied by it post 12 July 2014. In any case, the plaintiff has not placed any material on the record which may otherwise establish or indicate that the said subordinate office was in the occupation and use of the defendant on the date when the Lease Deed came to be executed on 30 March 2019. In view of the aforesaid, the Court is of the firm opinion that the Proviso to Section 16 cannot possibly come to the aid of the plaintiff.



12. It may also be noted that the subordinate office of a corporation and its location assumes significance provided the requirements of the Explanation to Section 20 is shown to apply. As is evident from a reading of Section 20 and its Explanation, it is the principal office of a corporation which is envisaged to be the focal point for the purposes of answering the question of territorial jurisdiction. The Explanation provides that a corporation shall be deemed to carry on business at its sole or principal office in India. Undisputedly and as per the plaintiff's own admitted case, the defendant's office is situate in the State of Maharashtra. The Explanation to Section 20 also enables proceedings to be drawn before a court within whose local limits the subordinate office may be situate. However, the same is qualified and made dependent upon it being established that the cause of action arises at a place where the defendant's subordinate office is situate. The Explanation thus clearly links the location of the subordinate office to the cause of action which forms the foundation of the suit. The plaintiff has woefully failed to establish any part of the cause of action which may be recognized to have a connect with the erstwhile subordinate office of the defendant.

13. The law with respect to parties designating a particular court as the seat for institution of legal proceedings stands duly enunciated by the Supreme Court in *A.B.C. Laminart*. As was rightly contended by Mr. Kohli while it would have been open for parties to choose one out of the various courts before whom a suit could have been ordinarily instituted, parties by consent cannot confer jurisdiction on a court within the local limits of whose jurisdiction, no part of the cause of action could be recognized to have arisen or accrued.

14. As is evident from the recordal of facts hereinabove, no facet of the cause of action arose within the territorial limits of this Court. The leased premises is situate in the State of Uttar Pradesh and it is in that



State that the Lease Deed itself was executed. The plaintiff has not only failed to establish that the subordinate office was either functional on the date of institution of the suit or the execution of the Lease Deed, it has also failed to connect any material facet of the cause of action to the subordinate office. The arguments addressed by Mr. Sinha based on Sections 16 and 20 of the Code do not merit acceptance. Since no part of the cause of action could be said to have arisen within Delhi, parties to the Lease Deed, therefore, could not have possibly conferred jurisdiction on courts in New Delhi.

15. Accordingly, and for all the aforesaid reasons, the present application is allowed. The Court declares that the plaint is consequently liable to be returned for presentation before the competent court.

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16. The plaint shall consequently stand returned for presentation before the competent court.

YASHWANT VARMA, J.

MAY 08, 2023

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