

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.02.2015

Pronounced on : 26.02.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.5156 of 2011
and
M.P.No.1 of 2011

M/s.Rana Sugars Ltd.
(a Joint Venture of Punjab Agro Industries
Corporation Ltd.,)
Village Butter Seviyan P.O.
Sathiala - 143 205 Tehail Baba Bakala
District Amristar, Punjab
Through its Managing Director ... Petitioner

vs.

M/s.Bharat Heavy Electricals Ltd.,
Boiler Auxiliaries Plant
Indira Gandhi Industrial Complex
Ranipet, Vellore District
Through its General Manager ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the Principal District Judge, Vellore District, Vellore, dated 16.11.2011 made in I.A.No.213 of 2010 in O.S.No.105 of 2009.

For Petitioner : Mr.P.Valliappan
for Harishankar Mani

For Respondent : Mr.A.V.Arun

ORDER

This civil revision has arisen out of an order of the Principal District Judge, Vellore dated 16.11.2011 made in I.A.No.213/2011 in O.S.No.105/2009 pending on the file of the District Court, Vellore. The defendant in the said suit is the petitioner in the revision filed under Article 227 of the Constitution of India.

2. The respondent herein filed the above said suit against the revision petitioner for recovery of a sum of Rs.1,26,16,301/- together with an interest at the rate of 24% per annum for the said amount from the date of suit till realisation and also for cost. The suit amount has been claimed for the materials supplied by the respondent to the revision petitioner. The respondent/plaintiff is having its Boiler Auxiliaries plant at Ranipet, Vellore District. The revision petitioner/defendant is a Registered company having its Principal office at S.C.O.49-50, Sector 8-C, Madhya Marg, Chandigarh-160 018. It also has its branch office at Amristar, Punjab. The order for the supply of Electrostatic Precipitator was placed by the revision petitioner/defendant by Purchaser Order dated 20.03.2006 from the branch office of the revision petitioner at Amristar. The terms and conditions of the purchaser order contains a stipulation in clause 13 to the effect that the disputes, which cannot be settled amicably, shall be subjected to Chandigarh jurisdiction only. However, it is an admitted case that the goods were to be delivered to the

agent of the revision petitioner Ex-works Ranipet. The payment was also to be made at Ranipet.

3. Contending that the cause of action arose at Ranipet and hence the District Court exercising jurisdiction over Ranipet was the appropriate forum having pecuniary jurisdiction as well as territorial jurisdiction to entertain the suit for the recovery of the suit amount, the respondent herein instituted the above said suit O.S.No.105/2009 on the file of the District Court, Vellore. On receipt of summons, the revision petitioner herein/defendant entered appearance under protest and filed I.A.No.213/2010 under Order VII Rule 10 of the Code of Civil Procedure praying for an order returning the plaint for presentation in proper court. The said prayer was made based on their contention that, by the choice of the parties as per the agreement, they have conferred exclusive jurisdiction on the courts at Chandigarh and thereby the jurisdiction of the District Court at Vellore stood ousted.

4. The learned District Judge, after hearing both sides, discountenanced the contention of the revision petitioner herein/defendant and dismissed the application filed under Order VII Rule 10 CPC by the impugned order dated 16.11.2011.

5. The legality and sustainability of the said order are questioned in the present revision filed under Article 227 of the Constitution of India invoking the supervisory power of the High Court over the courts subordinate to it.

6. The arguments advanced by Mr.P.Valliappan, learned counsel appearing for Mr.Harishankar Mani, learned counsel on record for the revision petitioner and by Mr.A.V.Arun, learned counsel appearing for the respondent were heard. The impugned order and the materials produced in the form of typed set of papers were also perused.

7. It is the contention of Mr.P.Valliappan, learned counsel arguing on behalf of Mr.Harishankar Mani, learned counsel on record for the petitioner that as per Section 20 of the Code of Civil Procedure, suits which are not governed by the earlier provisions can be filed in a court within local limits of whose jurisdiction -

(1) the defendant, or each one of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(2) any of the defendants, where there are more than one, at the time of filing of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided the leave of the

court is obtained or the other defendants who do not reside or carry on business or personally work for gain in the said jurisdiction acquiesce in such institution of the suit; and

(3) the cause of action, wholly or in part, arises.

8. Referring to the explanation provided under Section 20 of the Code of Civil Procedure, the learned counsel for the revision petitioner contended that, in case of a suit against a company/corporation, the place of its principal office shall be deemed to be its place of business and hence the courts at Chandigarh also do have jurisdiction to entertain the suit filed against the revision petitioner. By making such an submission, the learned counsel for the petitioner wanted to convey a message that in addition to the court exercising jurisdiction over the place wherein the cause of action arises, the courts having jurisdiction over the place wherein principal office of the company or corporation situates, shall have concurrent jurisdiction to try the suit filed against such a company or corporation. In support of his contention, learned counsel for the petitioner relied on the following authorities:-

- 1. *Ghatge and Patil (Transport) Ltd. v. M/s.Madhusudan Ramkumar* reported in *AIR 1977 BOMBAY 299*;**
- 2. *Hakam Singh vs. M/s.Gammon (India) Ltd* reported in *1971(1) SCC 286*;**

3. Ganpatrai Agarwall vs. The Fertiliser Corporation of India

reported in **AIR 1984 CALCUTTA 35**

4. Shriram City Union Finance Corporation Ltd. vs. Rama

Mishra reported in **(2002) 9 SCC 613.**

(i) The Bombay High Court in **Ghatge and Patil (Transport) Ltd. v. M/s.Madhusudan Ramkumar** reported in **AIR 1977 BOMBAY 299** held that when a party signs a document containing a contractual term, he is normally bound by such term even though he has not read it and even though he is ignorant of the precise legal effect. In the said case, the sarees ordered by the plaintiff therein were entrusted to the defendant transport company at their Belgaum office under a Goods Forwarding Note to be delivered at Pimpri, within the jurisdiction of the court at Pune. However, the Delivery Note contained a clause “subject to Kolhapur jurisdiction only”. Though no cause of action arose at Kolhapur, it was held that since the transport company had its Registered office at Kolhapur and it was carrying on business at Kolhapur also, the exclusion clause found in the Consignment Note was not one opposed to public policy violating Section 28 of the Indian Contract Act, 1872. When the defendant therein contended that the court in Pune had lost its jurisdiction by the selection of the other jurisdiction by the parties by consent, the same was accepted by the Bombay High Court.

(ii) In **Hakam Singh vs. M/s.Gammon (India) Ltd** reported in

1971(1) SCC 286, the Supreme Court enunciated the general principle 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 such an agreement does not contravene Section 28 of the Contract Act. The other clarification made therein regarding the expression "Corporation" and companies incorporated under the Companies Act is unnecessary for the purpose of deciding the case on hand.

(iii) In **Ganpatrai Agarwall vs. The Fertiliser Corporation of India** reported in **AIR 1984 CALCUTTA 35**, the Calcutta High Court held as follows:

"when parties enter into a forum selection agreement with free consent and as a result thereof, the parties have to face botheration and expenses, these are no grounds for releasing them from their contract. In such a case the excluded court cannot consider the balance of convenience or make a new approach to relieve the parties from their bargain. A contract cannot be avoided only because it contains stringent terms and the Court has no jurisdiction to ignore such contracts unless such contracts are found to be voidable or void under the law."

(iv) In **Shriram City Union Finance Corporation Ltd. vs.**

Rama Mishra reported in **(2002) 9 SCC 613**, the very same principle has been reiterated by the Apex Court.

9. There could be no quarrel over the proposition that when two or more courts do have concurrent jurisdiction to entertain a suit or proceeding, the parties can select any one of them and thereby exclude the jurisdiction of the other court which would have jurisdiction but for the contract excluding their jurisdiction.

10. The problem that arises in the case on hand is whether a court which does not have the jurisdiction to entertain a suit or proceeding as per the provisions of the Code of Civil Procedure can be conferred with such jurisdiction by act of parties. According to the respondent/plaintiff, the forum chosen by the agreement is not one of the courts having concurrent jurisdiction over the matter in dispute and that therefore the choice of the courts at Chandigarh in the agreement in the form of the purchase order cannot be enforced. According to the submissions of Mr.A.V.Arun, learned counsel for the respondent/plaintiff, unless the court chosen by the agreement of the parties does have jurisdiction under Section 20 of the Code of Civil Procedure, the selection of such court, no doubt by the mutual agreement of the parties, shall be obnoxious for the simple reason that what is allowed by the law is selection of the court among the courts

having jurisdiction and not conferring jurisdiction on a court, which does not possess a jurisdiction. According to the further submissions made by Mr.A.V.Arun, learned counsel for the respondent/plaintiff, the courts at Chandigarh does not have jurisdiction to try the suit but for the clause in the purchase order. The learned counsel referring to the explanation to Section 20 submitted that the place of principal office of a corporation or company shall be relevant for the purpose of deciding the jurisdiction under Section 20 of the Code of Civil Procedure, provided the corporation or company does not have a branch office within the jurisdiction wherein the cause of action either in part or in whole arises.

11. According to the contention made on behalf of the respondent/plaintiff, no part of the cause of action arose within the jurisdiction of Chandigarh. If at all the place from where the purchase order was made could be taken as the place where part of the cause of action has arisen, then it shall be Amristar and not Chandigarh, where such part of the cause of action has arisen. Admittedly, the revision petitioner has got a branch office at Amristar. If at all a valid choice of jurisdiction could have been made, it shall be either the court having jurisdiction over Ranipet or the courts having jurisdiction over Amristar. What the revision petitioner has done by incorporating a clause in the purchase order is an attempt to confer jurisdiction on the courts at Chandigarh, which they would not have got but for such a clause. As

rightly pointed out by the learned counsel for the respondent/plaintiff, the said clause is nothing but an attempt to confer jurisdiction on a court, which does not have the jurisdiction to try the issue and hence, it is not a choice between two courts having concurrent jurisdiction.

12. The said proposition is supported by the decision of a Larger Bench of the Supreme Court consisting of three Hon'ble Judges in ***Patel Roadways Limited, Bombay vs. Prasad Trading Company*** with ***Patel Roadways Limited, Bombay vs. Tropical Agro Systems Pvt. Ltd. and Another*** reported in ***(1991) 4 SCC 270***. The Supreme Court, after referring to Explanation 1 to Section 20 of the Code of Civil Procedure, which came to be deleted by the amendment and renumbering of Explanation 2 as Explanation 1, made it clear that in case of suits against Corporation or Company, the place of Principal office of such company shall be a relevant factor to decide the jurisdiction, provided it is the sole place of business or it does not have a branch office at the place wherein the cause of action arises either in part or in whole.

13. The law laid down by the Apex Court in the said case ***(Patel Roadways case)***, can be, briefly stated thus:

(i) A suit can be filed against a Corporation or Company where the cause of action arises even though

the Corporation or Company may not do business in the ordinary course in that place;

(ii) In case the Corporation or Company does have only the Principal Office, then the court having jurisdiction over the place wherein the Principal office is situate shall also have jurisdiction to try the case against such Corporation or Company;

(iii) Where the Corporation or Company does have a branch office at a place wherein the cause of action arises either in part or in whole, then the courts having jurisdiction over the Principal office shall not be the court having concurrent jurisdiction;

(iv) Though the Corporation or Company does have branch offices at various places, if no part of the cause of action arises within the jurisdiction of the court over the place wherein the branch office is situate, then the Corporation or Company, can be sued in the court having jurisdiction over the place where the principal office situates.

(v) In cases falling under categories (ii) and (iv) alone, the choice of the court having jurisdiction over the place wherein the principal office situate shall be valid and effective and the choice of the jurisdiction place of principal office in other cases will be nothing but amounting to conferring jurisdiction on a court, which does not have jurisdiction and hence the same is impermissible in law.

14. The above discussions will be enough to dispose of the civil revision petition holding that the contention of the revision

petitioner/defendant that the plaint must be returned for presentation in the court at Chandigarh is not sustainable and that the trial court committed no wrong in dismissing the application filed under Order VII Rule 10 of the Code of Civil Procedure. There is no merit in the revision and the revision deserves dismissal.

In the result, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

26.02.2015

Index : Yes
Internet : Yes
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To

The Principal District Judge, Vellore

P.R.SHIVAKUMAR, J.

asr/-

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Dated : 26.02.2015