"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 8TH DAY OF JANUARY 2024 / 18TH POUSHA, 1945

CRP NO. 288 OF 2019

AGAINST THE ORDER/JUDGMENT OS 1358/2017 OF III ADDITIONAL MUNSIFF COURT, ERNAKULAM (RENT CONTROL)

REVISION PETITIONER/S:

SANGHA ERECTORS PVT LTD.
PLOT 1B, VASAVINAGAR PICKET, SECURNDERABAD, PIN-500 009, REPRESENTED BY MANAGING DIRECTOR, S.S.SANGHA.

BY ADVS.
P.SANJAY
SMT.A.PARVATHI MENON

RESPONDENT/S:

LAXMI CRANES AND TRAILERS PVT LTD
BUILDING NO.VII/602 A, KUNDANNOOR, KOCHI-682 304, REPRESENTED BY MANAGING DIRECTOR, BHASI K.NAIR.

BY ADV MANU ROY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27.11.2023, THE COURT ON 08.01.2024 DELIVERED THE FOLLOWING:

"CR"

ORDER

Dated this the 08th day of January, 2024

The revision petitioner is the defendant in O.S.No.1358 of 2017 on the files of the Additional Munsiff Court, Ernakulam. The suit is filed by the respondent/plaintiff, seeking to realise a sum of Rs.8,69,836/- from the revision petitioner, along with interest at the rate of 18% per annum from 17.04.2016 onwards. The averments in the suit are to the following effect;

In 2016, the defendant expressed interest in hiring one Crawler Mounted Crane having capacity of 165 MT from the plaintiff for engaging in their project site in Chattisgarh. After negotiations, the defendant issued a purchase order dated 11.03.2016 containing the commercial terms and conditions for hiring the Crawler Mounted Crane. The purchase order was accepted by

the plaintiff with certain modifications and the crane was given on hire. Thereafter, the defendant failed and neglected to pay the hire charges, even after issuance of repeated demand notices.

2. On receipt of notice in the suit, the revision petitioner entered appearance and filed I.A.No.3160 of 2018, praying to return the plaint for presentation before the court in which the suit should have been instituted. It was contended by the revision petitioner that the Munsiff Court, Ernakulam lacks territorial jurisdiction since no part of the cause of action had arisen at Ernakulam. It was further contended that, as per Clause 17 of the terms and conditions of the purchase order dated 11.03.2016, only the courts in Secunderabad, Hyderabad, Telangana State have jurisdiction with respect to the disputes arising out of the agreement.

3. The plaintiff filed counter affidavit, contending that, in the letter dated 14.03.2016, issued in reply to the purchase order dated 11.03.2016, amendments with respect to the working hours and payment of hire charges had been suggested and the revision petitioner had not objected to those amendments. In the reply letter, it was also specified that the actions of the plaintiff would be subject to Cochin jurisdiction alone.

4. The learned Munsiff, after detailed consideration, dismissed the application seeking return of plaint, finding the contention regarding lack of territorial jurisdiction to be untenable. Hence, this revision petition.

5. Adv. Parvathi Menon, learned Counsel for the revision petitioner contended that, the parties having agreed to confer exclusive jurisdiction on the courts situated in the places mentioned in the purchase order dated

11.03.2016, the court below grossly erred in relying on the printed words in the letter dated 14.03.2016, to hold that the court at Ernakulam has got jurisdiction. In the reply letter dated 14.03.2016 issued by the plaintiff, only the conditions with respect to working hours and payments were sought to be amended. The silence on the part of the plaintiff with respect to the exclusive jurisdiction clause amounts to consent. The Apex Court decision in ***Swastik Gases (P) Ltd v Indian Oil Corpn.Ltd [(2013) 9 SCC 32]*** and decision of the High Court of Calcutta in ***Shridhar Vyapaar Private Limited v Gammon India Limited [2018 SCC OnLine Cal 11749]*** are pressed into service to buttress the contention. Relying on the Division Bench decision of this Court in ***India Roadway Corporation v. Unneerikutty [1990 (1) KLT 292],*** it is contended that the printed words 'subject to Cochin jurisdiction', at the

bottom of the letterhead, cannot be treated as a special contract conferring exclusive jurisdiction on Cochin Courts.

6. Adv.Manu Roy, learned Counsel appearing for the respondent, supported the impugned order by contending that the parties had not entered into any written agreement to confer exclusive jurisdiction on any court. On the other hand, the letterhead under which the communication suggesting amendments to the conditions in the purchase order was sent, it was printed in block letters that disputes will be subject to Cochin jurisdiction. No communication with respect to jurisdiction was received from the revision petitioner after receipt of that communication. In such circumstances, the only inference possible is that the revision petitioner had accepted the jurisdiction of the Cochin courts to decide disputes. Even otherwise, there is nothing to show that the respondent had acceded

or consented to the exclusionary clause in the purchase order. It is contended that part of cause of action had arisen at Ernakulam since the payment was effected to the respondent's account maintained with a bank at Ernakulam and the correspondences pertaining to the transaction were issued from the registered office of the respondent situated in Ernakulam.

7. In the nature of the contentions advanced, it is essential to note that, as per Section 20(c) of the Code of Civil Procedure, a suit can be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. It is also the settled position that, even if two or more courts may have jurisdiction based on cause of action, it is open for the parties to confer exclusive jurisdiction on one of the courts by consent. Dilating on this aspect, the Supreme Court in ***Hakam Singh v Gammon (India) Ltd [(1971)***

1 SCC 286] held that, where two courts or more have, under the Code of Civil Procedure, jurisdiction to try a suit or proceeding, an agreement between the parties that the dispute between them shall be tried in one of such courts is not contrary to public policy and would not be in contravention of Section 28 of the Contract Act. Here, the contention is that condition No.17 in the purchase order dated 11.03.2016 issued by the revision petitioner, and extracted hereunder for easy reference, confers exclusive jurisdiction on the courts at Secunderabad, Hyderabad, Telangana State;

> *"17.* ***Jurisdiction:*** *Whereas this Agreement, Contract is governed by and shall be construed in accordance with the laws of India and Courts at Secunderabad, Hyderabad, T.S. will have jurisdiction under this Agreement, Contract, in case of any dispute arising."*

Pertinently, terms like "alone", "only", "exclusive", indicating conferment of exclusive

jurisdiction are absent in the condition. As held by the Apex Court in ***A.B.C. Laminart (P) Ltd v A.P. Agencies, Salem [(1989) 2 SCC 163],*** where an ouster clause occurs in an agreement, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific, accepted notions of contract would bind the parties and unless the absence of *ad idem* is shown, the other courts should avoid exercising jurisdiction. Therefore, when words like "alone", "only", "exclusive" have been used, there is no difficulty. But even in the absence of such words, in appropriate cases the maxim "*expressio unius est exclusio alterius*"- expression of one is the exclusion of another- can be applied. What is an appropriate case shall depend on the facts of the case. In ***A.B.C. Laminart (P) Ltd*** *(supra)*, the maxim "*expressio unius est exclusio alterius*" was held to be having no application in the absence of

words like "alone", "only", "exclusive" being used along with the words, '*any dispute arising out of the sale shall be subject to kaira jurisdiction*', which clause was the subject matter of discussion in the judgment.

8. The legal position with regard to the exclusive jurisdiction clause underwent a change when, in ***Swastik Gases (P) Ltd*** *(supra)*, the Apex Court held that, absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is not decisive and does not make any material difference, since the intention of the parties was clear and unambiguous by the incorporation of an exclusionary clause in the agreement.

9. As far as condition No.17 in the purchase order in the instant case is concerned, the specific contention of the respondent is that the parties had not agreed to confer exclusive jurisdiction on the courts mentioned in that condition. The revision petitioner, on the other

hand, argues that an implied consent has to be inferred from the silence with respect to condition No.17. The question therefore is whether there was *consensus ad idem* with respect to the exclusionary clause. While on the question, it will be profitable to refer the decision in ***Rickmers Verwaltung GMBH v Indian Oil Corpn. Ltd [(1999) 1 SCC 1],*** wherein the Apex Court has set out the manner in which correspondences pertaining to business agreements are to be construed in order to arrive at the conclusion whether there is meeting of mind between the parties. Being contextually relevant, paragraph 13 of the judgment is extracted hereunder;

> *"13. In this connection the cardinal principle to remember is that it is the duty of the court to construe correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties, which could create a binding contract*

between them but the court is not empowered to create a contract for the parties by going outside the clear language used in the correspondence, except insofar as there are some appropriate implications of law to be drawn. Unless from the correspondence, it can unequivocally and clearly emerge that the parties were ad idem to the terms, it cannot be said that an agreement had come into existence between them through correspondence. The court is required to review what the parties wrote and how they acted and from that material to infer whether the intention as expressed in the correspondence was to bring into existence a mutually binding contract. The intention of the parties is to be gathered only from the expressions used in the correspondence and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an agreement upon all material terms, then and then alone can it be said that a binding contract was capable of being spelt out from the correspondence."

In the case at hand, the terms and conditions of

the contract were set out in the purchase order. In its communication sent in response to the purchase order, the respondent had sought amendment of the conditions with respect to working hours and payments. In the letterhead under which the reply was communicated, the words 'subject to Cochin jurisdiction' was printed in block letters. In ***Unneerikutty*** *(supra)*, this Court has held that the words printed at the bottom of the letterhead with respect to jurisdiction cannot be treated as a special contract conferring exclusive jurisdiction on the court mentioned therein. The reasoning being that, ouster of jurisdiction of courts cannot be lightly assumed or presumed and a unilateral affirmation by one of the parties to the contract, without the same being specifically accepted by the other party, will not confer exclusive jurisdiction on any court by overlooking the conferment of jurisdiction based

on cause of action stipulated in Section 20(c) of the Code. Being so, the printed words 'subject to Cochin jurisdiction' does not confer exclusive jurisdiction on the courts at Cochin.

10. The next question is whether the respondent had accepted the jurisdictional clause by conduct. On this, the revision petitioner's contention is that the failure on the part of the respondent to seek amendment of the jurisdiction clause, while specifically requesting amendment to certain other clauses, amounts to consent by conduct. As against this, the respondent would contend that the printed words in the reply and absence of consent are sufficient proof of the fact that the parties were not *ad idem* on the jurisdictional aspect. The law on the point, from the decision of the Privy Council onwards is that, a contract is concluded when, in the mind of each contracting party, there is *consensus ad idem* and a modification or revocation of the

contract requires a like consensus *(see* ***Y.A.J. Noorbhai*** *v.* ***S.P.L.K.R.Karuppan Chetty*** ***[AIR 1925 PC 232]****)*. The Apex Court in ***Bhagwati Prasad Pawan Kumar*** *v.* ***Union of India*** ***[(2006) 5 SCC 311]*** has held that, even though an offer may be accepted by the conduct, such conduct would amount to acceptance only if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. Therefore, the courts have to examine the evidence and find out whether, in the facts and circumstances of the case, the conduct of the offeree amounted to unequivocal acceptance of the offer made. If the facts disclose that there was no reservation in the acceptance by conduct, it follows that the offer has been accepted. On the other hand, if the evidence discloses that the offeree had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act. As far as

the case at hand is concerned, the available documents does not reveal consensus between the parties with respect to the conferment of jurisdiction on any particular court/s.

11. Yet another aspect of importance is the absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" in Clause 17 of the terms and conditions. In the absence of proof regarding consensus as to the jurisdiction, either implied or by conduct, the maxim "*expressio unius est exclusio alterius*" has no application. Being so, the court below was justified in rejecting the prayer for return of the plaint.

In the result, the revision petition is dismissed.

Sd/-

V.G.ARUN

JUDGE

Scl/