



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 10222 OF 2022 (GM-CPC)

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BETWEEN:

1. MULTI COMMODITY EXCHANGE OF INDIA LIMITED
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT 1956 HAVING
ITS REGISTERED OFFICE AT EXCHANGE SQUARE,
CTS NO.255, SUREN ROAD,
CHAKALA, ANDHERI (EAST)
MUMBAI-400093

REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE MANOJ JAIN,
CHIEF OPERATING OFFICER

...PETITIONER

(BY SRI. MANU K., ADVOCATE)

AND:

1. RAJESH EXPORTS LTD
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT 1956,
HAVING ITS REGISTERED OFFICE AT NO.4,
BATAVIA CHAMBERS,
KUMARA KRUPA ROAD,
KUMARA PARK EAST,
BENGALURU-560001
REPRESENTED BY ITS AUTHORISED
REPRESENTATIVE

...RESPONDENT

(BY SRI. RAGHU H P., ADVOCATE)



THIS W.P. IS FILED PRAYING TO A. ISSUE A WRIT OF CERTIORARI THEREBY SETTING ASIDE THE IMPUGNED ORDER DATED 03.06.2021 ANNEXURE PASSED IN O.S.NO.26610/2013 BY THE HONBLE LXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, MAYOHALL UNIT, BENGALURU (CCH-74), DISMISSING THE INTERIM APPLICATION FILED BY THE PETITIONER UNDER VII RULE 10 OF THE CODE OF CIVIL PROCEDURE, 1908 AND CONSEQUENTLY ALLOW INTERIM APPLICATION FILED BY THE PETITIONER UNDER ORDER VII RULE 10 OF THE CODE OF CIVIL PROCEDURE, 1908 AND ETC.

THIS PETITION, COMING ON FOR HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition seeks to challenge an order dated 03.06.2021 passed in O.S.No.26610/2013 by the learned LXXIII Additional City Civil and Sessions Judge, Mayohall Unit, Bengaluru. By the Impugned Order, an application under Order VII Rule 10 of the Code of Civil Procedure 1908 (hereinafter referred to as 'CPC'), filed by the petitioner/defendant has been dismissed by the



learned Trial Court. The challenge in the present petition is to this order.

2. Learned counsel for the petitioner/defendant has submitted that the suit for declaration and injunction from encashing the Bank guarantees was filed before the learned Trial Court. The suit was filed by the respondent/plaintiff on 10.10.2013. Since the respondent/plaintiff was a Member of the petitioner/Commodity Exchange, the Rules and Guidelines of the MCX Commodity Exchange were applicable to the respondent/plaintiff, the petitioner/defendant filed an application under Order VII Rule 10 of CPC seeking rejection of the plaint for lack of territorial jurisdiction.

3. The learned counsel for the respondent submits that in terms of clause 3.3 of the Bye-Laws of the petitioner/Commodity Exchange, which were applicable to the respondent/plaintiff, the Courts at Mumbai had exclusive jurisdiction to try and decide matters arising out of trading disputes *inter se*, the Exchange and its Members.



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4. Learned counsel for the petitioner/defendant also relies upon a suit filed under the provisions of Order XXXVII of CPC captioned ***Multi Commodity Exchange of India Ltd. vs. Rajesh Exports Ltd.***¹ filed at High Court of Mumbai (hereinafter referred to as 'Summary Suit') to submit that the petitioner/defendant had filed this suit for recovery of a sum of Rs.1,63,67,838/- against the respondent/plaintiff. It is contended that the respondent/plaintiff has filed a Written Statement and a counter claim registered as C.C. No.8/2016 in the Summary Suit wherein the respondent/plaintiff has stated that the cause of action has arisen within the jurisdiction of the Courts at Mumbai.

5. Learned counsel for the petitioner/defendant further submits that the Impugned Order is *sans* jurisdiction since it holds that 'Exclusive Jurisdiction' clauses which are partly barred by Sections 23 and 28 of the Indian Contract Act, 1872, (hereinafter referred to as 'the Contract Act'). He further submits that this application remained pending

¹ Summary Suit No.767/2014



before the learned Trial Court for six years and thereafter the Impugned Order was passed rejecting the application. Learned counsel for the petitioner/defendant relies upon the judgment of the Supreme Court in the case of ***Swastik Gases vs. IOCL***² to submit that clauses of this nature do not infringe the provisions of the Contract Act.

6. Learned counsel for the respondent/plaintiff on the other hand seeks to rely upon his objections to the application to contend that clause 3.3 of the Bye-Laws is not applicable in the facts of the present case since, in the case made out by the respondent/plaintiff before the Trial Court, an allegation of fraud played by the petitioner/defendant has been made. Learned counsel further submits that the Bye-Law that the petitioner/defendant has sought to invoke is Clause 3.3 and this Bye-Law is not applicable in cases of fraud. However, the learned counsel for the respondent/plaintiff

² (2013) 9 SCC 32



has not been able to reference any other clause in the Bye-Laws in this regard.

7. It is apposite at this stage to set out the relevant clause in issue:

"3.3 JURISDICTION

These Bye-Laws shall be applicable on all the members and participants of the exchange, authorized persons, approved users, clients and all entities involved in trading, clearing and settlement of transactions, to the extent specified herein. These shall be subject to the jurisdiction of the Courts in Mumbai, where the Exchange is situated, irrespective of the place of business of the members of the Exchange in India or abroad. All transactions entered into or executed through the ATS or any other trading system of the Exchange located at the premises of the Exchange at any place shall be deemed to have taken place in the city of Mumbai only and the place of contracting as between the members of the Exchange shall be at Mumbai, irrespective of the locations of the Trader Workstations of the members connected thereto. All disputes under these Bye-Laws shall be subject to the exclusive jurisdiction of the Courts in Mumbai irrespective of the location of the place of business of the members of the Exchange and of their clients or the place where the concerned transaction may have taken place. The Bye-Laws, Rules and Regulations of the Exchange shall be governed by and construed in accordance with the laws in force in India. **Every exchange member shall expressly provide in the contract notes to be issued by him that only the Courts at Mumbai shall have the exclusive jurisdiction for claims in relation to any dispute arising out of or in connection with or in relation to such contract notes.**"

[Emphasis Supplied]



8. The clause in the first instance set out that the Bye-Laws will be applicable on all members and participants of the exchange, authorized persons, approved users, clients and all entities involved in trading. The Bye-Law further states that these persons would be subject to the jurisdiction of the Courts at Mumbai where the exchange is situated whether or not irrespective of the place of the business of such person or entity. The Bye-Law also sets out that bye-laws shall be construed in accordance with the laws of India and that every exchange member shall expressly provide in the contract notes to be issued by him that only the Courts at Mumbai shall have exclusive jurisdiction for claims in relation to any dispute arising out of or in connection or in relation to such contract note.

9. Undisputably, the dispute that has arisen between the parties is that trading carried out by the respondent/plaintiff by virtue of contract notes that have been issued by the petitioner/defendant. It is the case of the respondent/plaintiff that on 28.08.2013, while he was



in the process of purchasing gold in his account the petitioner/defendant did not grant permission to purchase 466 kilograms of gold. While it is the case of the petitioner/defendant that the transaction was not permissible in law.

10. Clearly thus a dispute has arisen between the respondent/plaintiff and the petitioner/defendant. As can be seen from the clause 3.3 of the Bye-Laws referred above, all such disputes are amenable to jurisdiction of the Mumbai Courts.

11. The respondent/plaintiff has also in its counter claim filed in the Summary Suit before the Courts at Mumbai in respect of the same transaction has submitted to the jurisdiction of the Courts at Mumbai. The relevant extract of the Counter Claim filed in the Summary Suit is below:

"16. The cause of action for this counter claim has arisen in Bombay within the Jurisdiction of this Hon'ble Court and therefore this Hon'ble Court has jurisdiction to entertain and try this counter claim."



12. The respondent/plaintiff has also valued his counter claim at Rs.3,22,13,54,074/-. It is not disputed that the said suit is still pending adjudication before the High Court at Mumbai.

13. The learned Trial Court however has in the Impugned Order relied on the provisions of Sections 23 and 28 of the Indian Contract Act 1872, to give a finding that the exclusive jurisdiction clause is barred by law.

14. Section 23 of the Contract Act defines what constitutes lawful consideration and lawful object of contract, whereas Section 28 declares agreements in restraint of legal proceedings to be void. It is apposite to set out Sections 23 and 28 of the Contract Act, which are reproduced below-

"23. What considerations and objects are lawful, and what not.—

The consideration or object of an agreement is lawful, unless—

it is forbidden by law ; or

is of such a nature that if permitted, it would defeat the provisions of any law; or

is fraudulent ; or



*involves or implies injury to the person or property of another; or
the Court regards it as immoral, or opposed to public policy.*

28. Agreements in restraint of legal proceedings, void.—

Every agreement,—

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.]

Exception 1.—Saving of contract to refer to arbitration dispute that may arise.—

This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2.—Saving of contract to refer questions that have already arisen.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.”

15. The learned Trial Court however after examining these provisions has given a finding that a reading of both



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these sections together gives a scope for partial restriction by limiting parties' recourse to one forum.

16. This Court is unable to sustain this conclusion. The applicability of an exclusive jurisdiction clause is no longer *res integra*. The Supreme Court has time and again set out that the parties may, by contract, limit the jurisdiction to a particular Court and that the same is not barred by any law. In the judgment of **Swastik Gases's** case, the provisions of Sections 23 and 28 of the Contract Act were examined and the Supreme Court held that such clauses which specify the jurisdiction of one particular Court and expressly exclude the jurisdictions of other Courts are not hit by Section 23 of the Contract Act or barred by law in terms of Section 28 of the Contract Act. The relevant extract of **Swastik Gases's** case is set out below -

"32. For answer to the above question, **we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any**



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material difference. The intention of the parties-by having Clause 18 in the agreement is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim expression unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. **By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.**

33. The above view finds support from the decisions of this Court in *Hakam Singh A.B.C. Laminart*, *R.S.D.V. Finance*, *Angile Insulations*, *Shriram City*, *Hanil Era Textiles* and *Balaji Coke*."

[Emphasis Supplied]

17. The similar view has been taken by the Supreme Court in ***EXL Careers and Another vs. Frankfinn Aviation Services Private Limited***³, while adjudicating an application under Order VII Rule 10 of an exclusive jurisdiction clause has also held that where two or more Courts have jurisdiction, it is always open for the parties to confer jurisdiction on one of those Court by consent.

³ (2020) 12 SCC 667



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18. The Supreme Court in **EXL Careers's** case has while relying on the **Swastik Gases's** case held that an exclusive clause restricting jurisdiction would not be hit by the provisions of Section 23 or 28 of the Contract Act.

19. The only ground that has been agitated by the respondent/plaintiff is that he has alleged fraud and thus the clause 3.3 of the Bye-Laws would not be applicable and would not warrant such examination. This Court is unable to agree. Clause 3.3 of the Bye-Laws is clear and unequivocal. All disputes arising between the exchange and its members are to be subject to the exclusive jurisdiction of the Courts at Mumbai in the summary suit filed by the petitioner/defendant. It is not disputed that the respondent/plaintiff is a member of the exchange. In any event, the respondent/plaintiff has already submitted himself to the jurisdiction of the Courts at Mumbai in the summary suit filed by the petitioner by filing a Counter Claim and the respondent/plaintiff concedes that the dispute is presently pending adjudication at Mumbai.



20. In view of the foregoing discussions, the Impugned Order cannot be sustained and is accordingly set aside. Consequently, the application under Order VII Rule 10 is allowed.

21. The parties will appear before the learned Trial Court on 27.04.2026, the date already fixed for further proceedings. The appeal is ***disposed of*** in the foregoing terms. All pending applications stand closed.

(TARA VITASTA GANJU)
JUDGE

JJ/Yn.
List No.: 2 Sl No.: 11