

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.10 of 2002

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1. Bihar State Electricity Board, through the Chairman, Vidyut Bhawan, Bailey Road, Patna.
 2. Electrical Superintending Engineer (Purchase) Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
 3. General Manager cum Chief Engineer, Area Electricity Board, Mundichak, Bhagalpur.

... .. Appellants

Versus

M/s Shree Industries, through its sole proprietor Arun Kumar Singhanian, having its office at Patal Babu Road, Bhagalpur, works at East Aerodrome, Sabour Road, Bhagalpur.

... .. Respondent

Appearance :

For the Appellants	:	Mr. Venkatesh Kirti, Advocate (AVIN- 100322)
For the Respondent	:	Mr. Praveen Kumar, Advocate (AOR- 05039)
		Mr. Ravi Prakash Dwivedi, Adv. (AOR- 06722)

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 21-09-2024

Heard Mr. Venkatesh Kirti, the learned counsel for the appellants and Mr. Praveen Kumar, the learned counsel appearing on behalf of the respondent.

2. The present appeal is being preferred for setting aside the judgment and decree dated 31.08.2001, passed in money suit no. 23 of 1998 by Sub-Judge-IV, Bhagalpur, whereby and whereunder he has been pleased to decree the aforementioned money suit in favour of the plaintiff / respondent and directed the appellants / defendants to pay to the plaintiff a sum of Rs. 1,20,451.66/- (Rupees one lakh twenty thousand four hundred and fifty-one rupees and 66 paise) with



interest at the rate of 23% on monthly rates w.e.f. 15.03.1996 along with interest pendent lite at the same rate and has further held that the plaintiff is also entitled to realization of 6% per annum of simple interest from the date of order till its realization.

3. Learned counsel for the appellants submits that the appellants (Bihar State Electricity Board) floated a tender bearing NIT No. 131 for supply of 250 MT G.I. wires as per specification in all over Bihar.

4. Learned counsel for the appellants submits that clause 27 of NIT No. 131 contained the jurisdiction of Court clause which is read as:

“the Civil Court of Patna shall alone have an exclusive jurisdiction to decide any difference / dispute clause for and against Bihar State Electricity Board / Contractor / Suppliers arising out of in respect of the said NIT, contract agreement of purchased order.”

4.1 The clause 27 further in its second para is read as:

“the tenders of the firms who are agreeable to accept the above terms of general condition will only be considered and others will be outright rejected.”

5. Learned counsel for the appellants submits that respondent / plaintiff had participated in the tender process and was selected for supply of GI wires and accordingly a contract



was signed between the appellants and respondent / plaintiff bearing contract no. 29 dated 17.08.1994 (Exhibit- A), wherein clause 1 of the contract stated that:

“1. The supplier agrees to deliver the above said materials in conformity with the provisions of general conditions of NIT and other documents referred to above which forms a part of this contract...”

6. Learned counsel for the appellants submits that after signing of the contract, a purchase order no. 29 dated 24.02.1994 (Exhibit B) was issued to the respondent / plaintiff for supply of 140 MT quantity of GI wires.

7. Learned counsel for the appellants submits that bare perusal of the purchase order dated 24.02.1994, it appears that clause 14 of the purchase order contained the jurisdiction clause same as NIT and said that the Civil Court, Patna shall alone have exclusive jurisdiction to decide the difference:

“the Civil Court of Patna shall alone have an exclusive jurisdiction to decide any differences / disputes / clause for and against Bihar State Electricity Board / contractor / supplier, arising out of in respect of the said NIT contract agreement of purchased order.”

8. The plaintiff / respondent vide its letter dated 07.03.1994 (Exhibit 2/H) objected to payment clause and jurisdiction clause, the difference between the parties came with respect to penalty and payment of money.



9. Learned counsel for the appellants submits that the plaintiff / respondent filed a money suit bearing money suit no. 23 of 1998 before the Court of Sub-Judge-IV, Bhagalpur for claim of Rs. 2,24,503/- (Rupees two lakhs twenty-four thousand five hundred and three).

10. The appellant (Bihar State Electricity Board) filed its written statement and objected to the jurisdiction of the Court for trying the money suit in Bhagalpur in terms of the contract and submitted that in terms of the NIT No. 1331 and clause 27 of the NIT as well as the clause 14 of the purchase order, which suggests that:

“the Civil Court of Patna shall alone have an exclusive jurisdiction to decide any differences / disputes / clause for and against Bihar State Electricity Board / contractor / supplier, arising out of in respect of the said NIT contract agreement of purchased order.”

11. Learned counsel for the appellants submits that the learned trial Court after hearing the parties and examining the evidence came to the conclusion and gave its finding with respect to the jurisdiction at paragraph no. 20 of the judgment dated 31.08.2001, in favour of the respondent / plaintiff and the learned trial Court held that Bhagalpur had the jurisdiction to try the money suit and finally gave a decree in favour of the respondent / plaintiff.



12. Learned counsel for the appellants submits that the present appeal has been filed on a number of grounds including the ground of jurisdiction of Bhagalpur Civil Court. The learned trial Court failed to consider that only those who are allowed to bid tender are those who agree to all the terms and conditions of the tender (NIT), including the jurisdiction clause 27 / NIT. The respondent / plaintiff submitted all dispute to Patna Civil Court on applying his bid in NIT. The contract no. 29 dated 17.08.1994 clearly stipulates that all the terms and conditions of the NIT shall be part of the contract, even the jurisdiction clause at 77 / NIT was the part of the contract and the same jurisdiction clause was reiterated in the purchase order no. 29 dated 24.02.1994, to which the respondent / plaintiff objected.

13. Learned counsel for the appellants submits that if the respondent / plaintiff had objected with the jurisdiction at Patna Civil Court, they ought not had applied to bid for the tender and if they had any objection with the jurisdiction clause, they would have objected before signing of the contract.

14. Learned counsel for the appellants further submits that the learned trial Court has failed to consider the fact that the jurisdiction clause at clause 27 of the NIT and clause 14 of the purchase order were same, and they were binding on the parties. He further relies upon the judgment dated 29.07.2019 reported



in **(2020) 13 SCC 285**, in the case of **Maharashtra Chess Association v. Union of India** and paragraph no. 9 of the said judgment is read as follows:

*“ 9. It is a well-settled principle of contract law that parties cannot by contract exclude the jurisdiction of all Courts. Such a contract would constitute an agreement in restraint of legal proceedings and contravene Section 28 of the Contract Act, 1872. However, where parties to a contract confer jurisdiction on one amongst multiple Courts having proper jurisdiction, to the exclusion of all other Courts, the parties cannot be said to have ousted the jurisdiction of all Courts. Such a contract is valid and will bind the parties to a civil action. This principle was set out in **ABC Laminart (P) Ltd. v. A.P. Agencies (“ABC Laminart”)** where this Court noted: (SCC p. 172, para 16)*

“ 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 jurisdictions 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.”



15. Learned counsel for the appellants submits that when parties to the contract confirm jurisdiction of one amongst multiple Courts having proper jurisdiction to the exclusion of all other Court, the parties cannot be said to have ousted the jurisdiction of all Courts. Such a contract is valid and will bind the parties to a civil action and the same principle was set out in the case of ***A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem***, reported in ***(1989) 2 SCC 163*** and paragraph no. 16 of the said judgment is read as:

“ 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 jurisdictions 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.”

16. He further relied upon the judgment in the case of ***R.S.D.V. Finance Corporation Pvt. Ltd. v. Shree Vallabh Glass Works Ltd.***, reported in ***AIR 1993 SC 2094*** and he has referred



paragraph no. 9 of the said judgment which is read as:

“We may also consider the effect of the endorsement ‘Subject to Anand jurisdiction’ made on the deposit receipt issued by the defendant. In the facts and circumstances of this case it cannot be disputed that the cause of action had arisen at Bombay as the amount of Rs. 10,00,000/- (Rupees ten lakhs) itself was paid through a cheque of the Bank at Bombay and the same was deposited in the bank account of the defendant in the Bank of Baroda at Nariman Point, Bombay. The five post dated cheques were also issued by the defendant being payable to the plaintiff at Bombay. The endorsement ‘Subject to Anand jurisdiction’ has been made unilaterally by the defendant while issuing the deposit receipt. The endorsement ‘Subject to Anand jurisdiction; does not contain the ouster clause using the words like ‘alone’, ‘only’, ‘exclusive’ and the like. Thus the maxim ‘expression unius est exclusio alterius’ cannot be applied under the facts and circumstances of the case and it cannot be held that merely because the deposit receipt contained the endorsement ‘Subject to Anand jurisdiction’ it excluded the jurisdiction of all other Courts who were otherwise competent to entertain the suit. The view taken by us finds support from a decision of this court in A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem.”

17. He further relied upon a judgment reported in AIR 1971 SC 740, in the case of ***Hakam Singh v. Gammon (India) Ltd.*** and the aforesaid case deals with exclusive jurisdiction of the Court and paragraph no. 1, 2 and 6 of the said judgement are read as follows:

“1. On October 5, 1960 the appellant agreed to do certain construction work for the respondent on the terms and conditions of a "written tender". Clauses 12 & 13 of the tender were:



12. In the event of any dispute, arising out of this Sub-contract, the parties hereto agree that the matter shall be referred to arbitration by two Arbitrators under the Arbitration Act of 1940 and such amendments thereto as may be enacted thereafter.

13. Notwithstanding the place where the work under this contract is to be executed, it is mutually understood and agreed by and between the parties here to that this Contract shall be deemed to have been entered into by the parties concerned in the City of Bombay and the Court of law in the City of Bombay alone shall have jurisdiction to adjudicate thereon.

Disputes arose between the parties and the appellant submitted a petition to the Court of the Subordinate Judge at Varanasi for an order under Section 20 of the Indian Arbitration Act 10 of 1940 that the agreement be filed and an order of reference be made to an Arbitrator or Arbitrators appointed by the Court to settle the dispute between the parties in respect of the construction works done by him. The respondent contended that the Civil Courts in Bombay alone had because of the terms contained in Clause 13 jurisdiction to entertain the petition. The Trial Judge rejected that contention observing that the condition in Clause 13 that "the contract shall be deemed to have been entered into by the parties concerned in the city of Bombay has no meaning unless the contract is actually entered into in the city of Bombay", and that there was no evidence to establish that it was entered into in the city of Bombay. The Trial Judge concluded that the entire cause of action had arisen at Varanasi and the parties could not by agreement confer jurisdiction on the Courts at Bombay, which they did not otherwise possess.

2. The High Court of Allahabad in exercise of its revisional jurisdiction set aside the order passed by the Subordinate Judge and declared that the Courts in Bombay had jurisdiction under the general law to entertain the petition, and by virtue of the covenant in the agreement the second branch of Clause 13 was



applicable and binding between the parties and since the parties had agreed that the Courts in Bombay alone had jurisdiction to adjudicate upon the contract, the petition to file the arbitration agreement could not be entertained by the Courts at Varanasi. Against the order of the High Court directing that the petition be returned for presentation to the proper Court, the appellant has appealed to this Court with special leave.

6. Since an application for filing an award in respect of a dispute arising out of the terms of the agreement could be filed in the Courts in the City of Bombay, both because of the terms of Clause 13 of the agreement and because the respondents had their Head Office where they carry on business at Bombay, the agreement between the parties that the Courts in Bombay alone shall have jurisdiction to try the proceeding relating to arbitration was binding between them.”

18. Learned counsel for the respondent / plaintiff submits that judgment and decree dated 31.08.2001 passed in money suit no. 23 of 1998 by Sub-Judge-IV, Bhagalpur is in accordance with law and there is no infirmity in the impugned order and the learned trial Court after hearing the parties and adducing the evidence available on record has come to the conclusion, and in its jurisdiction directed the appellants / defendants to pay to the respondent / plaintiff a sum of 1,20,451.66/- (Rupees one lakh twenty thousand four hundred and fifty-one rupees and 66 paise) with interest at the rate of 23% on monthly rates w.e.f. 15.03.1996 along with interest pendent lite at the same rate and has further held that the



plaintiff is also entitled to realization of 6% per annum of simple interest from the date of order till its realization.

19. Having heard the parties and gone through the materials available on record, it appears that as per the clause 27 of the NIT no. 131, contained the jurisdiction of Court, clause which suggests that:

“the Civil Court of Patna shall alone have an exclusive jurisdiction to decide any difference / dispute clause for and against Bihar State Electricity Board / Contractor / Suppliers arising out of in respect of the said NIT, contract agreement of purchased order.”

19.1 The clause 27 further in its second para is read as:

“the tenders of the firms who are agreeable to accept the above terms of general condition will only be considered and others will be outright rejected.”

19.2 Apart from that, clause 14 of the purchase order dated 24.02.1994 contained the jurisdiction clause, which is same as NIT and says that Civil Court, Patna shall alone have the exclusive jurisdiction to decide the differences between the parties and clause 27 of NIT 131, when read with clause 14 of the purchase order suggests that the jurisdiction clause of the present agreement is at Civil Court, Patna and Bhagalpur Civil Court has no jurisdiction to entertain the money suit no. 23 of 1998 and in the judgments mentioned aforesaid, the judgment



and decree dated 31.08.2001 in money suit no. 23 of 1998
passed by the Sub-Judge-IV, Bhagalpur is set aside.

20. Accordingly, the appeal stands allowed.

(Rajesh Kumar Verma, J)

Shahnawaz/-

AFR/NAFR	NAFR
CAV DATE	11.07.2024
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