

**HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHA RAO**

CIVIL REVISION PETITION NO. 89 OF 2019

ORDER: (Per Hon'ble Sri Justice P. Keshava Rao)

Heard the learned counsel appearing for the petitioner.

2. Questioning dismissal of an application in I.A.No. 495 of 2017 filed under Order VII Rule 11(d) of CPC, the petitioner herein/defendant No.3 filed the present revision petition.

3. The facts in brief are that originally the first respondent herein filed a suit in O.S.No.101 of 2011 (renumbered as COS No.259 of 2017) for recovery of a sum of Rs.1,37,62,520/- against the petitioner herein and two others. It is the case of the first respondent that it entered into agreements with respondent Nos.2 and 3, who are the clearing and forwarding agents, who undertook to render services to the first respondent for clearance of imported cargo at Chennai Sea-port, Chennai Airport and Chennai CWC. In the course of business, respondent Nos. 2 and 3 have stored 16 nos. of consignments of imported goods belonging to the first respondent in the custom public bonded warehouse belonging to the petitioner. However, on 9.10.2008 at about 1300 hours there was a fire accident leading to damage of 13 consignments leaving 3 consignments intact. Because of the said fire accident, the first respondent sustained loss of Rs.5,93,88,856=06 ps. But, it could recover Rs.4,44,17,990/- (inclusive of 10% incidental charges) towards the value of 9 consignments under insurance coverage from TATA AIG Insurance Company. Thereby, the first respondent incurred loss to the tune of Rs.1,37,62,520/- for the 4 uncovered

consignments inclusive of 10% incidental expenses. The petitioner also confirmed the loss of the aforesaid consignments to respondent Nos. 2 and 3 through letter dated 18.11.2008. In fact, respondent Nos. 2 and 3 were under an obligation to deliver the aforesaid consignments in Hyderabad by arranging appropriate transportation apart from under legal duty to take reasonable and appropriate care of the goods from the time they were imported into Chennai till delivery of the same to the first respondent. The negligence of the petitioner and false declarations given by the 3rd respondent resulted in the aforementioned loss to the first respondent. Therefore, after issuance of legal notice dated 12.09.2009, the first respondent has come up with the above said suit for recovery of a sum of Rs.1,37,62,520/- with interest @ 12% per annum from the date of filing of the suit till realization.

4. The petitioner filed written statement denying the material allegations made in the suit and contended *inter alia* that it had no privity of contract with the first respondent. By way of the agreement, the jurisdiction cannot be conferred on any Court to try a dispute. The first respondent has no agreement with the petitioner and the cause of action arose at Chennai and no part of cause of action has arisen in Hyderabad. The petitioner also stated that the suit is bad for non-joinder of necessary parties since the custom authorities and the Cholamandalam Insurance Company, insurer of the goods, were not made as parties to the suit, apart from other aspects.

5. Pending the suit, the petitioner filed an application in I.A.No.495 of 2017 under Order VII Rule 11(d) of C.P.C. to reject the

plaint on the ground that the present Court where the suit is instituted has no territorial jurisdiction to entertain the suit as per the provisions of Section 20 C.P.C. The first respondent filed a counter affidavit opposing the said application. After hearing, the learned XIV Additional Chief Judge, City Civil Court, Hyderabad, dismissed the application by orders dated 15.06.2018 holding that the first respondent has an agreement with respondent Nos. 2 and 3 and there is a specific clause that the Courts at Hyderabad had got jurisdiction. Aggrieved by the said orders, the present revision petition is filed.

6. Learned counsel appearing for the petitioner strenuously contended that the Court below failed to consider that no part of cause of action arisen against the petitioner within the territorial jurisdiction of Hyderabad and the present Court does not have jurisdiction to try the suit. Even if any such cause of action against the petitioner has arisen, it is only at Chennai since the fire accident occurred in the warehouse of the petitioner at Chennai. Learned counsel also contended that the petitioner is not privy to the agreements dated 30.08.2008 and 27.01.2008 which were entered into by the first respondent with respondent Nos. 2 and 3. The petitioner is totally a stranger to those contracts.

7. To support her contentions, the learned counsel relied on the judgment of the Apex Court in **Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman v. Ponniamman Educational Society represented by its Chairperson/Managing Trustee**¹. Based on the said proposition, the

¹ (2012) 8 SCC 706

learned counsel contended that the revision may be allowed setting aside the order passed by the trial Court.

8. Having heard the learned counsel for the petitioner and from the perusal of the material on record, the admitted facts are that the first respondent had entered into agreements, dated 30.08.2008 and 27.01.2008 with respondent Nos. 2 and 3 as clearing and forwarding agents. They undertook to transport the cargo of the first respondent to Hyderabad by truck/train. They stored 16 nos. of imported consignments belonging to the first respondent in the warehouse belonging to the petitioner. However, in the fire accident, on 9.10.2008 at 1300 hours, 13 consignments out of the 16 consignments of the first respondent got damaged due to the fire leaving 3 consignments intact. In the said fire accident, the first respondent sustained a sum of Rs.1,37,62,520/- towards loss of the stock. To recover the same, the first respondent filed the above said suit. In the suit, the first respondent has specifically stated that as per the agreements dated 30.08.2008 and 27.01.2008 entered with respondent Nos. 2 and 3, it was agreed that any dispute arising out of the same shall be subject to the jurisdiction of the Courts at Hyderabad only. In fact, during the course of arguments, the learned counsel for the petitioner placed on record the copies of the said two agreements for perusal of the Court.

9. A perusal of the said agreements makes it clear that any dispute arising out of the contract will be subject to the jurisdiction of Hyderabad only. From a further perusal of the agreements it appears that the discussions with regard to clearance, re-warehousing and ex-bonding of imported material at Chennai Sea-

port, Airport, CWC and the charges of various overheads, which are agreed mutually, are decided at Hyderabad. Pursuant thereto the copy of the said agreement, after signing in Hyderabad, sent to respondent Nos. 2 and 3 for acknowledging and to counter-sign the duplicate copy of the contract as a token of acceptance of the above terms and conditions mentioned therein. That apart, even the exclusion clause mentioned therein also confers jurisdiction on any dispute arising out of the contract to the jurisdiction of the Courts in Hyderabad only.

10. Cause of action means every fact which plaintiff will have to prove, if traversed, in order to get his right but not every piece of evidence. It is always open for the parties to choose one of the forums for filing a suit to exclude the jurisdiction of another Court. As per Clause 20 (c) of CPC, a suit can be instituted in a Court within the limits of whose jurisdiction the cause of action wholly or in part arises.

11. In the case on hand, by virtue of finalization of terms and conditions and signing of the agreements by the first respondent in Hyderabad gives rise to a part of cause of action in Hyderabad. Even the exclusion clause also makes it amply clear that the parties, by mutual agreement decided to have the jurisdiction of Hyderabad Courts only to resolve the disputes arising out of the contract.

12. In **Angile Insulations vs. Davy Ashmore India Ltd. and another**², the Apex Court had an occasion to Section 20 CPC while interpreting a clause in a contract entered into between the

² (1995) 4 SCC 153

appellant and the first respondent therein regarding conferring of jurisdiction to the High Court situated in Bangalore and held as under:

“So, normally that Court also would have jurisdiction where the cause of action, wholly or in part, arises, but it will be subject to the terms of the contract between the parties. In this case, Clause (21) reads thus:

This work order is issued subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka. Any legal proceeding will, therefore, fall within the jurisdiction of the above Court only.

A reading of this clause would clearly indicate that the work order issued by the appellant will be subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka. Any legal proceeding will, therefore, be instituted in a Court of competent jurisdiction within the jurisdiction of High Court of Bangalore only. The controversy has been considered by this Court in *A.B.C Laminart Pvt. Ltd. and anr. vs. A.P. Agencies, Salem* ([1989] 2 SCC 163). Considering the entire case law on the topic, this Court held that the citizen has the right to have his legal position determined by the ordinary Tribunal except, of course, subject to contract (a) when there is an arbitration clause which is valid and binding under the law, and (b) when parties to a contract agree as to the jurisdiction to which dispute in respect of the contract shall be subject. This is clear from Section 28 of the Contract Act. But an agreement to oust absolutely the jurisdiction of the Court will be unlawful and void being against the public policy under Section 23 of the Contract Act. We do not find any such invalidity of Clause (21) of the Contract pleaded in this case. On the other hand, this Court laid that where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therewith, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves, the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague, it is not hit by Sections 23 and 28 of the Contract Act. This cannot be understood as parties contracting against the statute. Mercantile law and practice permit such agreements.

In this view of the law and in view of the fact that the agreement under which Clause (21) was incorporated as one such clause, the parties are bound by the contract. The contract had not been pleaded to be void and being opposed to Section 23 of the Contract Act. As seen, Clause (21) is unambiguous and explicit and that, therefore, the parties having agreed to vest the jurisdiction of the Court situated within the territorial limit of High Court of Karnataka, the Court of subordinate Judge, Dhanbad in Bihar State has no jurisdiction to entertain the suit laid by the appellant. Therefore, the High Court was right in upholding the order of the Trial Court returning the plaint for presentation to the proper Court.”

In **Hanil Era Textiles Ltd. vs. Puromatic Filters (P) Ltd.**³ the Apex Court held as under:

“The effect of Clause 17 of the Purchase Order which mentions - any legal proceedings arising out of the order shall be subject to the jurisdiction of the Courts in Mumbai, has to be examined in the aforesaid background. Under clauses (a) and (b) of Section 20, the place of residence of the defendant or where he carries on business or works for gain is determinative of the local limits of jurisdiction of the Court in which the suit is to be instituted. Clause (c) of Section 20 provides that the suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, accrues. As shown above, in the present case, a part of cause of action had accrued in both the places, viz., Delhi and Bombay. In *Hakam Singh v. Gammon (India) Ltd.* ([1971] 1 SCC 286), it was held that it is not open to the parties to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two Courts or more have under the Code of Civil Procedure jurisdiction to try a suit or a 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. It was also held that such an agreement does not contravene Section 28 of the Contract Act.

The same question was examined in considerable detail in *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies* ([1989] 2 SCC 163 = AIR 1989 SC 1239) (AIR headnote D) and it was held as under (see SCC pp.175-176, paras 20 & 21):

³ 2004 (4) SCC 671

"When the Court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the ousting 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. Where 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 est exclusio 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 other from its operation may in such cases be inferred. It has therefore to be properly construed."

This view has been reiterated in *Angile Insulations v. Davy Ashmore India Ltd.* ([1995] 4 SCC 153)."

In **New Moga Transport Co., through its Proprietor Krishanlal Jhanwar vs. United India Insurance Co., Ltd., and others**⁴, the Apex Court held as under:

"By a long series of decisions it has been held that where two Courts or more have jurisdiction under CPC to try a suit or proceeding, an agreement between the parties that the dispute between them shall be tried in any one of such Courts is not

⁴ (2004) 4 SCC 677

contrary to public policy and in no way contravenes Section 28 of the Indian Contract Act, 1872. Therefore, if on the facts of a given case more than one Court has jurisdiction, parties by their consent may limit the jurisdiction to one of the two Courts. But by an agreement parties cannot confer jurisdiction on a Court which otherwise does not have jurisdiction to deal with a matter. (See ***Hakam Singh v. M/s. Gammon (India) Ltd. ([1971] 1 SCC 286*** and ***M/s. Shriram City Union Finance Corporation Ltd. v. Rama Mishra: ((2002) 9 SCC 613).***)”

13. The judgment relied on by the learned counsel for the petitioner in **Church of Christ Charitable Trust and Educational Charitable Society, rep., by its Chairman vs. Ponniamman Educational Trust, rep., by its Chairperson/Managing Trustee⁵** deals with a case where the documents on which cause of action is based are not produced and rejection of a plaint for non-disclosure of cause of action. In those circumstances, it was held that the plaintiff must aver clearly facts necessary to enable him to obtain decree and must produce documents on which cause of action is based. Therefore, the said judgment is not applicable to the facts the case.

14. In the case on hand, the parties out of their volition, mutually agreed to have the jurisdiction of Hyderabad Courts only in case of any dispute arising out of the contract. The first respondent specifically pleaded the agreements as aforementioned conferring the jurisdiction on the Courts at Hyderabad only apart from finalization of discussions regarding clearance, re-warehousing and ex-bonding of the imported material at Chennai. This is not a case where, by mutual consent, parties have conferred jurisdiction upon

⁵ (2012) 8 SCC 706

a Court which lacked inherent jurisdiction. This is a case where the parties, by consent, have conferred exclusivity of jurisdiction upon a Court within whose territorial limits, a part of cause of action arose.

15. Therefore, we have carefully considered the submissions made by the learned counsel for the petitioner and in the light of the discussion stated supra, this Court is of the opinion that the petition filed under Order VII Rule 11 (d) of CPC, is not maintainable.

16. Accordingly, the civil revision petition is dismissed. No costs.

Miscellaneous petitions, if any pending, shall also stand dismissed.

V. RAMASUBRAMANIAN, J

P.KESHAHA RAO.J

Date: 04-02-2019
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