IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 17TH DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 3887 OF 2020 (GM CPC)

BETWEEN:

TVS MOTOR COMPANY LIMITED
A COMPANY UNDER THE
COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT:
NO.12, KHADER NAWAZ KHAN ROAD
NUNGAMBAKKAM, CHENNAI-600 006.
REP. BY MR. P. SUDHIR
AUTHORIZED SIGNATORY ...PETITIONER

(BY SRI.S. VIJAYASHANKAR, SR.ADVOCATES
ALONG WITH SRI. ANIRUDH, ADVOCATE)

AND:

KONGOVI PRIVATE LIMITED
A COMPANY UNDER THE COMPANIES ACT,2013
HAVING ITS REGISTERED OFFICE AT:
NO.377, 10TH CROSS, 4TH PHASE
PEENYA INDUSTRIAL AREA
BENGALURU-560 058. ...RESPONDENT

(BY MISS. MANEESHA KONGVI FOR C/R1.)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS, SET ASIDE THE ORDER DATED 07.02.2020 ANNEXURE-A PASSED ON I.A.NO.2/2019 IN COM O.S.NO.2451/2010 ON THE FILE OF THE HON'BLE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,

BENGALURU (COURT HALL NO.84) AND PASS AN ORDER ALLOWING I.ANO.2/2019 AS PRAYED AND ETC.,

THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner-Company being the defendant in a money suit in Com.O.S.No.2451/2010 is knocking at the doors of writ court for assailing the order dated 07.02.2020, a copy whereof is at Annexure-A, whereby the learned 83rd Addl. City Civil Judge, Bengaluru (CH-84) has dismissed its application for treating the additional issue No.1 as to territorial jurisdiction of the Court as a preliminary issue; the said application in I.A.No.2 is filed u/s.15(4) & 16(2) of the Commercial Courts Act, 2015 r/w various Orders and Rules of CPC 1908, including Sec.151. Petitioner has also a grievance as to non-consideration of its contention as to absence of a choate cause of action.

2. The respondent-defendant Company having entered caveat through its counsel opposes the writ petition making submission in justification of the impugned order.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to interfere in the matter for the following reasons:

(a) the money suit in question has been pending adjudication since the year 2010; the claim is for a huge sum of **Rs.4,11,53,318.78** with interest at the rate of 15% per annum; petitioner as the defendant having entered appearance through its counsel has already filed the Written Statement; recording of the evidence is also half way through; new Parliamentary Legislation namely, the Commercial Courts Act, 2015 providing for speedy disposal of commercial disputes has come into force; the suit arguably involves a commercial dispute and therefore it should see a speedy determination, without the avoidable interdiction by way of intermediary challenge, lest the very purpose of the new Act should be defeated;

(b) the contention of the petitioner that in terms of Condition 25 of the Purchase Conditions, the suit of the kind could be instituted in the Courts situate only in Chennai and therefore the Court below lacks territorial jurisdiction and consequently the said question ought to have been tried as a preliminary issue, is bit difficult to countenance, regard being

had to the provisions incorporated in the Schedule to the Act, more particularly, Order XV (A) concerning Case Management Hearing which vests abundant discretion with the trial Judge to treat the questions of the kind in a separate trial or not, as mentioned in Rule 6(h) & (i); the submission of the petitioner that the issue relating to territorial jurisdiction is required to be treated as a preliminary issue in view of text of Rule 6(h), is bit difficult to countenance when apparently such an issue involves mixed questions of law and facts; such issues cannot be treated as preliminary issue;

(c) the contention of the petitioner that the Division Bench of this Court in M.F.A.No.1514/2018 (CPC) between the parties vide judgment dated 30.10.2018 had required an issue relating to territorial jurisdiction should be framed, is true; however, further contention advanced as an off shoot thereof that such an issue is directed to be treated as a preliminary issue is not substantiated; at paras 9 & 10 of the said judgment, the Bench observed as under:

> *"9. Considering the pleadings of both the parties, the Trial Court has framed the issues and proceeded with the trial on the basis of the issues framed. However, it is discernible that no issue s regards the territorial jurisdiction of the Court to try the suit has been framed despite preliminary*

objection raised by the defendant/respondent in the written statement. In the circumstances, the core issue ought to have been the territorial jurisdiction of the Court to try the suit. In the absence of such an issue being framed, any further proceeding by the Trial Court are likely to be vitiated.

10. It is also apparent from the other impugned that no specific finding has been given as regards the question of cause of action addressed by the parties, which goes to the root of the matter as to decide the jurisdiction of the Court to try the suit."

The text & context of the aforesaid observations do not support the said contention strenuously advanced by the petitioner; the Bench only required framing of an issue for being tried along with the rest.

4. The next contention vociferously advanced is that when plural courts have jurisdiction, it is open to the parties by agreement to designate one of the several courts to have their *lis* adjudicated by, is not in dispute but a distinction has to be drawn between the lack of jurisdiction and a mere error in it's exercise; the former strikes at the very root of the matter since it is a case of want of jurisdiction/competence, in which event, the outcome of the exercise is a nullity that may be attacked even in collateral proceedings; on the other

hand, error of established jurisdiction stands on a different footing; a mere error in exercise of jurisdiction does not vitiate the legality or validity of the proceedings; the learned Authors **H.W.R.WADE & FORSYTH** in their **"ADMINISTRATIVE LAW" TENTH EDITION (Oxford Publication) at pages 220 & 221** state as under:

> "*Many judges have made a contrast between jurisdictional questions determinable at the outset and mere error made within jurisdiction during the course of the inquiry. Thus Lord Sumner said of a magistrate:*
>
> *if his jurisdiction to entertain the charge is not open to impeachment, his subsequent error, however grave, is a wrong exercise of a jurisdiction which he has, and not a usurpation of jurisdiction which he has not.*
>
> *And Lord Reid also once said:*
>
> *If a magistrate or any other tribunal has jurisdiction to enter on the inquiry and to decide a particular issue, and there is no irregularity in the procedure, he does not destroy his jurisdiction by reaching a wrong decision. If he has jurisdiction to go right he has jurisdiction to go wrong. Neither an error in fact nor an error in law will destroy his jurisdiction……*"

5. An agreement between the parties to have their case decided by one of several courts having jurisdiction does not render other courts a destitute of competence since the jurisdiction is vested by law and never by agreement, and

therefore cannot be ousted by such agreements of private individuals; the courts would ordinarily respect such an arrangement arrived at between the private individuals, is true; however that is not on the premise that the jurisdiction of the other Courts stands ousted by such an arrangement. A great Judge of yester years, namely, Justice K.A.Swamy having dealt with this aspect of the matter in **M/S. M.G.BROTHER LORRY SERVICE vs SHAMBALINGAPPA, ILR 1979(2) Kar 2131** has observed as under:

> *"Where two Courts or more have, under the Code of Civil Procedure jurisdiction to try a suit or proceeding, an agreement between the parties to the effect that the suit should be tried in one such court, is not contrary to the public policy. It is only by reason of an agreement that the suit in such cases will have to be filed by the party in the Court in which, as per the agreement, it is required to be filed. But, such an agreement will not take away the jurisdiction of the excluded court to entertain suit. Even in the existence of such an agreement, it is always open for the excluded court to consider, having regard to the facts and circumstances of the case, claim involved in the suit, convenience of the parties and the expenses to be incurred for the litigation, as to whether it will be in the interest of justice to direct the party to go to the other court named in the agreement. If the excluded court having regard to the aforesaid facts and circumstances of the case, comes to the conclusion that by directing the party which has approached the said court to go to the other court named in the agreement would be appressive and would amount to denial of justice, it can very well*

entertain the suit irrespective of there being an agreement between the parties excluding the jurisdiction of the said court. No doubt, parties are bound by the agreement which they have entered into but the courts are not obliged to enforce such an agreement in every case if it amounts to denial of justice to the party, which the courts cannot afford to do as it would undermine the very object of doing justice for which the courts exist".

6. The submission of the petitioner that the learned trial Judge has adverted to an old decision of the Apex Court i.e., **S.S. Khanna Vs. F.J. Dillon, AIR 1964 SC 497,** regardless of legislative changes, again does not impress this court, either; the Apex Court therein observed that the courts should not try a suit on mixed questions of law and facts, as preliminary issues; normally, the Apex court observed, all the issues in a suit should be tried together, especially when the decision on the issues even of law depends upon the determination of issues of facts; whatever legislative changes the new Act has brought about, has not robbed off the efficacy of the ratio of the said decision; it may be old, but it is said that "older the precedent, greater its value".

7. The last contention that the court below ought to have considered the question relating to the cause of action as a preliminary issue in view of petitioner's application

coupled with the observation of the Division Bench in the aforesaid Miscellaneous First Appeal to does not come to the aid of petitioner; even an issue relating to absence of cause of action ordinarily arises from the basket containing a mixture of law & facts which need to be tried, along with rest of the issues; both the petitioner and the respondent will have full opportunity to structure their version of the case by leading evidence in support thereof; as already mentioned above, the pleadings having been completed, the trial is half a through; the learned trial Judge should make all endeavors to try and dispose of the suit as expeditiously as possible of course with the cooperation of the parties.

8. One more aspect on which both the sides have not much argued needs to be adverted to; the impugned order is a product of exercise of discretion by the court below apparently in accordance with the rules of reason & justice; what prejudice has been caused by the impugned order is not forthcoming from the pleadings of the petitioner; a mere assertion that the respondent ought to have brought the suit in the court at Chennai is a matter relating to territorial jurisdiction, which all civilized legal systems treat as not going to the root of the matter; this apart, the pleadings of the

dominant litis namely the plaintiff decide the Forum; the Apex Court in **Abdulla Bin Ali And Ors. vs Galappa And Ors., AIR 1985 SC 577** at para 5 observed as under:

> "*There is no denying of the fact that the allegations made in the plaint decide the Forum. The jurisdiction does not depend upon the defence taken by the defendants in the Written Statement…*".

It hardly needs to be stated that it is open to the petitioner-defendant to prove his contentions by placing evidentiary material on record so that the Court below will consider the questions as to lack of jurisdiction and absence of choate cause of action as well, after the accomplishment of the trial.

In the above circumstances, Writ Petition being devoid of merits, is liable to be rejected, and accordingly it is.

However, the observation made herein above being confined to the disposal of writ petition, shall not influence the trial and decision making in the suit, since all contentions of the parties are kept open.

No costs.

Sd/-
JUDGE

SSD