

3. In support of this petition, Mr.Joshi submitted that the impugned order records that defendant No.1 failed to argue the application. He, therefore, submitted that the impugned order may be set aside so as to afford opportunity to defendant No.1 to argue the application on merits. He further submitted that defendant No.1 is a manufacturer of wine storage tanks. Defendant No.1 had supplied wine storage tank at the behest of defendant No.2 to the plaintiff. Perusal of the invoices and in particular, invoice dated 05/04/2008 clearly shows that Nashik Court will have exclusive jurisdiction. He further submitted that Section 19 of the C.P.C lays down that suit shall be instituted in a Court where defendant resides or carries on business or works for gain. Since defendant No.1 carries on business within local limits of Nashik Court, the plaintiff could not have instituted suit in Baramati Court.

4. On the other hand, Ms.Prabhune supported the impugned order. She has taken me through paragraphs 3 to 6 and 8 of the plaint and submitted that accident took place on 25/12/2008 at Daund and Daund is within the local limits of Baramati Civil Court and accordingly, plaintiff has rightly instituted suit in Baramati Court. Reliance was also placed on Section 19 of C.P.C.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of invoice dated 05/04/2008 shows that

the dispute can be raised subject to Nashik jurisdiction. In case of *A.B.C.Laminart (P)Ltd. Vs. A.P.Agencies*, **(1989) 2 SCC 163**, the Apex Court has observed in paragraphs 15, 16, 20 & 21 as under :

“ 15. In the matter of a contract there may arise cause 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 been 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 for 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 pleaded 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.

16. So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the court. If under the law several courts would have jurisdiction and the

parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdiction cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. Would this be the position in the instant case ?

20. When the court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the ouster expression or clause properly. Often the stipulation is that the contract shall be deemed to have been made at a particular place. This would provide the connecting factor for jurisdiction to the courts of that place in the matter of any dispute on or arising out of that contract. It would not, however, ipso facto take away jurisdiction of other courts. Thus, in *Salem Chemical Industries Vs. Bird & Co.* where the terms and conditions attached to the quotation contained an arbitration clause provided that : “any order placed against this quotation shall be deemed to be contract made in Calcutta and any dispute arising therefrom shall be settled by an arbitrator to be jointly appointed by us”, it was held that it merely fixed the situs of the contract at Calcutta and it did not mean to confer an exclusive jurisdiction on the court at Calcutta, and when a part of the cause of action had arisen at Salem, the court there had also jurisdiction to entertain the suit under Section 20(c) of the Code of Civil Procedure.

21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, 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 can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like 'alone', 'only', 'exclusive' and the like have been used there may be no difficulty. Even without such words in appropriate cases the

maxim 'expressio unius alterius'-- expression of one is the exclusion of another-- may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore, to be properly construed.

6. The said decision is also subsequently considered by the Apex Court in the case of *Hanil Era Textiles Ltd Vs. Puromatic Filters (P) Ltd.*, (2004) 4 Supreme Court Cases, 671, the Apex Court held that where two or more Courts have jurisdiction under C.P.C., and agreement restricts place of suing to any one of them, such an agreement is not contrary to public policy and does not contravene Section 28 of the Contract Act, 1872. The parties, however, cannot by agreement confer jurisdiction of a Court which it does not possess under C.P.C.

7. In the present case, ouster clause in the invoice dated 05/04/2008 does not use words like 'only', 'exclusive', 'alone'. In view thereof, it cannot be accepted that the Nashik Court alone will have jurisdiction.

Section 19 of C.P.C reads as under :

“19. Suits for compensation for wrongs to person or movables :- Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts”.

8. Perusal of the averments in paragraphs 2 to 6 & 8 of the plaint shows that accident took place at Daund on 25/12/2008. In view thereof, in terms of Section 19, the plaintiff has option either to institute suit in a Court where wrong is committed to him or where defendant resides or carries on business and works for gain. The plaintiff has exercised option by instituting suit in Baramati where according to him wrong was done to him at Daund. It is not disputed that Daund comes within the local limits of Court of Civil Judge, Senior Division, Baramati. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Mr.Joshi submitted that since defendant No.1 failed to argue the application, at least on this ground, the impugned order may be set aside. In my opinion, no purpose will be served by remanding the matter to the trial Court and as Mr.Joshi has argued the matter at length. Hence, petition fails and the same is dismissed.

(R. G. KETKAR, J.)