

(1992) 10 KL CK 0015
In the High Court Of Kerala
Case No : C.R.P. No. 848 of 1991 (H)

Atlas Transport Co. (P) Ltd. and Another	APPELLANT
Vs	
Oriental Insurance Co. Ltd. and Another	RESPONDENT

Date of Decision : 30-10-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19, 20

Citation : (1993) ACJ 875

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : S. Parameswaran, for the Appellant; George Cherian, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—The defendant Nos. 1 and 2 challenge the legality of the order of the Additional Sub-Judge, Kochi, dated 24.1.1991 in O.S. No. 250 of 1990 whereby he held that his court had jurisdiction to entertain and try the suit.

2. The plaintiff No. 1 is the insurer of the goods of the plaintiff No. 2. The defendant No. 1, Atlas Transport Co. Pvt. Ltd., has its registered office in New Delhi and branch office at Mattancherry, Cochin. The defendant No. 2 is the branch office at Cochin. The plaintiff No. 2, Sreekrishna Oil Industries, entrusted 119 tins of coconut oil, each tin weighing 15 kilograms, to the defendant No. 2 for transporting them to Cuttack in Orissa. The defendant No. 2 accepted the consignment for carriage and carried it in lorry bearing No. TDO 9956. On 19.5.1987 the lorry met with an accident. A hundred tins containing oil weighing 1,500 kg. were totally destroyed. The value of the oil so lost is Rs. 47,200/-. The suit is for recovery of the value of the lost oil. The contract between the parties embodies an agreement that all disputes/suits arising out of the contract of carriage shall be filed in a court in Delhi. The defendants, therefore, urge that it is the court in Delhi that has jurisdiction to entertain and try the suit.

3. While parties cannot by agreement confer jurisdiction on a court, it is now well settled that an agreement between parties to a transaction that one of the courts having jurisdiction shall alone try the suit, is perfectly valid. [See *Hakam Sing Vs. Gammon (India) Ltd.*, ; *Tatanagar Transport Corporation v. Bharat Trading Agency* 1974 KLT 105. On the basis of this law the parties herein entered into an agreement that all disputes shall be tried by the court at Delhi. It is, however, necessary that the court chosen by the parties has jurisdiction to entertain and try the suit.

4. A suit may be instituted in a court within the limits of whose jurisdiction (a) the defendant or each of the defendants, where there are more than one, resides, or (b) any of the defendants, where there are more than one, resides, or (c) where the cause of action wholly or in part arises. [See Section 20 of the Code of Civil Procedure]. A Corporation is, by fiction created by explanation to Section 20, deemed to carry on business at its sole or principal office in India. However, if the Corporation has a subordinate office, such Corporation is deemed to reside at the place where its subordinate office is situated. In other words, a Corporation can have for the purpose of determining the place of suing one place of residence. If it has no subordinate office, the Corporation resides at the place where it has the principal office. If it has also a subordinate office, it is deemed to reside at the place where the subordinate office is situated.

5. In this case admittedly, no part of the cause of action arose within the local limits of jurisdiction of any court in Delhi, which is the court chosen by the parties. A part of the cause of action, viz., entrustment of the goods for carriage and the making of the contract of carriage arose within the local limits of the jurisdiction of the court at Cochin. The Corporation, the defendant No. 1, has a branch office at Cochin. Therefore, it is deemed to carry on business at Cochin. A part of the cause of action arose at Cochin. Therefore, on the authority of *M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company*, I hold that the court at Cochin has jurisdiction to entertain and try the suit.

6. Mr. Parameswaran, learned counsel, then urged that Section 19 of the Code excludes the application of Section 20 of the Code whereunder the jurisdiction of the court at Cochin has been upheld. Section 19 of the Code lays down that (a) where a suit is for compensation for wrong done to movable property, (b) the wrong was done within the local limits of jurisdiction of one court and (c) the defendant resides or carries on business...within the local limits of the jurisdiction of another court, then the suit may be instituted at the option of the plaintiff in either of the said courts. The essential ingredient of Section 19 is that the suit must be for compensation for wrong done "To" movable property. If the suit is not for compensation for wrong done "To" movable property, Section 19 has no application. This suit is against the carrier who failed to deliver a part of the goods entrusted to it. No damage "To" the tins of oil is alleged. The case is one for compensation for breach of the obligation to deliver the goods in accordance with the contract. The plaintiff's case is that the oil weighing 100 tins

was lost to him. The suit is to recover the value of the lost oil and not for compensation for damage to the tins or to the oil.

7. The word "To" is of significance. The damage must be "To" the object. In this case, the plaintiff does not allege that the oil was damaged. His case is that the oil weighing 1,500 kg. was lost. Therefore, this is not a suit to recover compensation for damage to the oil tins, but a suit to recover compensation for short delivery of the consignment.

8. Take a case where furniture, paintings or idols, etc., are consigned through a carrier. While in custody of the carrier these objects suffer mutilation, breakage of a part or other injury thereby impairing its value or usefulness. Such damage is done "To" the object. In this suit no damage "To" the oil or tins is alleged.

9. This is a suit for damages for breach of contract of carriage. It does not fall within Section 19 of the Code. The suit is governed by Section 20 of the Code. The judgments in *Globe Transport Corporation v. Triveni Engineering Works* 1984 ACJ 465 (SC) and *The South Eastern Roadways Vs. The United India Insurance Co. Ltd.*, cited by counsel have no application to the facts of this case.

For all these reasons, the C.R.P. is dismissed.