

City Civil and Sessions Court, Mazgaon, Greater Mumbai**Court Room No. 31 – Commercial Court***(Additional District Judge : Vijay S. Hingne, LL. M.)***MHCC010100652022**

Notice of Motion Filed : 05.09.2022

Arguments Over : 22.08.2023
13.12.2023

Decided on : 19.01.2024

Duration : 1 Y, 04 M, 15 Days

Exhibit No. 08**Notice of Motion No. 103399 / 2022**

from

Commercial Summary Suit No. 100051 / 2022**Plaintiff** : Mr. Yatin Shah
M / s. Arihant Chemicals Corporation,
Mumbai, Maharashtra**VERSUS****Defendant** : Mr. Bharat Gor
M / s. Torrent Chemicals,
Thane, Maharashtra**Appearances**Plaintiff : Adv. Shri Pravin Rhathwal
Defendant : Adv. Disha K. Solanki**Notice of Motion for Return of Plaintiff**

ORDER*(Pronounced on this 19th Day of January, 2023)*

Defendant has preferred this Notice of Motion challenging territorial jurisdiction of the Commercial Court, Mumbai, and thereby for return of Plaintiff.

Points for determination :

2) Perused Record. Perused Written Arguments of plaintiff (Exh.12, Dt.22.08.2023) and defendant (Exh.11, Dt.22.08.2023). Heard Adv. Shri Pravin Rathwal for plaintiff. Heard Adv. Disha K. Solanki for defendant. Points for determination, findings and reasons are as follows :

Points**Findings**

- 1 Is Plaintiff liable for Return of Plaintiff under Order 7 Rule 10 of CPC?..... **In the Affirmative.**
- 2 What Order? **As per final order.**

REASONS**Suit :**

3) Yatin Shah, proprietor of M/s. Arihant Chemical Corporation, Mumbai, Maharashtra (hereinafter, **Plaintiff**).

Bharat Gor, proprietor of M/s. Torrent Chemicals, Mira Road, Dist. Thane, Maharashtra (hereinafter, **Defendant**).

Both are engaged in business of Chemicals.

4) Plaintiff supplied goods to defendant and defendant made part-payment, as follows :

<u>Sr. No</u>	<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Invoice Amount (₹)</u>	<u>Part Payment Date</u>	<u>Part Payment (₹)</u>
<u>1</u>	092701	27.09.2017	2,14,760	25.10.2017 26.10.2017 08.11.2017	50,000 50,000 1,14,760
<u>2</u>	101801	18.10.2017	2,14,760	14.11.2017	2,14,760
<u>3</u>	110602	06.11.2017	4,29,520	16.11.2017 23.11.2017	2,50,000 1,79,520
<u>4</u>	111003	10.11.2017	13,64,552	24.11.2017 12.12.2017 13.12.2017 27.12.2017 15.01.2018	2,50,000 5,00,000 4,00,000 2,00,000 2,50,000
<u>5</u>	111701	17.11.2017	1,86,062	15.01.2018	2,50,000
<u>6</u>	112201	22.11.2017	8,67,300	15.01.2018 15.01.2018	2,50,000 2,50,000
<u>7</u>	121102	11.12.2017	15,61,140		
<u>8</u>	122801	28.12.2017	4,00,374		
<u>9</u>	122802	28.12.2017	3,43,616		

5) Overall, defendant made part-payment of ₹.27,09,040/- and kept ₹. 28,73,044/-, as balance. Hence, plaintiff issued Legal Notice on 19.10.2018 asking defendant to make balance payment. However, defendant failed. Hence, on 23.09.2021, plaintiff filed present Commercial Summary Suit No. 100051 / 2022 for recovery of ₹. 28,73,044/- with interest @ 24% p. a.

Notice of Motion No. 103399 / 2022 (Dt. 05.09.2022) :

6) Defendant challenged Jurisdiction of the Commercial Court, Mumbai, contending that, jurisdiction is with Commercial Court, Thane. Hence, Plaint be returned.

Plaintiff, vide reply Dt. 27.09.2022, opposed the Notice of Motion, claiming that, jurisdiction is with Mumbai Court.

Issue of jurisdiction

7) Plaintiff claimed territorial jurisdiction with Commercial Court, Mumbai, for the reasons that :

1. *Plaintiff is having his office at Mumbai.*
2. *Invoices are prepared by plaintiff at its Mumbai office.*
3. *Invoices bears clause, Subject to Mumbai Jurisdiction.*
4. *Part payment made by defendant is from Thane Bank to Bank of plaintiff at Mumbai.*
5. *Plaintiff issued notice from Mumbai.*

8) Defendant claimed territorial jurisdiction with Commercial Court, Thane, for the reasons that :

1. *As per Sec. 20 of CPC, the Suit is to be instituted where defendant reside or cause of action arises.*
2. *Defendant is resident of Bhayandar, Thane.*
3. *Plaintiff's both storage godowns Adnath Good storage and Transit and Jay Parshwa Storage are at Bhiwandi.*
4. *Goods are delivered at Bhiwandi.*
5. *Payment is made by defendant from Bhayandar and Bhiwandi i.e. from Thane.*
6. *Defendant returned defective goods to plaintiff at Jay*

Parshwa Storage at Bhiwandi, Thane,

7. Defendant sent Tax Invoice No. 0011 Dt. 19.12.2017 for ₹. 17,00,346/- to plaintiff, wherein it is printed, ***subject to Thane Jurisdiction.***

Jurisdiction :

9) Issue of jurisdiction is mixed question of law and facts, which will require consideration of numerous aspects as, place from where order is placed, where delivery is made, from where payment and part payments are made, from where related transactions were carried out.

Self-interested Claims :

10) Facts of case are that, orders placed by defendant are having Clause as, *Subject to Thane Jurisdiction.* While, invoices prepared by plaintiff are having Clause as, *Subject to Mumbai Jurisdiction.* It means, rival parties are claiming jurisdiction on strength of documents prepared at their offices.

It is settled position that, parties cannot confer the jurisdiction on their own, unless they agree through executed Agreement. In present case, there is no such agreement executed by both plaintiff and defendant. So, these self-interested claims will not help either party.

Offices of the Parties :

11) It is admitted fact that, plaintiff is having office at Mumbai, while defendant is having office at Thane.

Jurisdiction clause in the Complaint :

12) In Para No. 6 of the Complaint, plaintiff pleaded as to how Jurisdiction is with Commercial Court, Mumbai. Said paragraph reads as follows :-

The Plaintiff is having his office in Mumbai at the address mentioned in the cause title. Therefore, the entire cause of action has arisen in Mumbai and hence

this Hon'ble Court has jurisdiction to entertain and try this present Suit.

CAUSE OF ACTION – PLAINTIFFS ADDRESS AT MASJID AS MENTIONED IN CAUSE TITLE.

Thereby, plaintiff is claiming jurisdiction, merely on the basis of location of his office, which is within Mumbai. Plaintiff has not pleaded any other grounds regarding jurisdiction.

Residence and Office of Defendant :

13) In Para No. 3 (i) of the Plaint, plaintiff claimed that, as defendant was not making repayment, hence plaintiff visited the residence of defendant, which is at Bhayander (East), Thane.

It means, defendant is residing and so also carrying his business from the territorial jurisdiction of Thane district.

Supply of Goods :

14) Regarding supply of goods, plaintiff pleaded in Plaint, Para No. 3 (b) as follows :

The plaintiff states that he has two go-downs / warehouses, which the Plaintiff carries out in the name and style of 'ADINATH GOODS STORAGE & TRANSIT' and 'JAY PARSHWA STORAGE' at Bhiwandi, Maharashtra. Thus, deliveries of chemicals, so ordered, are carried out by the plaintiff from these two go-downs.

Thus, plaintiff claimed that, he supplied goods from his godowns, located at Bhiwandi. It is admitted fact that, Bhiwandi is in territorial district of Thane.

It means, goods are supplied by plaintiff, from his godown at Thane to address of defendant, which is also at Thane.

FIR :

15) In Para No. 3 (j), plaintiff claimed that, as defendant failed to make payment, hence plaintiff filed Police Complaint with Naya Nagar Police Station, Mira Road (East), Thane for

fraud, cheating and wrongful losses committed by the defendant.

It means, while lodging FIR, plaintiff knocked the door of Police Station, which is within Thane territory.

Section 20 of the Code of Civil Procedure :

16) Sec. 20 of the Code of Civil Procedure reads as follows :

Section 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 works for gain, as aforesaid, acquiesce in such institution; or

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

Sec. 20 contains words as, every suit shall be instituted in a Court..... It means, while instituting the Suit, the local limits, within which the defendant resides and carries business, are to be given due importance. It is thereafter, the place where, part cause of action arises, will require consideration.

In present case, defendant is residing and carrying business within Thane jurisdiction.

Part-cause of Action :

17) Part cause of action, which are in favour of plaintiff / Mumbai, are as follows :

1. *Office of plaintiff is at Mumbai.*
2. *Plaintiff prepared invoices at Mumbai.*
3. *Plaintiff received part-payment at Mumbai.*
4. *Plaintiff issued notice from Mumbai on 19.10.218.*

18) Part cause of action, which are in favour of defendant / Thane, are as follows :

1. *Plaintiff is having his godowns at Thane.*
2. *Goods are dispatched by plaintiff from Thane godown.*
3. *Goods were received by defendant at Thane office.*
4. *Part-payment was made from Thane.*
5. *Plaintiff lodged FIR at Thane.*

19) When part-cause of actions of plaintiff and that of defendants are compared, then certainly the causes which took place in Thane Jurisdiction are on higher side then those which took place within Mumbai jurisdiction.

20) Had there been no godowns of plaintiff within Thane jurisdiction and had its godowns would have located within Mumbai jurisdiction and had plaintiff supplied goods from such Mumbai godowns, then, claim of plaintiff regarding territorial jurisdiction with Mumbai, would have been successful.

21) So, preparation of invoices and acceptance of part-payment, cannot confer Jurisdiction to Mumbai Court. Rest major cause of actions as, supply of the goods, receipt of the goods, making of part-payment, lodging of the FIR and residence of defendant, are all within Thane jurisdiction and they confer jurisdiction to Thane Court.

This Thane jurisdiction cannot be ousted merely for the fact that, the plaintiff is having his office at Mumbai and that, the invoices were generated at Mumbai.

22) Considering all the facts, it is held that, the Commercial

Court, Mumbai, lacks jurisdiction to try the Suit. Proper jurisdiction for this Commercial Suit is Commercial Court, Thane. Thereby, defendant succeeds in its objection. Accordingly, Points are so answered and the Notice of Motion is disposed off, by following Order :

ORDER

1. *Notice of Motion No. 103399 of 2022, is allowed.*
2. *Plaint of Commercial Summary Suit No. 100051 / 2022, Yatin Shah Vs. Bharat Gor, be returned to the Plaintiff U / Order 7 Rule 10 of Code of Civil Procedure.*
3. *This be considered as intimation of the decision of the Court to the plaintiff. Plaintiff is at liberty to make an application U / Order 10-A of the Code of Civil Procedure for necessary compliance.*
4. *Plaintiff is at liberty to present the Suit before appropriate forum.*
5. *Proceeding of Notice of Motion No. 103399 / 2022 is closed.*
6. *Parties be informed about their right to challenge this Order and period of limitation for same.*
7. *Order dictated and pronounced in Open Court.*
8. *Record of Notice of Motion shall be part of Commercial Summary Suit No. 100051 / 2022.*

Mumbai
Dated : 19.01.2024

(Vijay S. Hingne)
Additional District Judge,
Court Room No.31 - Commercial Court,
City Civil & Sessions Court,
Mazgaon, Greater Mumbai