IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 563 OF 2024

1. NCM Shoava Engineers (Pvt.) Ltd.
2. Mr. Neeraj Mujumdar

...Applicants

Versus

1. Hydrotek Engineers
2. Narendra Mujumdar

...Respondents

Mr. Amit Karle, a/w Sameer Tiwari, for the Applicants.
Mr. Anurag Mishra, i/b Pooja Kankariya, for Respondent No.1.

CORAM: N. J. JAMADAR, J.
Reserved On: 24th DECEMBER, 2025
Pronounced On: 17th MARCH, 2026

JUDGMENT:-

1. This revision application is directed against an order dated 4th October, 2023 passed by the learned Civil Judge, Pune, whereby an application preferred by the applicants for rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ("the Code") came to be rejected.

2. The respondent No.1 - plaintiff is engaged in the business of manufacture, supply and export of heavy duty engineering components and material handling equipments. Applicant No.1 (D1) is a company registered under the Companies Act, 1956. Defendant No.1 is engaged in the business of manufacturing

attachments for earth moving equipments and infrastructural development.

3. D1 was in need of piping kits and other accessories for rock breaker. The defendants had approached the plaintiff and placed a purchase order for the supply of piping kits and accessories. Accordingly, the plaintiffs had sold and delivered the piping kits and other accessories to the defendants and raised invoices. The defendants, however, committed default in the payment of the price of the goods sold and delivered. Hence, respondent No.1 instituted a summary suit based on the invoices for recovery of the outstanding amount alongwith interest thereon.

4. The plaintiffs took out a Summons for Judgment. By an order dated 17th October, 2019, the trial Court granted leave to defend the suit to the defendants subject to condition of depositing the entire amount of the alleged claim.

5. Being aggrieved, the defendants preferred WP/954/2019; which is subjudice.

6. In the meanwhile, the defendants preferred an application for rejection of the plaint contending, *inter alia,* that the plaint was liable to be rejected for absence of cause of action, and on

account of exclusive jurisdiction having been conferred, by agreement between the parties, on the Courts at Indore. Reliance was placed by the applicants on the purchase orders placed by the applicants which contains a clause, "subject to Indore jurisdiction". Since the defendants do not reside and carry on business within the local limits of the jurisdiction of the Court at Pune, nor any part of the cause of action has arisen within the local limits of the jurisdiction of the Court at Pune and there is an explicit clause in the contract between the parties which excludes the jurisdiction of other Courts except the Court at Indore, the plaint was liable to be rejected, contended the defendants.

7. Respondent No.1 – plaintiff resisted the application.

8. By the impugned order, the learned Civil Judge rejected the application observing that, there were specific averments in the plaint which disclose the cause of action for the suit. In regard to the contention of the defendants that only the Courts at Indore had exclusive jurisdiction, the learned Civil Judge was of the view that a part of the cause of action did arise within the local limits of the jurisdiction of the Courts at Pune and the question of forum was to be determined on the basis of the averments in the plaint and not the contentions raised in the

written statement. The learned Civil Judge also arrayed against the defendants, the aspect of the non-compliance of the condition of deposit of the amount subject to which leave to defend the suit was granted by the Court. It was observed, the objection to the jurisdiction of the Court does not fall within the four corners of the provisions contained in Order VII Rule 11 of the Code.

9. I have heard Mr. Karle, the learned Counsel for the applicants and Mr. Mishra, the learned Counsel for respondent No.1, at some length. With the assistance of the learned Counsel for the parties, I have perused the averments in the plaint and the material on record.

10. Mr. Karle, the learned Counsel for the applicants, would submit that the learned Civil Judge completely misdirected himself in rejecting the application for rejection of the plaint on the ground that a part of cause of action arose within the limits of the Courts at Pune. According to Mr. Karle, that consideration was totally irrelevant. The question that the learned Civil Judge ought to have posed unto himself was, whether, in view of the contract between the parties, as manifested in the purchase orders, the jurisdiction of all the Courts except the Court at Indore was excluded? If the answer

to this question is in the affirmative, then the suit before the Civil Court at Pune would be wholly incompetent.

11. To buttress the aforesaid submission, Mr. Karle placed reliance on the fact that, indisputably, the defendants do not actually and voluntarily reside or carry on business within the local limits of the jurisdiction of the Court at Pune. The purchase orders were issued from the office of the defendants at Indore. The purchase orders by incorporating the term, "subject to Indore jurisdiction" contain a clear stipulation to exclude the jurisdiction of all other Courts except the Courts at Indore. Mr. Karle submitted that, the absence of the word "only", "exclusive" and the like, is not of decisive significance. If more than one Courts have jurisdiction, it is open for the parties to oust the jurisdiction of all other Courts, except one. In that event, such agreement is not rendered void and the stipulation as to exclusive jurisdiction is required to be enforced.

12. To lend support to the aforesaid submission, Mr. Karle placed a very strong reliance on the judgments of the Supreme Court in the cases of ***Swastik Gases Private Limited vs. Indian Oil Corporation Limited***[1]***, A.B.C. Laminart Pvt. Ltd. vs. A. P.***

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1 (2013) 9 Supreme Court Cases 32.

Agencies, Salem[2] and *Rakesh Kumar Verma vs. HDFC Bank Ltd.*[3].

13. Per contra, Mr. Mishra, the learned Counsel for respondent No.1 would submit that, the application for rejection of the plaint was not maintainable at the stage of the suit at which it was filed. Emphasis was laid on the fact that the leave to defend the suit was sought by the defendant and after the leave to defend was granted subject to the condition of the deposit of the claim amount, the defendants failed to comply with the said condition. Indeed the defendants have preferred WP/954/2019. Yet as the defendants have submitted themselves to the jurisdiction of the Civil Court at Pune, it would not be open for the defendants to seek rejection of the plaint.

14. Mr. Mishra placed reliance on a judgment of this Court in the case of *Drive India Enterprise Solutions Ltd. vs. Haier Telecom (India) Pvt. Ltd.*[4], wherein it was enunciated that in a summary suit where the defendant has filed an application seeking leave to defend the suit, no application can, thereafter, be filed under Section 8 of the Arbitration and Conciliation Act, 1996 seeking the referral of the parties to the arbitration.

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2 (1989) 2 Supreme Court Cases 163.

3 2025 SCC OnLine SC 752.

4 2018 (5) Bom CR 670.

15. As a second limb of the submission, Mr. Mishra would urge that, once the defendant failed to comply with the condition subject to which leave to defend is granted, under the provisions of Order XXXVII Rule 3(6), the plaintiff is entitled to immediate judgment. Thus, on this count as well, the application for rejection of the plaint was wholly untenable after the failure on the part of the defendants to comply with the condition subject to which the leave to defend was granted. In order to support this submission, Mr. Mishra placed reliance on a judgment of the Supreme Court in the case of ***Executive Trading Company Private Limited vs. Grow Well Mercantile Private Limited***[5]***,*** wherein the consequences of the steps under Order XXXVII Rule 3 sub-rules (1) to (7) of the Code, were set out.

16. Mr. Mishra further submitted that the purchase orders, on which the defendants bank upon, nowhere indicate that the plaintiff consented to waive off his right to sue in Pune. The purchase order is in a printed proforma. The purchase order does not spell out a contract to exclude the jurisdiction of all other Courts. In these circumstances, the learned Civil Judge was fully justified in rejecting the application for rejection of the

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5 2025 INSC 1157.

plaint, which according to Mr. Mishra was also misconceived as a plaint cannot be rejected even if the Court finds that the Court has no territorial jurisdiction. At best, the proper remedy for the defendants was to seek the return of the plaint, submitted Mr. Mishra.

17. At the threshold, the two objections raised on behalf of the plaintiff to the prayer for the rejection of the plaint deserve to be dealt with. First, the tenability of the application for the rejection of the plaint on the ground that the defendants have failed to comply with the condition of deposit of the amount subject to which leave to defend has been granted. It was submitted that, having sought leave to defend the suit, which implies submission to the jurisdiction of the Civil Court at Pune, it was impermissible for the defendants to seek rejection of the plaint.

18. The plain text of Order VII Rule 11 provides a complete answer to the objection sought to be canvassed on behalf of the plaintiff. Under Order VII Rule 11, the plaint shall be rejected if the situations enumerated in Clauses (a) to (f) therein are fulfilled. A plaint can be rejected at any stage of the suit. The fact that the defendants have filed an application for leave to defend in a summary suit or even written statement in a regular

suit, does not preclude the defendants from seeking the rejection of the plaint. If the conditions stipulated in the clauses incorporated in Rule 11 of Order VII are made out, it is the duty of the Court to reject the plaint.

19. The analogy sought to be drawn by Mr. Mishra on the basis of the provisions contained in Section 8 of the Arbitration and Conciliation Act, 1996 is wholly inapposite. Under the said section, the party seeking referral of the parties to arbitration is enjoined to apply for the same not later than the date of submitting his first statement on the substance of the dispute. A party is entitled to waive off the right to seek the referral under Section 8 of the Arbitration and Conciliation Act, 1996. Conversely, if the conditions stipulated in the clauses enumerated under Rule 11 are satisfied, it is the duty of the Court to reject the plaint. Thus, the reliance placed by Mr. Mishra on the judgment in the case of ***Drive India Enterprises Solutions Ltd*** (supra) is of no assistance to respondent No.1.

20. Likewise, in the event of default in compliance of the condition subject to which the leave to defend is granted, the plaintiff is entitled to a judgment under the provisions of Order XXXVII Rule 3(6)(b) of the Code. Nothing precludes the Court from passing such judgment, if there is no stay to the execution

and operation of the order granting conditional leave to defend. However, till the time such judgment is passed, the defendants cannot be precluded from seeking the rejection of the plaint, albeit upon satisfactorily demonstrating that the plaint is otherwise liable to be rejected.

21. The second contention on behalf of respondent No.1 - plaintiff that, on the ground of absence of territorial jurisdiction the plaint cannot be rejected under Order VII Rule 11 of the Code is impeccable. However, in the case at hand, it appears the defendants had sought rejection of the plaint on the ground that it does not disclose cause of action; which is covered by clause (a) of Order VII Rule 11, as well. The application was thus tenable, though whether the prayer therein deserved to be countenanced was an altogether different matter.

22. This takes me to the pivotal question as to whether the impugned order suffers from any legal infirmity or material irregularity. On the first count, on which the rejection of the plaint was sought, namely the plaint did not disclose a cause of action, it would suffice to note that, from a meaningful reading of the plaint as a whole, which is warranted at the stage of consideration of an application for rejection of the plaint, it becomes abundantly clear that the plaint did disclose the cause

of action as the suit was for the recovery of the price of the equipments and accessories sold and delivered by the plaintiff to the defendants. Incontrovertibly, the defendants had placed the purchase orders, pursuant to which the equipments and accessories were allegedly delivered and invoices were raised. In fact, the summary suit has been instituted on the basis of those invoices. The learned Civil Judge was, thus, within his rights in observing that the plaint did disclose the cause of action.

23. It is true, if the Court finds that, the plaint discloses a cause of action, the prayer for rejection of the plaint on the ground that the Civil Court at Pune had no jurisdiction, does not fall within the ambit of Order VII Rule 11 of the Code, in the strict sense. Nonetheless, the trial Court has proceeded to examine the challenge on the ground of ouster of the jurisdiction of all the Courts except the Civil Court at Indore and determine the same. As legality, propriety and correctness of the said order is to be evaluated by this Court, this Court considers it necessary to briefly delve into the question of ouster of jurisdiction sought to be raised on behalf of the defendants.

24. The legal position is well-neigh settled that, when two or more Courts have territorial jurisdiction to try the dispute

between the parties and the parties have agreed that dispute should be tried only by one of those Courts, the Court mentioned in the agreement – chosen by the parties, shall have jurisdiction. So long as the parties to contract do not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to decide the dispute, it can not be said that, the parties have by their contract ousted the jurisdiction of the Court.

25. The question as to whether the parties have excluded the jurisdiction of all the Courts but one, by an agreement; which takes different forms in a variety of fact-situation, has engaged the attention of the Courts. If there is a clear and categorical agreement that only the Court at a particular place, which also has the jurisdiction, shall be the only Court which would exercise the jurisdiction in the wake of a dispute, the situation does not present much difficulty. However, where the clause which purportedly excludes the jurisdiction of the other Courts is not absolutely clear, or in a sense equivocal, the controversy arises.

26. In the case of ***Swastik Gases Pvt. Ltd.*** (supra) on which reliance was placed by Mr. Karle, the Supreme Court, after a survey of the authorities including the earliest judgment in the

case of ***Hakam Singh vs. Gammon (India) Pvt. Ltd.***[6] and ***A.B.C. Laminart*** (supra), enunciated that the fact that whilst providing for jurisdiction clause in the agreement the words like 'alone', 'only', 'exclusive' or 'exclusive jurisdiction' had not been used was not decisive and did not make any material difference. In the facts of the said case, the Supreme Court found, the intention of the parties – by having clause 18 in the agreement – was 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 *expressio 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. Where the contract specifies the jurisdiction of the Courts at a particular place and such Courts have jurisdiction to deal with the matter, an inference may be drawn that the parties intended to exclude all other Courts. A clause like that was not hit by Section 23 of the Contract Act at all. Such clause was neither forbidden by law nor it was against the public policy. It did not offend Section 28 of the Contract Act in any manner.

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6 (1971) 1 SCC 286.

27. In the case of ***Rakesh Kumar Verma*** (supra) the Supreme Court, again adverted to the precedents including the three-Judge Bench judgment in the case of ***Swastik Gases*** (supra) and enunciated the law as under:

> "18. A bare perusal of the above decisions leads to the conclusion that for an exclusive jurisdiction clause to be valid, it should be (a) in consonance with Section 28 of the Contract Act, i.e., it should not absolutely restrict any party from initiating legal proceedings pertaining to the contract, (b) the Court that has been given exclusive jurisdiction must be competent to have such jurisdiction in the first place, i.e., a Court not having jurisdiction as per the statutory regime cannot be bestowed jurisdiction by means of a contract and, finally, (c) the parties must either impliedly or explicitly confer jurisdiction on a specific set of Courts. These three limbs/criteria have to be mandatorily fulfilled."

28. In the light of the aforesaid enunciation of law, reverting to the facts of the case at hand, the thrust of the submission of Mr. Karle was that the clause contained in the purchase orders "subject to Indore jurisdiction" was sufficient to oust the jurisdiction of all other Courts, except the Courts at Indore. The question that wrenches to the fore is, whether the Courts at Indore can be said to have jurisdiction in the sense that cause of action arose at Indore. If no part of cause of action arose at Indore, then, it is trite, the parties cannot, by consent, confer the jurisdiction on the Court which has otherwise no jurisdiction to decide the *lis.*

29. For an answer, of necessity, it has to be seen whether the place from which the purchase order was issued, forms a part of the making of the contract. The decision in the case of ***A.B.C. Laminart*** (supra) illuminates the path. In the said case, which arose out of a contract, the Supreme Court enunciated that the jurisdiction of the Court in the matter of a contract will depend upon the situs of the contract and the cause of action arising through connecting factors. The making of the contract is a part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The observations in paragraphs 11 to 15 are instructive and hence extracted below:

> "11. The jurisdiction of the Court in matter of a contra ct will depend on the situs of the contract and the cause of action arising through connecting factors.
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> 12. A cause of action means every fact, which, if traverse d, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the l aw applicable to them gives the plaintiff a fight to relief against the defendant.

It must include some act done by t he defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the fight sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a fight to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

13. Under Section 20(c) of the Code of Civil Procedure subject to the limitation stated theretofore, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. It may be remembered that earlier Section 7 of Act of 1888 added Explanation III as under:

> "*Explanation III* – In suits arising out of contract the cause of action arises within the meaning of this section at any of the following places, namely:
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> (1) the place where the contract was made;
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> (2) the place where the contract was to be perform ed or performance thereof completed;
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> (3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."

14. The above Explanation III has not been omitted b ut nevertheless it may serve a guide. There must be a connecting factor.

15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the Law of Contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have performed or its performance

> completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits f or agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is plead ed as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors."
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> (emphasis supplied)

30. Applying the aforesaid principles to the facts of the case at hand, the fact that the purchase order was issued from Indore does not, in itself, form a part of the cause of action. Incontrovertibly, the purchase order was placed at the office of the plaintiff within the local limits of the jurisdiction of the Court at Pune. The delivery of the goods was immediate through Vijayraj Transport. The payment was to be made against the delivery. All these stipulations imply that the place within the local limits of which the purchase order was placed (not issued from), the invoices were raised, the delivery was effected and the payment was to be made, was the place at which the cause of action arose. In such circumstances, mere stipulation of the condition, "subject to Indore jurisdiction", in the purchase orders would not confer jurisdiction on the Courts at Indore.

31. A useful reference, in this context, can be made to the decision of the Supreme Court in the case of ***Hanil Era Textiles Ltd. vs. Puromatic Filters (P) Ltd.***[7]**,** which was also a case of stipulation of exclusive jurisdiction in the purchase order. In that case, the condition in the purchase order read, "legal proceeding arising out of the order shall be subject to the jurisdiction of the Courts in Mumbai". In that context, after following the judgments in the cases of ***Hakam Singh*** (supra), ***A. B. C. Laminart*** (supra) and ***Angile Insulations vs. Davy Ashmore India Ltd.***[8]**,** the Supreme Court held as under:

> "9. Clause 17 says — any legal proceedings arising out of the order shall be subject to the jurisdiction of the Courts in Mumbai. This clause is no doubt not qualified by the words like "alone", "only" or "exclusively". Therefore, what is to be seen is whether in the facts and circumstances of the present case, it can be inferred that the jurisdiction of all other Courts except Courts in Mumbai is excluded. Having regard to the fact that the order was placed by the defendant at Bombay, the said order was accepted by the branch office of the plaintiff at Bombay, the advance payment was made by the defendant at Bombay, and as per the plaintiff's case the final payment was to be made at Bombay, there was a clear intention to confine the jurisdiction of the Courts in Bombay to the exclusion of all other Courts. The Court of Additional District Judge, Delhi had, therefore, no territorial jurisdiction to try the suit."
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> (emphasis supplied)

32. In the case at hand, apart from a bare stipulation in the purchase order, "subject to Indore jurisdiction", none of the connecting factors, which go on to make a contract have taken

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7 (2004) 4 SCC 671.

8 (1995) 4 SCC 153.

place within the local limits of the jurisdiction in the Court at Indore, unlike the fact-situation in ***Hanil Era Textiles Ltd.*** (supra). Resultantly, the objection to the jurisdiction sought to be raised on behalf of the defendants does not merit countenance.

33. For the foregoing reasons, I am impelled to hold that the impugned order does not suffer from any jurisdictional error, legal infirmity or material irregularity which would warrant exercise of revisional jurisdiction. The application, thus, deserves to be dismissed.

34. Hence, the following order:

: O R D E R :

The revision application stands dismissed.

No costs.

[N. J. JAMADAR, J.]