

21.5.2025
SL No.10
Court No.1
(tk)/sp

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction**

**FAT/6/2024
IA NO:CAN/1/2024**

Srinath Constructions and Merchant Co. Pvt. Ltd.
-vs-
Navodaya Vidyalaya Samiti and Anr.

Mr. K. Bhattacharyya,
Ms. S. Sehanabis,
Mr. S. Saha,
Mr. S. Sah,

...appear.

1. The instant appeal is directed against the judgment and order dated December 30, 2023, passed by the learned Civil Judge, Senior Division, Darjeeling, in O.C Declaration Suit No.40 of 2012.
2. By the impugned judgment, the Court, inter alia, held that it had no territorial jurisdiction to entertain the suit and the suit was dismissed.
3. The brief facts relevant to the case are that the plaintiff is a company incorporated under the Companies Act, 1956 and has its registered office at Gauhati in Assam. The plaintiff is engaged in the business of civil construction.

4. Pursuant to a notice inviting tender published from Gurgaon, Haryana, by the defendant no.2, M/s. RITES Ltd., having its registered office in New Delhi and acting as the agent of the defendant no.1, the appellant submitted a tender for construction of Phase-A Building for Jawahar Navodaya Vidyalaya in the district of Darjeeling at an estimated cost of Rs.68.59 lakhs.
5. The tender document was purchased at the office of the defendant no.2 in Gurgaon, Haryana. The plaintiff succeeded in securing the tender and it was stipulated that the work of construction shall be completed within 18 months of handover of the work site and issuance of letter of award.
6. Clause 13 of the ITT entitled the “Agreement for construction of Phase-A buildings for Jawahar Navodaya Vidyalaya at District Darjeeling, DGHC,” dated August 2008, was as follows:

“13. Court’s Jurisdiction

Any suit or application, arising out of any dispute or difference on account of this contract of any matter in relation to the Award of the contract or for the settlement of Arbitration clause under the Contract, shall be filed in a Competent Court at New Delhi only and no other court of any other

District of the country shall have any jurisdiction in the matter.”

7. The Trial Court placing reliance on the decision of the Supreme Court in the case of **Patel Roadways Ltd., Bombay -vs- Prasad Trading Co., reported in AIR 1992 SC 1514, Hakam Singh -vs- Gammon (India) Ltd., reported in AIR 1971 SC 746, K.N. Satyapalan (deceased) & Anr. -vs- State of Kerala & Ors., reported in (2007) 13 SCC 43, Roula Construction -vs- Union of India & Ors., reported in AIR 1977 Delhi 205**, held that when the place of settlement of disputes chosen by the parties conferring jurisdiction for dispute resolution on a particular Court, the same is binding on the parties.
8. In addition to the cases relied upon by the Trial Court, reference is made to the decision of the Supreme Court in the case of **ABC Laminart Pvt. Ltd. & Anr. -vs- A.P. Agencies, Salem, reported in AIR 1989 SC 1239**, particularly paragraphs 9, 10 and 16 thereof.
9. In view of the above settled proposition of law and given the jurisdiction clause which is conferred to the prescribed Courts in New Delhi only which has to be the place for dispute resolution between the parties, the suit could not have been filed by the

plaintiff-appellant before the District Court at Darjeeling.

10. Learned counsel for the appellant has, however, argued, by referring to the decision of the Supreme Court in the case of **Hakam Singh -vs- Gammon (India) Ltd, reported in AIR 1971 SC 740**, that the principal employer-defendant no.1 was having its office at Noida, U.P., the place of execution of contract and was at Darjeeling.
11. The aforesaid two places are those which fall within the defined place of scene under the Civil Procedure Code, 1908. He, therefore, submits that the jurisdiction clause in the agreement is void ab initio since none of the main parties to the contract had their offices at New Delhi.
12. This Court, however, notes that the defendant no.2 agent who undertook all steps under the contract on behalf of the defendant no.1 employer, has its registered office at New Delhi. Even the litigation that will have to be defended by the defendant no.1 would therefore have to be defended by its agent, being the defendant no.2.
13. In the above circumstances, it cannot be said that the Courts of New Delhi as chosen by the parties for agitating their dispute, do not have territorial jurisdiction as prescribed under the provisions of

the CPC. It is undisputed that one of the places where the suit can be instituted by a party is where the defendant ordinarily resides.

14. At the risk of repetition since M/s. RITES admittedly has registered office at New Delhi. Even if one holds that the tenders were issued by defendant no. 2 from Gurgaon, and the defendant no. 1 has its office at Noida, it cannot be said that the jurisdiction clause under the contract between the parties is either contrary to the principal place of scene under the CPC. Both Noida and Gurgaon are as good as part of New Delhi these days.
15. Having regard to the discussions made hereinabove, this Court is of the view that the impugned judgment and order passed by the trial Court below calls for no interference.
16. FAT 6 of 2024 fails and is hereby dismissed.
17. Consequently, CAN 1 of 2024 shall also stand dismissed.
18. As prayed for by the learned counsel for the appellant, the plaintiff/appellant may institute appropriate proceedings against the respondents at New Delhi within a period of one month from date. If the same is done, the benefit of Section 14 of the Limitation Act shall be available to the plaintiff/appellant.

19. There shall be no order as to costs.

20. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)