

(2010) 09 AHC CK 0021
In the Allahabad High Court
Case No : C.R. No. 392 of 2010

Ashok Kumar Ajmera

APPELLANT

Vs

Hindustan Petroleum Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Contract Act, 1872 — Section 23, 28

Citation : (2011) 4 AWC 3443

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : Ramendra Asthana, for the Revisionist, for the Appellant;

Final Decision : Dismissed

Judgement

Krishna Murari, J.—This civil revision is directed against the order dated 1.6.2010, passed by the District Judge, Etah rejecting the application filed by applicant, u/s 9 of the Arbitration and Conciliation Act, 1996 (for short the "Act") for want of jurisdiction.

2. Undisputed facts, giving rise to the dispute, are as under:

Applicant was appointed as dealer to run a retail outlet of the Respondents-Corporation at Maharara, district Etah. Subsequently, with the consent and approval of the Respondents-Corporation, the said retail outlet was commissioned at village Jalesar against the same dealership agreement dated 9.10.1990 which was executed between the parties in respect of village Maharara. In 2001, the Respondents-Corporation proposed to renovate the retail outlet and uplift the same at its own costs to the level of "A Site" category and for the purpose desired the applicant's land at Jalesar where retail outlet was running to be leased out in its favour. On 7.9.2001, the land was leased out to the Respondents -Corporation under lease agreement. On 23.8.2006, the officers of the Corporation carried inspection of the retail outlet of the applicant and

collected sample of motor spirit. The said sample was tested on 31.8.2006. Vide order dated 22.9.2006 the sale and supply of the retail outlet of the applicant was placed under suspension and a show cause notice was issued for termination of the dealership. Vide order dated 23.1.2007, the dealership agreement of the applicant was terminated which was challenged before the Delhi High Court by means of Writ Petition No. 914 of 2007. The said writ petition was later on withdrawn by the applicant with liberty to initiate proceedings before the competent court having territorial jurisdiction. Thereafter, the applicant filed a petition u/s 9 of the Act before the District Judge, Etah. An objection was filed on behalf of Respondents-Corporation raising the question of jurisdiction of District Judge, Etah to entertain the proceedings in view of Clause 67 of the dealership agreement dated 19.10.1990 which provided that Court in the city of New Delhi shall have jurisdiction to entertain suit, application or other proceedings in respect of any claim or dispute arising under the agreement.

Vide impugned order, the District Judge dismissed the application for want of jurisdiction in view of Clause 67 of the agreement.

3. It has been urged by the Learned Counsel for the applicant that the learned District Judge has erred in law in rejecting the application as agreement excluding the jurisdiction is void in view of Sections 23 and 28 of the Contract Act being against public policy. It has further been urged that since a part of the cause of action arose in district Etah as such the application was maintainable before the civil court at Etah and the application has wrongly and illegally been rejected.

4. In reply, it has been submitted that where there are two or more competent courts which can entertain the proceedings in view of part of cause of action having arisen thereunder but if the parties to the contract agree to vest jurisdiction in only one Court to try dispute such agreement is valid and binding.

5. I have considered the arguments advanced by the Learned Counsel for the parties and perused the record.

6. The issue raised is no longer res-integra.

7. The Hon'ble Apex Court in the case of A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, , has held 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 therewithin, 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. It has been observed in paragraph 16 as under:

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.

8. Again in the case of Hanil Era Textiles Ltd. Vs. Puromatic Filters (P) Ltd., , it has been held by the Hon"ble Apex Court that where two or more Courts have jurisdiction under the Code, it is permissible to have an agreement between the parties restricting the place of suing to any one of them and if such restriction is placed in the agreement, the same cannot be said to be contrary to public policy and does not contravene Section 28 of the Contract Act. The Hon"ble Apex Court made it very clear that the parties cannot by agreement confer jurisdiction on a Court which otherwise it does not possess under the Code of Civil Procedure. After considering the scope of Section 20, Code of Civil Procedure, it was observed as under:

When ouster clause is clear, unambiguous and specific, accepted notions of contract would bind parties, and unless absence of ad idem can be shown Courts should avoid exercising jurisdiction.

9. Same ratio was again followed by the Hon"ble Apex Court in the case of Rajasthan State Electricity Board Vs. Universal Petro Chemicals Ltd., , and it was observed 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 therein, if the parties to the contract agree to vest jurisdiction in one such Court to try the dispute which might arise as between themselves, such agreement would be valid and binding".

In the case in hand, Clause 67 of the agreement reads as under:

67. This agreement has been made at New Delhi and all payments thereunder shall be due and made at New Delhi unless otherwise directed by the Corporation, the Court in the city of New Delhi alone shall have jurisdiction to entertain any such application or other proceeding in respect of any claim or dispute arising under this agreement.

10. Undoubtedly, the retail outlet was commissioned and was running within the territorial jurisdiction of district Etah which would have jurisdiction to entertain and decide any dispute. However, making of the contract would also be a part of cause of action and a suit or other proceedings on the basis of contract, therefore, could also be undertaken at the place where it was made. A perusal of

Clause 67 quoted above clearly goes to show that the contract was made at New Delhi and the Courts there would have jurisdiction but by the agreement the parties excluded the Jurisdiction of Courts at Etah.

11. The parties having clearly stipulated and agreed that no other Court than the Court at New Delhi will have jurisdiction to try and decide any dispute arising out of the agreement and, therefore, it is the Court at New Delhi alone which would have jurisdiction to try and decide the issue.

12. In view of the above facts and discussions and the law settled by the Hon''ble Apex Court, no illegality has been committed by the District Judge, Etah in rejecting the application filed by the applicant u/s 9 of the Arbitration and Conciliation Act for want of jurisdiction.

13. Thus, no interference is called for in the impugned order. The revision being devoid of merits accordingly stands dismissed. However, there shall be no order as to costs.