



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 13.09.2023
Pronounced on : 08.12.2023

+ **CS(COMM) 164/2023**

IN THE MATTER OF:

YAJUR COMMODITIES LTD. Plaintiff
Through: Mr. Kamal Mehta, Mr. Abhishek
Chauhan and Ms. Srishti Ahuja,
Advocates.
versus

SURESH ASRANI Defendant
Through: Mr. Ritesh Chowdhary, Mr. Soumik
Ghosal and Mr. Nirav Shah,
Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

I.A. 13423/2023 and I.A. 5638/2023

1. By way of I.A. 13423/2023 filed under Order VII Rule 11 CPC, defendant seeks rejection of plaint on the ground that it is barred by limitation. Plaintiff, on the other hand, vide its I.A. 5638/2023 under Section 14 of the Limitation Act seeks exclusion of 2292 days spent in pursuing its suit before Bombay High Court, a period of 27 days spent in seeking legal opinion in the matter and in instituting and pursuing mandatory pre-litigation mediation under the Commercial Court Act and a further period of 4 days in preparing and filing the present suit in this court after the mediation proceedings was closed as failed. Considering that both the applications involve issue of limitation in filing of the present plaint, the applications are taken up for consideration together.



2. Briefly, the plaintiff claims itself to be a trading company engaged in the business of sourcing and procurement of minerals and commodities as well as supply of coal products. Plaintiff claims that on defendant's request, it supplied coal to the defendant from time to time. The defendant had placed a purchase order dated 24.03.2012 for supply of 10,000 MT of coal for a sum of Rs.3,64,00,000/- and in this regard, the parties entered into a High Sea Sale Agreement dated 03.04.2012. The consignment was shipped vide two bills of lading, both dated 27.03.2012. Plaintiff raised High Sea Sale Invoice dated 03.04.2012 for Rs.3,19,00,000/-. The defendant handed over a cheque dated 11.03.2012 for Rs.1,62,79,200/-, as security. On defendant's assurance of clearance of the outstanding dues at the earliest, the security cheque was not presented for encashment.

3. Plaintiff further claims that the defendant vide email dated 20.09.2012 acknowledged its liability to pay a sum of Rs.2,53,10,347/-. The defendant alongwith the said email had also attached a copy of its account ledger and debit notes showing the said amount to be payable. Reminder emails were sent on 15.10.2012 and 24.12.2012 followed by a letter dated 27.04.2013. Defendant vide letter dated 08.05.2013 denied the same and demanded statement of accounts, which were provided by the plaintiff. Again, plaintiff reiterated the demand vide letter dated 13.08.2013 and email dated 01.10.2013.

Defendant vide its reply email dated 01.10.2013 admitted its liability to pay the outstanding amount and undertook to start repayment of the outstanding amount after 3-4 months. Several reminders sent by the plaintiff remained unanswered. Finally, defendant vide letter dated 08.01.2016 denied his liability.



4. On 30.09.2016, the plaintiff filed a commercial summary suit no. 45/2017 for recovery in Bombay High Court. The suit was resisted by the defendant for want of territorial jurisdiction and was eventually directed to be returned to be presented before this Court vide order dated 21.12.2022. The aforesaid order came to be passed in the chamber summons filed by the plaintiff seeking return of the plaint.

5. In the aforesaid backdrop, the present suit accompanied with the application under Section 14 of the Limitation Act came to be filed in Delhi High Court on 01.03.2023.

6. Learned counsel for the defendant has raised two folds submissions. It is firstly contended that the plaintiff despite being aware of the jurisdiction clause in the High Sea Sale Agreement providing for jurisdiction of Courts at Delhi, filed the suit before the Bombay High Court, which shows lack of diligence on its part.

7. Secondly, although the defendant took an objection to the maintainability of the suit on 14.08.2017, plaintiff failed to take any remedial steps for 15 months i.e., till 15.11.2018 when it filed the chamber summons for return of the plaint. It was thus submitted that as the plaintiff had failed to show diligence in filing and pursuing the suit in Bombay High Court, the defence of good faith is not available to it, for which reason the time spent before Bombay High Court cannot be excluded giving benefit to the plaintiff under Section 14 of the Limitation Act.

8. It is further contended that the suit was filed in Bombay High Court on the last day of limitation period and filing of the suit in Delhi on 01.03.2023 was already time barred. The period allegedly spent in taking legal advice cannot be excluded and even otherwise it is not supported by



any documentary evidence.

9. Per contra, learned counsel for the plaintiff contended that the plaintiff had approached Bombay High Court at the first instance as the defendant was based in Mumbai and the High Sea Sale Agreement was also executed in Mumbai. It pursued its suit before the Bombay High Court in good faith. The jurisdiction clause in High Sea Sale Agreement did not stipulate exclusive jurisdiction to the Courts in Delhi. Even otherwise, the period of limitation would commence when the defendant failed to make the payment after he had promised in his email dated 01.10.2013 to pay after 3-4 months. It is contended that since the defendant undertook to pay in 3-4 months, the limitation period would not commence immediately from the date of the email i.e., 01.10.2013, and would commence from the expiry of the fourth month. Even from 01.10.2013, the limitation would have expired on 30.09.2016, and the suit was filed on the last day of limitation.

10. In order to decide if the benefit of Section 14 is available to the plaintiff to save its suit from dismissal on account of limitation, the court has to examine two aspects. First, whether the filing of the suit in Bombay was not a bonafide decision and therefore there was a lack of diligence in pursuing the suit in Bombay. Second, the exact time that would be excluded for counting the limitation period by the time the suit came to be filed in Delhi upon its return by the Bombay High Court.

11. Let me deal with the first aspect first. Can it be said that filing of the suit in Bombay High Court by the plaintiff, despite Clause 14 of the Agreement, wherein it is mentioned that the courts at Delhi shall have jurisdiction in the event of disputes between the parties? Answer to the question is in negative for the following reasons.



12. Territorial jurisdiction often becomes a vexed legal issue between the parties who are situated in different geographical locations, despite the presence of a clause in the contract which indicates that courts at a particular place will have jurisdiction over the disputes between the parties. The Supreme Court in A.B.C. Laminart (P) Ltd. & Anr. v. A.P. Agencies, Salem¹ has held that unless the jurisdiction clause confines jurisdiction exclusively to one of the two courts that have jurisdiction in the matter, both the courts that would otherwise have jurisdiction under Section 20 of CPC, can entertain the dispute. It was further held that some illustrative signs of exclusivity in the clause will be the use of expressions like “alone”, “exclusive” or “only” in the jurisdiction clause. In view of this, Clause 14 of the Agreement, does not indicate that the parties had intended to confine jurisdiction to the courts at Delhi exclusively. The clause mentions that courts at Delhi shall have jurisdiction, without the use of any qualified expression like “alone”, “exclusive” or “only”.

13. In Consolidated Engineering Enterprises v. Principal Secretary (Irrigation Department)², Supreme Court has held that Section 14 should be liberally construed so as to suppress the mischief and advance its object. It was further observed that having regard to the intention of the Legislature, the equity underlying Section 14 be applied to its fullest extent and time taken diligently in pursuing a remedy, in a wrong court, should be excluded.

14. Following the ratio in Consolidated Engineering (Supra), since Clause 14 enabled the plaintiff to file its suit in Delhi or Bombay, filing of the suit in Bombay does not suggest that the filing was in bad faith or lacked bonafide. In any case, mere error of judgment, based on an interpretational

¹ (1989) 2 SCC 163

² (2008) 7 SCC 169



decision in choosing a place for filing a suit cannot be a ground for denying the benefit of Section 14. Certainly, defendant can point out the lack of diligence on part of the plaintiff in pursuing the suit at Bombay, to deny him the benefit of Section 14. In the present case, the defendant has not brought out any material to show that during the time the suit remained pending in Bombay High Court between 30.09.2016 and 21.12.2022, the plaintiff was not diligent enough in pursuing it.

15. It would be profitable to refer to a similar view followed by a Co-ordinate Bench of this Court in Modtech Furniture Pvt. Ltd. v. NCUBE Planning Design Pvt. Ltd. & Anr.³, wherein it was held that filing of a suit at a place contrary to the jurisdictional territory mentioned in the contract, will not deprive a party from the benefits of exclusion of time under Section 14.

16. Therefore the time spent between 30.09.2016 to 21.12.2022, before the Bombay High Court, is liable to be excluded from the limitation period.

17. Under Section 14 of the Limitation Act, the only benefit that can be extended to a diligent plaintiff is the exclusion of time in pursuing a bonafidely filed and pursued suit before a wrong court, from the calculation of the limitation period and it does not extend the period of limitation. The time spent in filing the subsequent suit before the correct court after the previously filed plaint is returned by the wrong court cannot be excluded under Section 14. The filing of the subsequent plaint in the correct court has to be within the available limitation period from the original cause of action, after excluding the time spent before the wrong court.

18. With this understanding, the Court proceeds to examine if the plaintiff had the luxury of unexpired limitation period for filing the suit in Delhi on

³ 2020 (5) AD (Delhi) 264



01.03.2023.

19. There is no quarrel that the limitation period for filing the recovery suit is three years. The dispute is with respect to the date of commencement of limitation period. Indisputably, the limitation period would commence from the expiry of the time agreed between the parties for making of payment.

20. As per agreed terms, the defendant was required to pay the invoiced sums within 30 days from the date of invoice. Invoice is dated 03.04.2012 as per which, ideally, the three years limitation period would have expired on 02.04.2015. However, the suit was filed in Bombay on 30.09.2016. As per the plaint, the plaintiff is counting the commencement date of limitation from the acknowledgment made by the defendant in the letter dated 01.10.2013, wherein it undertook to pay the outstanding amount in 3-4 months. As per the acknowledgment, the limitation could either commence from 01.10.2013 or upon the expiry of the fourth month i.e., the time within which the defendant stated that he would make the payment. However, in Manoj Kumar Goyal v. Jagdish Prashad Modi⁴, this Court dealt with exactly the same issue and held that limitation period would commence from the expiry of the time promised for making the payment. Following what has been laid down in Manoj Kumar Goyal (Supra), the fourth month expired on 31.01.2014, from which date three years would expire on 30.01.2017, whereas the suit was filed in Bombay on 30.09.2016, with four months to spare in the three years limitation.

21. As already held above, after excluding the time spent in Bombay between 30.09.2016 and 21.12.2022, the plaintiff was left with four months

⁴ 2014 (3) ILR (Del) 1595



to file the suit in Delhi after its return on 21.12.2022, and could have filed the same latest by 20.04.2023, whereas the said suit was filed on 01.03.2023, which is well within the four months of unexpired limitation, making the suit filed within the limitation period.

22. Defendant has raised objections against giving any benefit to the plaintiff for excluding the time period between 21.12.2022 and 01.03.2023, which according to the defendant is not justified as the plaintiff has been careless and not shown diligence by taking a long time to file the suit in Delhi upon its return by Bombay High Court. As explained above, there is no need to comment upon plaintiff's alleged lack of diligence in filing the suit within due time in Delhi, since plaintiff had four months of unexhausted limitation period at its disposal at the time of return on 21.12.2022. The court therefore has not examined if in a given case, time taken in filing the suit in the correct court after its return from the wrong court can be excluded under Section 14. This question may become relevant in a given case where there is no unexpired limitation period left for re-filing the suit in the correct court i.e., if the suit was filed on the last day before the limitation period expired in the wrong court.

23. The defendant's reliance on Rikhab Dass v. Smt. Chandro & Ors.⁵ is misplaced as the said case also supports plaintiff's contention that the period spent in prosecuting suit *bona fide* in a wrong court with due diligence is liable to be excluded *albeit*, the Court didn't find favour with the plaintiff's justification seeking exclusion of time on the ground of illness. In The Hatti Gold Mine Ltd. v. Vinay Heavy Equipments⁶, a decision relied upon by the defendant, the Court was considering the application under Section 14 with

⁵ AIR 1971 All 234

⁶ AIR 2005 Kar 264



respect to an Award passed under A&C Act, wherein the arbitral proceedings were held in Bangalore and the Award was also delivered at Bangalore. The parties had admittedly agreed that it is the Court at Bangalore which will have jurisdiction to decide any dispute between the parties. In these circumstances, the filing of petition under Section 34 before the Civil Judge at Chitradurga was held to be not in good faith. The decision is distinguishable on its facts.

24. For the reasons stated above, plaintiff's I.A. 5638/2023 under Section 14 is allowed and I.A. 13423/2023 filed by the defendant is dismissed.

I.A. 5637/2023

In view of the orders passed hereinabove, the said application is allowed. The original plaint, alongwith all the documents returned by the Bombay High Court, is taken on record.

CS(COMM) 164/2023, I.As 5639/2023, 12334/2023 & 12546/2023

List before Joint Registrar on 12.01.2024.

**MANOJ KUMAR OHRI
(JUDGE)**

DECEMBER 8, 2023

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