

ITEM NO.4 Court 15 (Video Conferencing) SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Transfer Petition(s)(Civil) No(s). 755/2021

M/S FUMO CHEM PVT. LTD. Petitioner(s)

VERSUS

M/S RAJ PROCESS EQUIPMENTS AND SYSTEMS PVT. LTD. & ORS.
Respondent(s)

(FOR ADMISSION and IA No.47377/2021-EX-PARTE STAY)

Date : 12-04-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s)

Mr. Gaurav Goel, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

This proceeding arises out of a commercial dispute between the parties over supply of certain items (spray dryer). The respondents were meant to install the same in the petitioners' manufacturing unit. The petitioners contend that they had filed an earlier suit in the Commercial Court, Ahmedabad seeking compensation and damages on account of failure on the part of the respondents in effecting proper installation of the same. The petitioners ask for transfer of a subsequent suit (Special Civil Suit No. 1478 of 2019) instituted by the respondents against them in the Court of learned Civil Judge, Senior Division, Pune to the Commercial Court, Ahmedabad. In this suit, the respondents in substance

have claimed specific performance of the contract relating to installation and commissioning of spray dryer. The petitioners argue that there are common issues involved in both the suits, which are between the same parties. Learned counsel for the petitioners has relied on a decision of this Court in the case of *Chitivilasa Jute Mills vs. Jaypee Rewa Cement* [(2004) 3 SCC 85] in support of his clients' plea for transfer to enable both the suits to be tried in the same court.

The petitioners are not asserting that the Court at Pune lacks jurisdiction to entertain, try and determine the suit instituted by the respondents. There may also be some overlapping issues involved in both the suits. But that factor alone, in my opinion, does not confer right on the petitioners to bring the suit of the respondents to the jurisdiction of their choice where they have already instituted a suit, albeit for an independent set of reliefs. There is no bar in the Code of Civil Procedure (the Code) in institution of two different suits in two Courts by the same set of parties on same set of facts. The party having approached the Court first however has the right to apply before the Court in which the subsequent suit is instituted for stay of the latter proceeding, as stipulated in Section 10 of the Code, if the matters in issue in both the suits are directly and substantially the same.

The factor which needs consideration while examining a plea for transfer in a petition under Section 25 of the code is whether allowing such petition would be expedient in the ends of justice or not. This Court has to consider the prayer

for transfer with an element of equity. The petitioners' case is largely founded on the claim of having approached a judicial forum before the respondents did and both the suits emanate from the same set of facts with the same set of parties. These factors, by themselves cannot be the ground for invoking the provisions of Section 25 of the Code.

The ratio of the decision in the case of *Chitivalsa Jute Mills* (supra) cannot be applied in the facts of this case. In that case, there was an application under Section 10 of the Code by the party who brought the action first and finding in that case was that the said application was erroneously rejected. It was thereafter the petition under Section 25 of the Code was filed. So far as this proceeding is concerned, the petitioners have bypassed the route specified in Section 10 of the Code and seek to apply the principles embodied in the said provision of the Code in a petition under Section 25 thereof.

Functional convenience of one of the parties in commercial litigations cannot determine exercise of jurisdiction of this Court under Section 25 of the Code. The yardstick applied in entertaining transfer petition of an estranged homemaker having no independent income to bring a matrimonial action instituted by the husband to a Court within whose jurisdiction she has taken shelter in her parental home cannot be followed in commercial disputes. A petitioner seeking transfer of a case involving business-related disputes from one jurisdiction to another will have to establish some

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grave difficulty or prejudice in prosecuting or defending the case in a forum otherwise having power to adjudicate the cause. No such case of outstanding prejudice has been made out by the petitioners. What has been submitted is that the senior management executives of the petitioners arraigned as defendants are foreign national running business operations in Ahmedabad and they are more familiar and accustomed to Ahmedabad. This is not good enough reason, and transfer of the second suit cannot be directed to accommodate them. I am not satisfied that an order for transfer as prayed for in this petition, is expedient for the ends of justice.

Under such circumstances, the transfer petition is dismissed.

There shall be no order as to costs.

(SONIA BHASIN)
COURT MASTER (SH)

(ANITA RANI AHUJA)
ASSISTANT REGISTRAR