

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 6963 of 2011 (O&M)

Date of decision: August 19, 2015

Planet EDU Pvt. Ltd.

...Petitioner

Versus

M/s EDEXCEL LIMITED AND ANOTHER

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Manoj Singh, Advocate,
for the petitioner.

Mr. Ashwani Talwar, Advocate,
for respondent No.1.

Ms. Sanamjeet Kaur, Advocate,
for respondent No.2.

K. KANNAN, J. (Oral)

1. The point raised in the revision is squarely covered by the decision of the Supreme Court in Modi Entertainment Network and another Versus W.D.G. Cricket Pte. Ltd. (2003) 4 SCC 341. The parties to a contract opted for a particular forum and a choice of law. The plaintiff was suing for a specific performance of service agreement and for damages on accounts. The service agreement provided for a clause 9.8 which reads as under:-

“9.8. This Agreement shall be governed by and constructed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.”

2. The contention in defence was by placing reliance on the above clause that the courts in India cannot entertain a suit. The court applied the decision in Modi Entertainment Network and another Versus W.D.G. Cricket Pte. Ltd. (2003) 4 SCC 341 that was dealing with the rights of the parties to choose the forum and applicability of law at the interlocutory stage and the competency of the courts in India to grant interim relief in anti-suit injunction. The court has held in para 10 as under:-

“In regard to jurisdiction of courts under the Code of Civil Procedure (CPC) over a subject matter one or more courts may have jurisdiction to deal with it having regard to the location of immovable property, place of residence or work of a defendant or place where cause of action has arisen. Where only one Court has jurisdiction it is said to have exclusive jurisdiction; where more courts than one have jurisdiction over a subject-matter, they are called courts of available or natural jurisdiction. The growing global commercial activities gave rise to the practice of the parties to a contract agreeing beforehand to approach for resolution of their disputes thereunder, to either any of the available courts of natural jurisdiction and thereby create an exclusive or non-exclusive jurisdiction in one of the available forums or to have the disputes resolved by a foreign court of their choice as a neutral forum according to the law applicable to that court. It is a well-settled principle that by agreement the parties cannot confer jurisdiction, where none exists, on a court to which CPC applies, but this principle does not apply when the parties agree to submit to the exclusive or

non-exclusive jurisdiction of a foreign court; indeed in such cases the English Courts do permit invoking their jurisdiction (emphasis supplied). Thus, it is clear that the parties to a contract may agree to have their disputes resolved by a Foreign Court termed as a 'neutral court' or 'court of choice' creating exclusive or nonexclusive jurisdiction in it”.

3. I do not think that the court below has committed any error in ruling against the jurisdiction when the suit was instituted in the State of Haryana. The learned counsel for the petitioner argues that the operation of the 1st defendant company in India, a damage was caused to the plaintiff for the wrongful act of the 1st respondent in India and, therefore, the cause of action having been caused in India, the parties cannot confer jurisdiction to the courts in England. The principle of impropriety of parties conferring courts the jurisdiction which it did not have is different from two or more courts having jurisdiction and the parties restricting jurisdiction in one court or one country. If the plaintiff was entering into a contract to do service for a company in foreign country at India through communication exchanged by e-mail and one of the parties which granted service agreement to the plaintiff was in England and the choice was being restricted, it will be understood as cause of action arising in England as well in India and the parties have opted for restrictive jurisdiction to exclude jurisdiction in one of the places where cause of action arises, namely, in India. Here the conferment of jurisdiction was in a country, which admittedly had the jurisdiction. It is not as if the Indian courts did not have the jurisdiction but the parties consciously excluded it.

4. A term of an agreement restrictive of the application of law and

the choice of law ought to be respected to keep the comity of Nations. The choice of law clauses has assumed an enormous importance in modern day inter-country contracts. Parties can express a choice by including a choice of law clause in the contract stating that, for example, all disputes shall be governed by English Law (See. Biggs (2003) LUCLO 389, cf, Cheshire North and Fawcett, Private International Law, 14th Edn., Oxford). Private International law becomes applicable when there is a foreign constituent in the transaction obtaining between parties. A foreign constituent requires the Court to address itself to issues of jurisdiction as well to the choice of law. There can not be meaningless choice of law. The parties could not have opted for American law, for example, for a contract whose cause of action arose in England and/or India. The most crucial test shall be the choice expressed before the dispute actually arose, when parties are at par and not arm twisted by a powerful party at the bargaining table after the dispute arose. Here, the choice of law was explained even at the time when contract was struck through email. In Trimex International FZE Ltd. Dubai V. Vedanta Aluminium Ltd. India (2010) 3 SCC 1, the Supreme Court was holding a concluded contract through exchange of emails was perfectly tenable and gave effect to an arbitration clause in such exchange of mail, although the parties had not signed jointly in any formal written contract in physical form.

5. The choice of law are most familiar also in aviation and maritime contracts. For instance, passenger tickets may also designate the law to be applied in resolving any dispute which may arise. It was held that in a cruise between Singapore and Australia, the law selected may be that of the Bahamas [Kirman v. Compagnie Francaise, 1994 American Maritime

Cases 2848 (Cal Sup. 1993) In Jewel Seafoods Ltd. V. M/V Peace River 1999 WL 166559 (DSC 1999), the choice of law was enforced by a Chienese cruise. Choice of law clauses are, generally, enforceable unless the passenger can demonstrate that “enforcement would be unreasonable and unjust” and “the clause was invalid for such reasons as fraud or overreaching” or “enforcement would contravene a strong public policy of the forum in which the suit is brought” [Milanovich v. Costa Crociere, SPA 954 F. 2d 763, 768 (DC Cir. 1992 cf. Accidents and Compensation Laws, Wadhwa, 2005)]. The same principle ought to apply here.

6. The orders passed already returning the plaint is fully justified and I find no error for intervention in revision petition. Dismissed.

7. The learned counsel for the petitioner states that his own remedy against 2nd respondent who is a person India ought to be protected. I will make no observation against the competency of such suit and if such a suit is brought for the breach of service agreement against the 2nd respondent, he will be at liberty to do so, but it will be at all times subject to an objection regarding jurisdiction that will be competent to be taken by the person against whom suit is filed and the Court will decide on such objection whenever it is raised.

August 19, 2015
prem

(K.KANNAN)
JUDGE