

M/s RR Enterprises vs. Acme Cleantech etc.

CNR No PBMNV0000606-2023

CS-510-2023

Present:- Sh. N.K. Sharma, Advocate, Counsel for the
respondent/plaintiff.
Sh. RS Dhaliwal, Advocate for applicants/defendants.

ORDER:-

1. This order of mine shall dispose of an application under Order 7 Rule 11 CPC for rejection of the plaint, filed by the applicants/defendants.

2. Brief facts of the application as averred by the applicants/defendants are that, the Plaintiff has filed the present suit against the defendants for recovery of Rs. 12,51,025/- and the same is pending for adjudication before the Hon'ble Court. The suit is pending for filing the written statements by the defendants and the defendants will file its written statements to defend the case separately. It is further submitted that both plaintiff and defendants had entered into a work order and purchase order for providing services and goods to the solar power plant of M/s ACME Cleantech Solutions Private Limited situated in the State of Telangana and an alleged amount of Rs.12,51,025/- is outstanding against the defendant work/services. It is further submitted that for deciding an application under purposes order VII rule XI of CPC, the Court ought to consider that if on a meaningful and not formal reading of the plaint, it is manifestly vexatious and merit-less in the sense of not disclosing a clear right to sue, the plaint ought to be rejected. Further, if clever drafting has created the illusion of a cause of action, it must be nipped in the bud and

Pankaj Verma,
ACJ(SD),Srd.
25.5.2026

irresponsible/vexatious suits must be rejected under order VII rule XI CPC. It is further submitted that the averments made by the plaintiff in its plaint does not disclose any cause of action, jurisdiction, is barred by law, therefore, liable to be rejected. It is further submitted that from the pleadings of the plaintiff and documents filed in support of its case the Hon'ble Court has no jurisdiction over the matter and no cause of action has been disclosed and taken place within the jurisdiction of this Hon'ble court for the following reasons:

Both the parties had entered into a work order dated 01.02.2018 ("WO") and purchase order dated 07.03.2018 ("PO") to perform the work and services as per the terms of the WO and PO. As per the terms of the PO and WO, both the parties agreed that in the event of any dispute or difference out of or in connection with the PO or WO, where the matter cannot be resolved amicably, then in such event the parties shall resolve the dispute or difference by reference Arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 1996. The relevant clause of the PO and WO is as under:-

"23. ARBITRATION: The Parties shall first use their best efforts to settle amicably dispute arising any connection this out of or in PO as to the interpretation or any other matter, by negotiation by referring the dispute to the senior representatives of each Party, requesting a resolution of the dispute within Ten (10) days of reference. In the event of any dispute or difference out of or in connection with this PO as to the interpretation or any other matter, where such matter cannot be resolved

amicably, then in such event the parties shall resolve such dispute difference by reference to Arbitration to be conducted in accordance with the Arbitration and Conciliation Act, or 1996 by the Sole Arbitrator appointed by the Purchaser in accordance with said rules. The arbitration will be held at Gurugram, Haryana and shall be conducted in the English language."

B. Further, as per the terms of the PO and WO, the Court at Gurgaon, Haryana has exclusive jurisdiction to entertain the suit. The relevant clause is as under:-

"25. JURISDICTION: Without prejudice to the provisions pertaining to arbitration, this PO shall be governed by the laws of India and shall be subject to the Jurisdiction to the Court at GURGAON, Haryana."

It is further submitted that the suit of the plaintiff is barred by law as the alleged dispute in the present suit is commercial dispute under section 2(1) (c) of the Commercial Courts Act, 2015. As much as there is clear violation of the mandate of section 12 (A) of the Commercial Courts Act 2015 providing for "Pre-Institution Mediation and Settlement" under Chapter III-A of the Act as under:

PRE-INSTITUTION MEDIATION AND SETTLEMENT

12A. Pre-Institution Mediation and Settlement (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be

prescribed by rules made by the Central Government.

It is further submitted that it has been settled by the Hon'ble Supreme Court in **Patil Automation Pvt. Ltd. & Ors. Vs. Rakheja Engineers Pvt. Ltd.** that Section 12-A of the Act is mandatory and further that any suit instituted violating the mandate of Section 12-A must be rejected. The Apex Court has also held that this power can be exercised even suo moto by the Court. The relevant extract of the judgment is mentioned below:

84. Having regard to all these circumstances, we would dispose of the matters in the following manner. We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Still further, we however direct that in cases/plaints have been already rejected and no steps have been taken within the period of limitation, the matter on the cannot be reopened basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has 12A mandatory also, declared Section the plaintiff will not be entitled to the relief.

It is further submitted that The Hon'ble Supreme Court in

Kamala and others vs. K.T. Eshwara Sa and others, (2008) 12 SCC 661,

opined that only the averments in the plaint would be relevant for invoking clause (d) of Order VII Rule 11 C.P.C. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merits of the matter would not be within the realm of the Court at this stage. Therefore, at that stage, the Court would not consider any evidence or enter a disputed question of fact of law.

The plaintiff has failed to disclose any urgency as well as mislead this Hon'ble Court by providing false/incomplete information nor has sought any exemption from this Hon'ble Court for not complying the Pre-institution Mediation. It is prayed that the present suit is barred by limitation of jurisdiction and liable to be dismissed on this ground alone. Hence, the present application.

3. In reply to the application, the respondent/plaintiff has submitted that the present application has been filed by the defendant to prolong the matter; on the ground of not being maintainable and the fact that the plaintiff firm is doing the business at Sardulgarh and the defendants have installed their solar plant at village Khaira Khurd, Jhanda Kalan, Mankhera and Nangla which is within the jurisdiction of the Hon'ble Court. Thus, the plaintiff is having right to file suit in the Court at Sardulgarh. No agreement ever came into existence to resolve the dispute between the parties at Gurugram (Haryana). The suit amount is still outstanding towards the defendants of the plaintiff. Rest of the averments have been denied in toto, and a prayer for dismissal of the

application has been made.

4. I have heard the learned Counsel for the parties at length and after giving my thoughtful consideration to the facts and circumstances of the case, this court finds that the plaintiff firm has filed the suit for recovery of Rs.12,51,025/- against the defendants on the ground that the after completing the work order of the defendants, the suit amount stands due towards the defendants of the plaintiff. It is the contention of the 1d. Counsel for the applicants/defendants that the plaint is liable to be rejected as the jurisdiction of the Civil Court is barred as both the parties entered into a work order dated 01.2.2018 and purchase order dated 07.3.2018 and as per the work order in the even of any dispute or differences, the same shall be resolved by reference to the Arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 1996. The relevant clause of the Purchase order and Work order is referred as under:

"23. ARBITRATION: The Parties shall first use their best efforts to settle amicably dispute arising any connection this out of or in PO as to the interpretation or any other matter, by negotiation by referring the dispute to the senior representatives of each Party, requesting a resolution of the dispute within Ten (10) days of reference. In the event of any dispute or difference out of or in connection with this PO as to the interpretation or any other matter, where such matter cannot be resolved amicably, then in such event the parties shall resolve such dispute difference by reference to Arbitration to be conducted in accordance with

the Arbitration and Conciliation Act, or 1996 by the Sole Arbitrator appointed by the Purchaser in accordance with said rules. The arbitration will be held at Gurugram, Haryana and shall be conducted in the English language."

When there is a specific clause in the Purchase and Work Order that in the event of any dispute, the parties shall resolve such dispute/difference by reference to Arbitration to be conducted in accordance with the Arbitration and Conciliation Act, or 1996 by the Sole Arbitrator appointed by the Purchaser in accordance with said rules. The arbitration will be held at **Gurugram**, Haryana and shall be conducted in the English language.

5. Hence, in view of the specific clause in the Purchase and Work Order executed between the parties, discussed above, this Court does not have any jurisdiction to try the present suit and hence the instant application in hand, stands allowed and the present plaint is hereby ordered to be returned to the plaintiff under order 7 rule 10 CPC for its presentation before the competent jurisdiction. Ahlmad is directed to place a duplicate copy of the plaint on record. File be consigned to the record room.

Pronounced in Open Court:
25.05.2022

(Pankaj Verma)
Addl. Civil Judge(Senior Division)
Sardulgarh (PB0314)
(Direct Dictation)

(Naveen, SG-I)

Pankaj Verma,
ACJ(SD),Srd.
25.5.2026