

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.4228 of 2014

ORDER:

Heard Sri K.Mohan Rami Reddy, learned counsel for the petitioners, and Sri P.Durga Prasad, learned counsel for the 1st respondent.

2. This revision is filed challenging the order dt.04.09.2014 passed in I.A.No.851 of 2013 in O.S.No.549 of 2010 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad.

3. The petitioners herein are the defendant Nos.1 and 2 in the above suit. The said suit was filed by the 1st respondent/plaintiff before the said Court for recovery of money against the petitioners and others and a written statement was filed disputing the suit claim. Trial has commenced and the matter was posted for cross-examination of P.W.1.

4. At that stage, the petitioners herein filed I.A.No.851 of 2013 stating that the City Civil Court at Secunderabad had no territorial jurisdiction to entertain the suit and decide it and that the Civil Courts in Hyderabad alone would have such jurisdiction. Reference was also made to the chit agreement between

the parties, which contains a clause that disputes arising thereunder would be subject to jurisdiction of the Courts at Hyderabad. It was also contended that no part of cause of action arises within the territorial jurisdiction of the Court below.

5. Counter affidavit was filed by the 1st respondent opposing the said application. It was pointed out that the plaint mentions that the suit chit transaction took place at Secunderabad Branch of plaintiff/1st respondent, which is within the territorial jurisdiction of the Court below; after trial has commenced and when the matter is posted for cross-examination of P.W.1, this application has been filed; and the only intention of the petitioners is to drag on the proceedings to escape liability.

6. By order dated 04.09.2014, the Court below dismissed the said application. It held that as per Clause 10 of the agreement of chit, the subscriber was asked to pay monthly subscription at foreman's office at Secunderabad and the auction was scheduled to be held at branch office located in Sarojinidevi Road, Secunderabad. It also noted that the chit agreement was entered at branch office at Secunderabad and the legal notice was issued to the petitioners and other defendants from the office at Secunderabad. It also referred to the

byelaws and observed that the Registrar of Chits had certified that the chit was proposed to be conducted at Sarojinidevi road, Secunderabad. It also held that even though the parties cannot, by their mutual consent, confer jurisdiction on the Court at Hyderabad, since under Clause 21 of the agreement of chit, the Courts at Secunderabad would have jurisdiction and that the Clause 21 in the chit agreement will not oust the jurisdiction of the Courts at Secunderabad. It held that when more Courts than one have jurisdiction, the parties to contract have the freedom to choose one of those Courts for resolution of disputes between them and where no act took place within the jurisdiction of the Court at Hyderabad and when cause of action mentioned in the plaint arose at Sarojinidevi road, which is within the local limits of the Court below, this suit can be tried in that Court.

7. Challenging the said order, this revision is filed.

8. Learned counsel for the petitioners relied upon a judgment of the Supreme Court in ***A.V.M.Sales Corporation v. M/s. Anuradha Chemicals Pvt. Ltd.***^[1] and contended that the Court should enforce the clause in the chit agreement and ensure that the suit has to be filed before the Court at Hyderabad and not before the Court at Secunderabad. In the said case, the clause in the

contract between the parties stated “**Any dispute arising out of this agreement will be subject to Calcutta jurisdiction only**”. The Supreme Court, after considering the contentions of the parties and the documents filed and referring to Section 28 of the Indian Contract Act, 1872, observed that if two Courts have jurisdiction consequent upon the cause of action or a part thereof arising therein, if the parties agree in clear and unambiguous terms to exclude the jurisdiction of the other, the said decision would not offend the provisions of Section 23 of the Contract Act and the suit would lie in the Court agreed upon by the parties. It held that although part of cause of action also arises within the jurisdiction of the Courts at Vijayawada along with the Courts at Calcutta, in view of the clause in the agreement between the parties, the jurisdiction of the Court at Vijayawada would stand ousted by virtue of the exclusion clause in the agreement. It referred to its earlier judgments in ***A.B.C. Laminart Pvt. Ltd. and another v. A.P.Agencies, Salem***^[2] and ***Angile Insulations v. Davy Ashmore India Ltd. and another***^[3].

9. It is pertinent to note that in Clause 21 of the chit agreement between the parties to the present suit, the word “only” is not mentioned. Therefore, it cannot be said that the Courts at Hyderabad only have jurisdiction. Since

according to 1st respondent the chit transaction was entered into in Secunderabad branch office of the 1st respondent, which is within the territorial jurisdiction of the Court and the terms of the chit agreement also permit payment of monthly subscription at foreman's office at Secunderabad, part cause of action for filing of the suit can be said to have arisen within the jurisdiction of the Courts at Secunderabad also. Therefore, in my opinion, the Court below did not commit any error of jurisdiction in dismissing I.A.No.851 of 2013 in O.S.No.549 of 2010.

10. The Civil Revision Petition is therefore dismissed at the admission stage. No costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 25-06-2015

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[\[1\]](#) 2012 (3) SCJ 505

[\[2\]](#) AIR 1989 SC 1239

[\[3\]](#) (1995) 4 SCC 153