

CHOLAMANDALAM INVESTMENTS AND  
FINANCE CO. PVT. LTD.

v.

RADHIKA SYNTHETICS AND ANR.

JANUARY 16, 1996

[A.M. AHMADI, C.J. AND B.P. JEEVAN REDDY, J.J.]

*Code of Civil Procedure, 1908 :*

*S.9, 10, 20, 25—Suit for recovery of money—Jurisdiction—High Courts of Bombay and Madras having jurisdiction—Parties agreeing to submit to jurisdiction of Madras High Court—Plaintiff filing suit in Madras High Court—Held, where two courts have jurisdiction, parties by contract can submit to jurisdiction of one court and exclude jurisdiction of other—Another suit filed later in Bombay High Court in respect of same subject matter transferred to Madras High Court.*

*Constitution of India :*

*Article 139 A(2)—Suit alleging breach of contract—Plaintiff filing suit in Madras High Court—Defendant raising no objection to jurisdiction—Later defendant filing another suit in respect of same subject matter before Bombay High Court—Petition for transfer of Suit pending in Bombay High Court to Madras High Court—Allowed.*

*Letters Patent (Bombay High Court).*

*Clause 12—Suit arising out of breach of agreement—Parties agreeing to submit to jurisdiction of Madras High Court—Suit for recovery of money filed in Madras High Court—Defendant raising no objection to jurisdiction—Defendant later filing another suit in respect of same subject matter in Bombay High Court after obtaining leave of Bombay High Court—Held, leave granted under clause 12 of letters patent cannot exclude jurisdiction of High Court of Madras in view of agreement between parties.*

**The petitioner in Transfer Petition No. 870 of 1993, had its registered office at Madras. It filed a civil suit in the Madras High Court against the respondents on the ground that they did not pay the amount due under the hire purchase agreement dated 26.4.1989 and supplemental agree-**

ments entered into between the parties. The plaint of the suit state that the cause of action for the suit arose partly at Madras where the moneys were due and payable under the agreements. The hire purchase agreement also stipulated that only Madras Courts would have jurisdiction to try the arbitration or legal proceedings arising out of any dispute regarding the agreement. The respondents did not raise any objection about the jurisdiction. Later, the respondents filed a suit in the Bombay High Court against the petitioner claiming damages for failure on latter's part to comply with the terms of the said hire purchase agreement. The petitioner filed a Transfer Petition (T.P. No. 870 of 1993) seeking transfer of suit No. 6920 of 1992 to Madras High Court. The respondents also filed on T.P. No. 96 of 1994. The respondents opposed the Transfer Petition No. 870/93 on the grounds that the petitioner also had an office in Bombay, the entire documentation was done at Bombay, the payments made by the respondents were made at Bombay and the entire cause of action arose at Bombay; and that, the respondents had filed the suit in the Bombay High Court after obtaining leave under clause 12 of Letters Patent from the Bombay High Court.

Allowing Transfer Petition No. 870 of 1993 and rejecting the other transfer petition, this Court

**HELD :** 1.1. Where two courts have jurisdiction to adjudicate upon any dispute, the parties by a contract can submit to the jurisdiction of one and exclude the jurisdiction of the other. In that view, the parties in the instant case are bound to submit to the jurisdiction of the High Court of Madras. [499-F]

1.2. Both the High Courts of Madras and Bombay can be said to have jurisdiction over the subject-matter of the dispute although by virtue of clause 20 of the hire purchase agreement the parties submitted to the jurisdiction of Madras Courts and are bound by that clause. The supplemental agreements have not totally superseded the original agreement and therefore the question whether they were executed at Bombay or Madras as they purport to be loses significance. [499-H; 500-A-B]

2. So far as the High Court of Bombay is concerned, the leave granted under clause 12 of the Letters Patent cannot exclude the jurisdiction of the High Court of Madras, particularly in view of the agreement between the parties. [500-B]

3. Besides the suit at Madras was first in point of time and in the counter of that suit also the respondents claimed to have suffered damage. The suit at Bombay was filed almost six months after the institution of the Madras suit and that is why it is described as a counterblast. The issues arising in both the suits are likely to be common in many respects. [500-B-C]

4. Two courses are open : (i) to transfer the Bombay suit to Madras to be tried along with the latter; or (ii) to stay the Bombay suit under Section 10 of the Code of Civil Procedure till the disposal of the Madras suit. In order that all the issues are finally thrashed out by and between the parties and the litigation is not unnecessarily and unduly protracted, the first course of action is commendable. [500-C-D]

5. Article 139 A(2) of the Constitution empowers this Court to transfer any case pending before any High Court to any other High Court. This is a fit case to exercise that power and transfer the suit No. 6920 of 1992 pending in the Bombay High Court to the High Court of Madras to be tried along with C.S. No. 1161 of 1991. [500-D-C]

CIVIL ORIGINAL JURISDICTION : Transfer Petition (C) No. 870 of 1993 Etc.

(Under Article 139A of the Constitution of India.)

P. Chidambaram, V.A. Bobde, Rajeev Dhawan, C.A. Sundaram, G.K. Jain, Mukul Mudgal, Rajiv K. Garg, N.D. Garg and Kailash Vasdev for the appearing parties.

The Judgment of the Court was delivered by

**AHMADI, CJ.** M/S. Cholamandlam Investments & Finance (P) Ltd. with its registered office at Madras filed a suit being C.S. No. 1161/91, in the High Court of Madras against M/s. Radhika Synthetics Ltd. seeking a decree for a sum of Rs. 65,82,850 with interest amounting to Rs. 62,75,778 on the allegation that the amount was due under a hire purchase agreement dated 26th April, 1989 and a Supplemental Agreement dated 1st June, 1989. The plaintiff further contends that it had earlier filed C.S. No. 716/90 in the High Court of Madras in which an Advocate Commissioner was appointed to seize the machinery that were the subject matter of the agreement and that thereafter on negotiation between the parties, two further supplemental agreements, both dated 19th October, 1990, were executed and in view of the supplemental

agreements, C.S. No. 716 of 1990 was withdrawn. The present suit before the Madras High Court was filed as the defendant M/s. Radhika Synthetics Ltd., failed to pay the instalments from November, 1990 onwards. As per the schedule annexed to the agreement dated 26th April, 1989, the machinery were to be supplied by M/s. Primatex Machinery Private Limited, Dombivli, Thane. M/s. Radhika Synthetics Limited had certain complaints about the machinery supplied to them. About that M/s. Cholamandlam Investments & Finance (P) Ltd. contend in the suit that they were only the financiers and were not concerned with any defect in the machinery supplied by M/s. Primatex Machinery Private Limited. In para 12 of the suit in the Madras High Court, it is stated that the cause of action for the suit arose partly at Madras where the monies are due and payable under the original agreement as well as the supplemental agreements.

M/s. Cholamandlam Investments & Finance (P) Ltd. filed some interest applications presumably under Order 38 Rule 5 of the Code of Civil Procedure for attachment before judgment. It appears from the record that M/s. Radhika Synthetics Limited filed a counter affidavit in response to the application under Order 38 Rule 5 of the Code of Civil Procedure. Copy of the counter affidavit is on record. The objections to the application under Order 38 Rule 5 all relate to the plaintiff's responsibility for supplying defective machinery. No objection about the jurisdiction was taken therein.

Radhika Synthetics Limited filed suit No. 692 of 1992 in the High Court of Bombay against M/s. Cholamandlam Investments & Finance (P) Ltd. for recovery of Rs. 2, 56,00,000 with interest holding them responsible for failure to commence the production unit for which that hire purchase agreement between M/s. Radhika Synthetics Limited and M/s. Cholamandlam Investments & Finance (P) Ltd. were executed. Coming to jurisdiction M/s. Radhika Synthetics Limited in their suit allege that M/s. Cholamandlam Investments & Finance (P) Ltd. had agreed to install the machinery at the premises of M/s. Radhika Synthetics Limited at Bombay, that the defective machinery was supplied by the defendants at Bombay, that the agreement was executed at Bombay, that the plaintiffs suffered loss and damages at Bombay, and that all the material part of cause of action has arisen at Bombay. M/s. Radhika Synthetics further contend in their suit that they have obtained leave under clause 12 of the Letters Patent from the High Court of Bombay.

The Transfer Petition filed by M/s. Cholamandlam Investments & Finance (P) Ltd. was opposed by M/s. Radhika Synthetics and Anr. *inter alia*

on the ground that M/s. Cholamandlam Investments & Finance (P) Ltd. has an office in Bombay, that the entire documentation was done at Bombay that the payments made by M/s. Radhika Synthetics Limited were made at Bombay and were received by M/s. Cholamandalam Investments & Finance (P) Ltd. at Bombay, that the entire cause of action arose at Bombay. In reply to this on behalf of the M/s. Cholamandlam Investments & Finance (P) Ltd. It was stated in the rejoinder that their office in Bombay is a small forwarding office, that the hire purchase agreement was executed at Madras, that a few instalments were also paid at Madras and that as per terms of the hire purchase agreement all monies due and payable are to be paid at Madras.

The copy of the hire purchase agreement dated 26th April, 1989 opens with the words "Memorandum of Agreement made at Madras". Clause 20 of the agreement deals with jurisdiction which is as under :

*"20. Jurisdiction :* This agreement has been accepted and executed by the Company at MADRAS and it has been agreed to between the parties hereto that all the covenants, terms and conditions hereof shall be observed and performed at MADRAS and the Hirer specifically agrees and undertakes that it or its representatives and agents shall institute any arbitration or other legal proceedings only in MADRAS Courts, concerning this agreement and the Hired Articles hereunder. It is further agreed between the parties hereto that only MADRAS Court shall have exclusive jurisdiction to try any arbitration or legal proceedings or any suit in respect of any matter, claim or dispute arising out of or in any way relating to this agreement in respect of the Hired Articles."

It is settled law that where two courts have jurisdiction to adjudicate upon any dispute, the parties by a contract can submit to the jurisdiction of one and exclude the jurisdiction of the other. In that view, it appears that the parties are bound to submit to the jurisdiction of the High Court of Madras.

The supplemental agreements dated 19.10.1990 may have been signed on behalf of the M/s. Radhika Synthetics Limited at Bombay as appears from their letter dated 18.4.1991, but they purport to have been made at Madras. Both the supplemental agreements have a clause that all terms and conditions covered by the original hire purchase agreement will continue to be in force.

Apparently, at best both the High Court of Madras and the High Court

of Bombay can be said to have jurisdiction over the subject-matter of the dispute although by virtue of clause 20 of the agreement the parties submitted to the jurisdiction of Madras and are bound by that clause. The supplemental agreements have not totally superseded the original agreement and therefore the question whether they were executed at Bombay or Madras as they purport to be loses significance. So far as the High Court of Bombay is concerned, the leave granted under clause 12 of the Letters Patent cannot exclude the jurisdiction of the High Court of Madras, particularly, in view of the agreement between the parties. Besides the suit at Madras was first in point of time and in that suit also, in the counter, the first respondent raised the contention that they had suffered damage to the tune of Rs. 2.16 crores. The suit at Bombay was filed almost six months after the institution of the Madras suit and that is why it is described as a counterblast. The issues arising in both the suits are likely to be common in many respects. Two courses are open (i) to transfer the Bombay suit to Madras to be tried along with the latter; or (ii) to stay the Bombay suit under Section 10 of the Code of Civil Procedure till the disposal of the Madras suit. In order that all the issues are finally thrashed out by and between the parties and the litigation is not unnecessarily and unduly protracted, the first course of action commends us. Article 139A(2) empowers this Court to transfer any case pending before any High Court to any other High Court. We are satisfied that this is a fit case to exercise that power and transfer the Suit No. 6920 of 1992 pending in the Bombay High Court to the High Court of Madras to be tried along with C.S. No. 1161 of 1991. Transfer Petition No. 870 of 1993 shall stand allowed accordingly with no order as to costs while Transfer Petition No. 196 of 1994 shall stand rejected with no order as to costs.

T.P. No. 870/93 allowed.

T.P. No. 196/94 rejected.