

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

GA (COM) No. 1 of 2024

With

GA (COM) No. 2 of 2024

In

CS (COM) No. 564 of 2024

Bravo Sponge Iron Private Limited

Versus

Birat Chandra Dagara

Mr. Kumarjit Banerjee

Ms. Sanchari Chakraborty

Mr. Sourojit Dasgupta

Ms. Akanksha Chowdhury

Ms. Tanishka Khandelwal

... for the plaintiff.

Mr. Ratnanko Banerji, Sr. Adv.

Mr. Jayanta Sengupta

Mr. Saurodip Banerjee

Mr. Rahul Auddy
Ms. Aditya Goopta

... for the defendant.

Hearing Concluded On : 11.11.2024

Judgment on : 18.11.2024

Krishna Rao, J.:

1. The plaintiff has filed an application being G.A. (COM) No. 1 of 2024 praying for Judgment upon admission for a sum of Rs. 6,80,44,580/- along with interest at the rate of 24% per annum and also an order of injunction restraining the defendant, their men, agents, servants and/or assignees from dealing with and/or disposing off and/or alienating and/or transferring and/or encumbering the assets and properties.
2. The defendant has filed an application being G.A. (COM) No. 2 of 2024 praying for revocation of leave granted under Clause 12 of the Letters Patent, 1865 or in the alternative to return the plaint or rejection of plaint.
3. The plaintiff is a company under the meaning of the Companies Act, 2013, engaged in the business of manufacturing and trading of sponge iron and allied iron products.
4. The defendant is the sole proprietor carrying on business under the name and style of "M/s. B.C. Dagara" and is the owner of the Suleipat Iron Ore Mine.

5. Sometimes in or around February, 2018, the defendant approached the plaintiff and offered to supply iron ore to commence business relationship. The defendant then represented that he is the lessee of one Iron Ore Mine situated at Pahadabhanga, Odisha, being the Suleipat Iron Ore Mine.
6. Pursuant to the discussions between the parties, it was decided that the defendant would supply the required iron ore mineral in accordance with the specific descriptions on the basis of the purchase orders issued by the plaintiff and it was also agreed between the parties that the plaintiff would make advance payments in respect of the orders and the defendant would forthwith deliver and/or supply the materials as per terms and conditions stipulated and in case the defendant defaults in supplying of the materials, the defendant would be liable to refund the entire advance amount paid by the plaintiff along with an interest at the rate of 24% per annum.
7. The plaintiff upon the approach of the defendant issued Purchase Order cum Tax Invoice dated 7th February, 2018, setting out the terms and conditions upon which such supply was to be made by the defendant together with the agreed consideration payable in respect thereof.
8. Apropos the understanding between the plaintiff and the defendant and in view of the continuing business relation between the parties, the plaintiff continued to place purchase orders cum tax invoices to the

defendant for supply of the required materials from time to time. The plaintiff also made advance payments to the defendant from time to time under the respective purchase orders and the defendant received such amount with an undertaking to supply the materials worth to total outstanding amount received by the defendant.

- 9.** However, despite receipt of the purchase orders and the advance payments, the defendant did make supplies on an ad hoc basis but was unable to supply materials corresponding to the entire consideration received from time to time from the plaintiff. The plaintiff continued to issue purchase orders and made advance payments relying on the representation and assurances of the defendant that it would make requisite supply equal to the amount received by the defendant.
- 10.** As on last date of purchase orders cum tax invoices dated 25th October, 2021, an amount of Rs. 6,20,44,580/- stood to the credit of the plaintiff corresponding to which no supplies were made.
- 11.** The defendant by its letter dated 28th October, 2021 by admitting the amount of Rs. 6,20,44,580/- had requested the plaintiff to make further payment of Rs. 60,00,000/- to enable the defendant to clear its liability towards various government dues. The defendant assured the plaintiff that as soon as to dispatches from its Suleipat Iron Ore Mines resumes the defendant will supply the entire quantity of iron ore to the plaintiff.

- 12.** As per the request of the defendant, the plaintiff has made further advance payment of Rs. 60,00,000/- to the defendant on 28th October, 2021 so that no further delay may occur to supply the total quantity of materials.
- 13.** Despite assuring the plaintiff, the defendant failed and neglected to discharge its obligation by supplying materials. Subsequently, a meeting was held between the representatives of the plaintiff and the defendant on 21st September, 2022 wherein the defendant unequivocally assured that the entire advanced amount which is due and payable by the defendant to the plaintiff, shall be refunded within a period of one month and in support to that the defendant further issued a notice dated 23rd September, 2022, wherein the defendant stated that soon after permission is received from the Mining department, the defendant will supply the materials, otherwise the defendant shall refund the outstanding dues within a period of one month from the date of the letter.
- 14.** Thereafter despite repeated requests made by the plaintiff to the defendant, the defendant have failed to repay the amount to the plaintiff. The plaintiff then issued a Demand Notice dated 17th April, 2023, through speed post and electronic mail demanding the payment of the outstanding amount of Rs.6,80,44,580/- along with an interest at the rate of 24% per annum within a period of 14 days upon receipt of the notice. Despite receipt of notice, the defendant deliberately

neglected to pay the amount to the plaintiff. Now, the plaintiff has filed the present suit.

- 15.** The defendant has now filed an application for revocation of leave granted under Clause 12 of the Letters Patent, 1865 or for return of plaint. On the other hand, the plaintiff has filed an application for Judgment upon admission.
- 16.** Before deciding the issue whether the plaintiff is entitled to get judgment upon admission, this Court finds that it would be appropriate to first decide whether the leave granted by this Court to the plaintiff at the time of presentation of plaint under Clause 12 of the Letters Patent, 1865 is required to be invoked or not and the plaint is liable to be returned to the plaintiff to file before the appropriate Court.
- 17.** The main contention of the defendant that no cause of action arose within the jurisdiction of this Court for filing of the present suit.
- 18.** Mr. Ratnanko Banerji along with Mr. Jayanta Sengupta, Learned Advocates for the defendant submits that registered office of the plaintiff as well as defendant is situated outside the jurisdiction of this Court. He submits that no contract was entered between the parties within the jurisdiction of this Court.
- 19.** Mr. Banerji submits that all purchase orders and correspondences between the parties, the defendant is required to deliver Iron Ore at the factory of the plaintiff which is situated at village Mohuda, Rukni,

Purulia, West Bengal which is outside the jurisdiction of this Court. He submits that the Suleipat Iron Ore Mines of the defendant is also situated at Pahadabhanga, Odisha, outside the jurisdiction of this Court.

- 20.** Mr. Banerji submits that the registered office and branch office of the defendant are also situated outside the jurisdiction of this Court. He submits that the purported ledgers relied by the plaintiff are also maintained at Purulia. He submits that the purported letter dated 23rd September, 2022 which the plaintiff has relied as admission of the defendant is also issued to the plaintiff at Purulia by the defendant from Odisha outside the jurisdiction of this Court. He submits that mere one or two isolated correspondences between the parties will not change the cause of action and jurisdiction of this Court. Mr. Banerji in support of his submission relied upon the judgment in the case of ***Modern Malleable Casting Works Ltd. Vs. M/s. Star Iron Works Ltd. and Others*** reported in **(1995) 2 CHN 433** wherein the Hon'ble Supreme Court held that by a long and uniform course of decisions the rule is well settled that mere making of an offer does not form part of the cause of action for damages for breach of contract which has resulted from acceptance of the offer.

- 21.** Mr. Banerji relied upon the judgment in the case of ***Pacific Refractories Ltd. Vs. Stein Heurtey India Projects Pvt. Ltd.*** reported in **2006 (3) Mh.L.J. 438** and submitted that the Hon'ble High Court by relying upon the judgment of ***Bhagwandas Goverdhandas Kedia***

(supra) revoked the leave granted under Clause 12 of the Letters Patent, 1865.

22. Mr. Banerji Relied upon the judgment in the case of ***Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas and Co. and Others*** reported in ***AIR 1966 SC 543*** and submitted that merely because of the fact that some communication was received would not confer jurisdiction of this Court.
23. Mr. Banerji submitted that the plaintiff has filed the suit before this Court only to harass the defendant knowingly that no cause of action arose within the jurisdiction of the Court and all the record, witnesses are either at Purulia or at Mayurbhanj and it would be very difficult to the defendant to being witnesses and to present documents before this Court at the time of evidence.
24. Mr. Banerji submitted that this Court is also required to take into consideration that the inconvenience likely to be caused to the parties for attending the proceeding of this suit personally throughout the trial. He submits that either the Court of Mayurbhanj District in Odisha or the competent Court in the District at Purulia are the forum convenient to both the parties. In support of his submissions, Mr. Banerji relied upon the judgment in the case of ***Parasram Harnandrai Vs. Chetandas and Ors.*** reported in ***AIR 1952 Cal 82*** wherein the Coordinate Bench of this Court held that for the “balance of convenience” is not the importance of the matter to be proved but the

volume of evidence, and convenience or inconvenience of producing it, the most vital and fundamental part of a case may well depend upon evidence of a limited volume, and yet evidence bearing upon the remaining part of the case which are only consequential or inconsequential, may be voluminous and troublesome to bring forward.

25. Mr. Kumarjit Banerjee, Learned Advocate, representing the plaintiff submits that the defendant has admitted the payment made by the plaintiff and the plaintiff is entitled to receive payment from the defendant at its office within the jurisdiction of this Court and the plaintiff has categorically pleaded that the agreement between the parties in paragraphs 5 and 8 which was concluded at the office of the plaintiff and thus part cause of action arose within the jurisdiction of this Court and part cause of action arose outside the jurisdiction of this Court.

26. Mr. Banerjee submits that the administrative office of the plaintiff situated within the jurisdiction of this Court but in the cause title of the suit, the plaintiff has inadvertently mentioned as registered office instead of administrative office. He submits that in the purchase order, the address of the administrative office of the plaintiff is mentioned as “Diamond Prestige” 8th Floor, Room No. 801, 41A, A.J.C Bose Road, Kolkata -700 017, West Bengal which is situated within the jurisdiction of this Court. He submits that in the purchase orders, it is also categorically mentioned that correspondence address is “Diamond

Prestige” 8th Floor, Room No. 801, 41A, A.J.C Bose Road, Kolkata -700 017, West Bengal.

- 27.** Mr. Banerjee submits that the purchase orders cum tax invoices were issued by the plaintiff to the defendant from the administrative office of the plaintiff which is within the jurisdiction of this Court. He submits that by a letter dated 28th October, 2021, the defendant has admitted the amount and the said letter was addressed to the plaintiff at the administrative office address.
- 28.** Mr. Banerjee submits that from the documents relied by the plaintiff which is admitted by the defendant and the pleading it is crystal clear that the part cause of action arose within the jurisdiction of this Court and part cause of action arose outside of the jurisdiction, thus the application filed by the defendant is liable to be dismissed.
- 29.** As regard to the balance of convenience, the defendant has only made a vague averment in paragraphs 16 and 17 of the instant application. He submits that the defendant has not disclosed about what are the documents which the defendant intend to disclose during evidence and how it will be inconvenient to the defendant to produce before this Court.
- 30.** Mr. Banerjee submits that the defendant has also not disclosed who are the witnesses of the defendant and are not in a position to appear before this Court. He has relied upon the judgment in the case of **State of Punjab Vs. A.K. Raha (Engineers) Ltd.** reported in **AIR 1964 Cal**

418 and submitted that the defendant must make out a case that there is an over whelming balance of convenience in favour of a trial either at Purulia or in Odisha.

31. Mr. Banerjee relied upon the case of ***Indian Mineral and Chemicals Co. and Others Vs. Deutsche Bank*** reported in ***(2004) 12 SCC 376*** and submitted that the assertions in a plaint must be assumed to be true for the purpose of determining whether leave is liable to be revoked on a point of demurrer.
32. Mr. Banerjee relied upon the judgment in the case of ***Isha Distribution House Private Limited Vs. Aditya Birla Nuvo Limited and Another*** reported in ***(2019) 12 SCC 205*** and submitted that the plea of territorial jurisdiction is essentially a mixed question of law and fact. The defendant can raise such plea in the written statement to enable the Court to try it on its merit in accordance with law.
33. Mr. Banerjee in support of his submissions relied upon the judgment in the case of ***Secretary of State for India in Council Vs. Golabrai Paliram*** report in ***Indian Law Reports (1931) Vol LIX 150*** and submitted that it is well settled that the proper way to plead to the jurisdiction of the Court is to take the plea in the written statement and as a substantive part of the defence.
34. Mr. Banerjee submits that the defendant has neither made out any case for revocation of leave nor balance of convenience. He prays for rejection of the application filed by the defendant. On the other hand,

Mr. Banerjee submits that the defendant has not denied with regard to payment of the amount to the plaintiff. He submits that the defendant has categorically admitted in its correspondences and in discussion between the parties that the defendant is liable to refund the amount but inspite of the same, the defendant failed to refund the amount to the plaintiff.

- 35.** Heard the Learned Counsel for the parties, perused the materials on record and the judgments relied by the parties. The Registered office of the plaintiff is situated outside the jurisdiction of this Court and administrative office is situated within the jurisdiction of this Court. Admittedly, the registered office as well as Iron Ore Mines of the defendant are situated outside the jurisdiction of this Court. It is also admitted that the defendant is to deliver materials to the plaintiff outside the jurisdiction of this Court.
- 36.** In paragraph 4 of the plaint, the plaintiff has stated that plaintiff's registered office is situated within the jurisdiction of this Court but in the cause title of the plaint, the plaintiff though mentioned as registered office but the address mentioned is the administrative office of the plaintiff and not the registered office. As per the documents relied by the plaintiff, the registered office of the plaintiff is situated at Village Mohuda, P.O. Rukni, P.S. Para near Rukni, District - Purulia, West Bengal which is situated outside the jurisdiction of this Court.

- 37.** In the purchase orders issued by the plaintiff to the defendant, both the addresses are mentioned but it is not clear that whether the purchase orders have been issued from its registered office or administrative office. Some of the purchase orders of the plaintiff, it is mentioned that corresponding address is “Diamond Prestige” 8th Floor, Room No. 801, 41A, A.J.C Bose Road, Kolkata -700 017, West Bengal.
- 38.** In all the purchase orders of the plaintiff has mentioned that the billing address is Purulia. It is also mentioned that the delivery of the materials would be at Purulia. The ledger account which the plaintiff has relied upon, in the some of the ledger accounts, the address of the plaintiff is mentioned as Purulia and some of the ledger accounts, the address of the plaintiff is mentioned to that of the administrative office.
- 39.** In paragraph 4 of the plaint, the plaintiff has stated that *“The aforesaid discussion, negotiation and agreement took place and/or were concluded at the office of the plaintiff situated within the jurisdiction aforesaid”*. The purchase orders of the plaintiff disclosed both the addresses but there is doubt whether the purchase orders were issued to the defendant from the administrative office or the registered office. The plaintiff has to prove whether purchase orders issued from the administrative office or from the registered office.
- 40.** The judgment referred by the plaintiff in the case of ***Indian Mineral & Chemicals Co. and Others (supra)*** and ***Secretary of State for India in Council (supra)***, the plea of jurisdiction is essentially a mixed

question of law and fact and the defendant should be allowed to raise such plea in the written statement to enable the Court to try it on its merits. The defendant has not filed written statement till date but the defendant has filed an application praying for extension of time to file written statement and the same is pending for consideration.

- 41.** In the case of ***Isha Distribution House Private Limited Vs. Aditya Birla Nuvo Limited and Another*** reported in **(2019) 12 SCC 205**, the Hon'ble Supreme Court held that :

“19. In our opinion, a plea of territorial jurisdiction is essentially a mixed question of law and fact. It is for this reason, the respondent-defendants should be allowed to raise such plea in the written statement to enable the Court to try it on its merits in accordance with law in the light of the requirements of Order 14 of the Code of Civil Procedure, 1908 and other relevant provisions governing the issue on merits.”

- 42.** In the case of ***Secretary of State for India in Council (Supra)***, the Hon'ble Court held that:

“The learned Judge has held that, as there is a provision in the Indian Railways Act which says that the plaintiffs cannot recover damages unless they give a certain notice which they had to give in this case in Calcutta, that notice is a part of the cause of action and, therefore, a part of the plaintiffs' cause of action arose in Calcutta. Learned counsel for the defendant contests that proposition very strongly. It is a proposition which has been accepted by the learned Judge. Again, the learned Judge has held that Article 115 of the Limitation Act is applicable. It does seem to me rather monstrous that, in a case where there is a serious question on these points to be decided, it should be raised by an application to take the plaint of the file. If there is anything to try, it should

be tried out by a proper hearing of the suit upon properly framed pleadings. Suppose, for example, that we were to hear this appeal and in effect dismiss the suit, would it be anything short of ludicrous if the correctness of Doya Ndrain's case [(1886) I.L.R. 14 Calc. 256.] should go before the Privy Council on a question whether or not the plaint should be taken of the file. Would it not be absurd if we referred the question to a Full Bench? The decisions of the learned Judge may be right or wrong, but are the plaintiffs, who say that he is right, to be told by this Bench that their case is not even to be entertained and that they will not be allowed to go to trial? The more I examined this case, the more it becomes evident that the matter should not have been dealt with at the stage at which it has been dealt with. The proper course is to dismiss the application to take the plaint of the file, and to direct that the case do proceed on all points in the usual way. After it has proceeded to written statement and discovery, it would be open to either party to apply for determination of the issues as preliminary issues, always provided that either party is given a proper opportunity to adduce any evidence bearing upon any of the issues that are, framed. I do really protest against questions of difficulty and importance being dealt with by an application to revoke the leave under clause 12 of the Letters Patent and to take the plaint of the file. Normally it is well settled that the proper way to plead to the jurisdiction of the Court is to take the plea in the written statement and as a substantive part of the defence."

- 43.** The plaintiff has categorically made out a case in paragraph 4 of the plaint that after the negotiation and discussion between the parties, the agreement was concluded in the office of the plaintiff which is the administrative office of the plaintiff situated within the jurisdiction of this Court but in the cause title, it is inadvertently mentioned as registered office instead of administrative office. It is also the case that the correspondences were made between the plaintiff and the defendant

from the administrative office and in the correspondences and purchase orders, both the addresses of the plaintiff are mentioned. Taking into consideration the above facts, this Court is of the view that it would not be proper for this Court to decide with regard to point of jurisdiction for revocation of leave under Clause 12 of the Letters Patent, 1865 in an application under Order VII, Rule 11 of the CPC. The plaintiff should be given an opportunity to prove whether the agreement between the parties concluded within the jurisdiction of this Court and the correspondences between the plaintiff and the defendant were made from the administrative address of the plaintiff.

- 44.** In view of the above, the prayer of the defendant for revocation of leave under Clause 12 of the Letters Patent, 1865 is refused.
- 45.** As regard to the balance of convenience the coordinate bench of this Court in the case of ***Parasram Harnandrai (supra)*** has framed the guide lines which reads as follows:

“(a) Where, an application for revocation of leave is made at the initial stages of a suit, the allegations in the plaint must be taken to be correct, and the Court will not enter into disputed questions of fact.

(b) The Court cannot decide the question of mala fides of the plaintiff in instituting the suit in a particular forum except at the trial of the action.

(c) The ‘balance of convenience’, to be decided in such an application, must be shown to be overwhelmingly in favour of the defendant, to such an extent, that to force the defendant to come to this Court would amount to a denial of

justice. The Court will not enter into “nice” calculations for ascertaining the respective convenience or inconvenience of the parties. This is what is meant by the phrase “mere balance of convenience is not enough.”

(d) In considering the ‘balance of convenience’, what is to be considered is not the importance of the matter to be proved but the volume of the evidence and the convenience or inconvenience of producing it at a particular forum.

(e) In deciding the question of ‘balance of convenience’, statements of a general nature contained in affidavits affirmed for that purpose, without particulars, is useless. The Court must consider the facts, and cannot proceed to act on vague allegations, devoid of particulars.

(f) In deciding applications for revocation of leave, it is always useful to consider as to which Court was the “Natural forum” for an action.”

In the present case, the defendant in paragraphs 16 and 17 of the present application only stated that inconvenience likely to be caused to the parties by having to attend the proceeding of the suit personally throughout the trial but has not given any details how the parties will face inconvenience. It is also not mentioned what evidence, the defendant intend to adduce in its support which the defendant will not be in a position to produce before this Court.

Considering the above, this Court finds that the plaintiff has not made out any case with regard to forum inconvenience.

46. The plaintiff has filed an application being G.A. (COM) No. 1 of 2024 praying for Judgment upon admission but the defendant has filed an application for revocation of leave granted under Clause 12 of the Letters Patent, 1865 and this Court held that the same is to be decided during trial and thus the prayer for Judgment upon admission cannot be taken at this stage without deciding the issue with respect to the jurisdiction. The plaintiff has also prayed for interim order for security deposit but this Court in the present proceeding has relegated the matter for trial with regard to issue of jurisdiction of this Court. Thus, it would not be proper for this Court to pass any order for grant of interim order for security deposit as prayed by the plaintiff.

47. In view of the above, **G.A. (COM) No. 1 of 2024** filed by the plaintiff and **G.A. (COM) No. 2 of 2024** filed by the defendant, both are **dismissed**.

(Krishna Rao, J.)