

(2001) 08 RAJ CK 0058

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 175 of 1984

Hindustan Metals Jodhpur

APPELLANT

Vs

Vishal Goods Transport Co. and Another

RESPONDENT

Date of Decision : 14-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : AIR 2002 Raj 248 : (2003) 1 CivCC 642 : (2002) 4 RCR(Civil) 627 : (2002) 3 RLW 1473 : (2002) 4 WLC 728 : (2003) 1 WLN 240

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : H.R. Soni, for the Appellant; A.R. Mehta and S.P. Sharma, for the Respondent

Judgement

Panwar, J.—This misc. appeal is directed against the order dated 23rd Aug., 1984 passed by the learned Additional District Judge No.2, Jodhpur in Civil Appeal Decree No. 25/81.

2. The brief facts of the case which are necessary for the decision of this appeal are that; the appellant-plaintiff (for short "the plaintiff") filed a suit before the Munsiff Magistrate, Jodhpur City, Jodhpur for recovery of Rs. 3,050/- against the respondent-defendants, inter alia, stating therein that the plaintiff-firm is a registered firm and the respondent defendants Transport-company is also a registered Transport Company firm and undertaking the businesses of career by transporting goods through their trucks having a branch office at Jodhpur and principal office at Delhi (for short "the defendants"). It was averred that on 6.6.1973 the plaintiff booked the goods (scrape) weighting about 100 quintal to be delivered to M/s Modi Steels, Modi Nagar which is situated in the State of U.P. near Gaziabad. It was further averred that the plaintiff demanded receipt of the goods from M/s. Modi Steels, Modi Nagar by letter No. 247 dated 20th June, 1994. In response to this letter M/s. Modi Steels, Modi Nagar intimated that the goods sent by the plaintiff on 6.6.1973 by truck No. RRL 4156 has not been

delivered to the consignee M/s. Modi Steels. The plaintiff, by its letter dated 24th June, 1974 inquired from the defendant No.2 with the request that the receipt by which the goods were sent may also be made available to the plaintiff. This letter remained unreplyed. The plaintiff again on 28.8.1974 sent a reminder but the defendants did not respond. Thereafter on 11.11.1974 the defendants were served with a notice demanding the amount for the loss occasioned on account of non-delivery of the aforesaid goods. That notice was also not responded by the defendants. Despite the aforesaid communications and notice, the defendants did not pay the amount for the loss occasioned to the plaintiff. Under these circumstances, the plaintiff after calculating the interest at the rate of 12% per annum for 36 months filed a suit for recovery of Rs. 3050/- (Rs. 2,234/- original amount of the goods and Rs. 806/- the interest and the expenses on notice) against the defendants.

3. On receipt of the notice, the defendants filed the application dated 6.12.1976 by which the territorial jurisdiction of the trial court was challenged and it was contended that the printed condition No. 17 overleaf the document Ex.A/1 provides that the court in Delhi City alone shall have jurisdiction in respect of all the claims and the matters arising under consignment or of the goods entrusted for transportation.

4. The condition printed overleaf of the Ex.A/1 has not been signed by either of the parties. During the pendency of the said application, the defendants filed written statement. In the written statement also a similar plea was raised. The learned trial court framed the issues and issue No.6 was specifically framed in the following terms;

"Whether on the basis of objection raised in para 10 of the written statement this Court has no jurisdiction to try the case?"

5. This issue was framed on the pleadings of defendants and, therefore, burden to prove this issue was rested on the defendants. The plaintiff examined PW-1 Jasraj Surana and proved the bilty Ex.A/1 by which the goods were booked and sent to the consignee M/s. Modi Steels, Modi Nagar. The defendants did not lead any evidence and as such the evidence of plaintiff remained uncontroverted. The learned trial court by the judgment and decree dated 24th Sept., 1981 decided issues No.1, 2, 4, 5, 6, 7 and 8 in favour of the plaintiff and issue No.3 in favour of the defendant.

6. Against the judgment and decree of the trial court dated 24.9.1981 the defendants preferred an appeal before the learned first appellate court. Before the first appellate court, the learned counsel for the appellant-defendants confined its arguments on the point of jurisdiction of the trial court. The First Appellate Court by impugned order dated 23rd Aug., 1984 set aside the judgment and decree passed by the trial court holding that the trial court has no territorial jurisdiction and the jurisdiction vests only in the Courts at Delhi. With this finding, the first appellate court directed to return the plaint to the plaintiff.

7. Being aggrieved by the impugned order dated 23rd August, 1984 the plaintiff has filed the present appeal.

8. I have heard learned counsel for the parties at length. Perused the order impugned and the record.

9. The plaintiff's case which was set up before the trial court is that on 6.6.1973 the plaintiff firm booked iron scrape weighing 100 quintals through the Branch Office of the defendants situated at Jalori Gate, Jodhpur to be carried and delivered to M/s. Modi Steel, Modi Nagar. He has placed on record the bilty Ex.A/1 wherein the defendants received the said goods from the plaintiff and were required to sent to the consignee by truck No. RRL 4165 on 6.6.1973 itself. The execution of this bilty and the receipt of the goods for transporting to M/s Modi Steels, Modi Nagar has not been disputed by the defendants in their written statement. The defendants have also not disputed having their branch office situated at Jalori Gate, Jodhpur (defendant No.2). The only point for consideration before this Court is as to whether the Court at Jodhpur has territorial jurisdiction to try the suit or not. Learned counsel Mr. H.R. Soni appearing for the appellant plaintiff contended that the goods were booked and handed over to the defendant No.2 at the Branch Officer, Jodhpur and were to be delivered to M/s. Modi Steels at Modi Nagar (U.P.) and ultimately the defendants failed to deliver the goods to M/s. Modi Steels and, therefore, the cause of action arose to the plaintiff at Jodhpur as well as Modi Nagar, U.P., therefore, the courts at Jodhpur and at Modi Nagar (U.P.) had jurisdiction to try the case. But at any rate the courts at Delhi has absolutely no jurisdiction and the defendants on the basis of printed condition on the overleaf of the bilty Ex.A/1 cannot be permitted to challenge the territorial jurisdiction of the courts at Jodhpur. He relied on the judgment of Hon'ble Supreme Court in M/s Patel Roadways Limited, Bombay vs. M/s Prasad Trading Co. (1), A.B.C. Laminar Pvt. Ltd. and another v. A.P. Agencies, Salem (2), Khaleel Ahmed Dakhani v. Hatti Gold Mines Co. Ltd. (3), M/s. instruments Incorporated v. M/s. Industrial Cable (India) Ltd. (4), United India Insurance Co. v. Associate Corporation (5), R.S.D.V. Finance Co. Pvt. Ltd. v. Shri Vallabh Glass Works Ltd. (6).

10. In Patel Roadways Ltd., Bombay (Supra), the Hon'ble Supreme Court observed that the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the Corporation and can file a suit at a place where the cause of action arises. Hon'ble Supreme Court held as under:-

"As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has

been done in the present case. The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one."

11. Their Lordships further observed that in the instant two cases Clause (c) is not attracted to confer jurisdiction on courts at Bombay and the appellant has admittedly its subordinate offices at the respective places where the goods in these two cases were delivered to it for purposes of transportation. The courts at Bombay had no jurisdiction at all to entertain the suits filed by the respondents and the parties could not confer jurisdiction on the courts at Bombay by an agreement.

12. In ABC Laminar Private Ltd. (Supra) while considering the case in a similar situation the Hon'ble Supreme Court observed as under:-

"The next question is whether Clause 11 is valid, and if so, what would be its effect? As Clause 11 formed part of the agreement it would be valid only if the parties could have validly agreed to it. It is common knowledge that the law of contract only prescribes certain limiting principles within which parties are free to make their own contracts. An agreement enforceable at law is a contract. An agreement which purports to oust the jurisdiction of the Court absolutely is contrary to public policy and hence void. Each of the citizens has the right to have his legal position determined by the ordinary Tribunal except, of course, in a 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 disputes in respect of the contract shall be subject. "It has long been established", say Cheshire and Fifoot, "that a contract which purports to destroy the right of one or both of the parties to submit questions of law to the courts is contrary to public policy and is void *pro tanto*". However, arbitration is a statutory mode of settlement; and as a matter of commercial law and practice parties to a contract may agree as to the jurisdiction to which all or any disputes on or arising out of the contract shall be subject."

13. Their Lordships further observed as under:-

"Parties cannot by contract oust the ordinary courts from their jurisdiction. They can, of course, agree to leave questions of law, as well as questions of fact, to the decision of the domestic tribunal. They can, indeed, make the tribunal the final arbiter on questions of fact, but they cannot make it the final arbiter on

question of law. They cannot prevent its decisions being examined by the courts. If parties should seek, by agreement, to take the law out of the hands of the courts and put it into the hands of a private tribunal, without any recourse at all to the courts in cases of error of law, then the agreement is to that extent contrary to public policy and void."

14. In Khalil Ahemad Lakhani (supra) the Hon"ble Supreme Court held as under:-

"In this case Patel Roadways Limited had its principal office at Bombay and branch offices at various other places Prasad Trading Company entrusted certain consignments of goods to Patel Roadways Limited at its subordinate office in the State of Tamil Nadu for delivery at Delhi. The goods reached Delhi but in damaged, conditions. Prasad Trading Company instituted a suit for damages in the Court at Madras within whose jurisdiction the subordinate offices of Patel Roadways Limited were situated and where the goods were entrusted for transport. A plea was raised by the Patel Roadways Limited in its defence that when the contract was entered into between the parties it was agreed that only Bombay Court would have jurisdiction and as such court in Madras had no jurisdiction. It was in this context that this Court considered clause (a) of Section 20 and explanation thereto in CPC (for short "Code"). The question which was before this court was as to whether in view of the relevant clause in the contract between the parties the Court at Bombay alone had jurisdiction and the jurisdiction of the Courts at Madras where the suit was instituted was barred. It was submitted by the Patel Roadways that apart from the Courts within whose territorial jurisdiction the goods were delivered to the appellant for transport the Courts at Bombay also had jurisdiction to entertain a suit arising out of the contract between the parties in view of the Explanation to Section 20 of the Code inasmuch as the principal office of the appellant was situated in Bombay. According to it since Courts of two places namely Madras and Bombay had jurisdiction in the matter the jurisdiction of the Courts in Madras was ousted by the clause in the contract whereunder the parties had agreed that jurisdiction to decide any dispute under the contract would be only in the. Court at Bombay. Consequently the Courts where the suit was instituted had no jurisdiction to entertain it. This Court said that "the explanation is really an Explanation to clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises within the place where a subordinate office is located clearly shows that the intention of the legislature was that in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the

subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there, instead, the second part of the Explanation would have read "and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place". "It, therefore, held that the explanation provides an alternative locus for the Corporation's place of business, not an additional one. Thus, this Court was of the view that clause (c) was not attracted to confer jurisdiction on Courts at Bombay and the appellant has admittedly its subordinate office at Madras where the goods in the case were delivered to it for the purpose of transport the Court at Bombay had no jurisdiction at all to entertain the suit and that the parties could not confer jurisdiction on the Courts at Bombay by an agreement."

15. In case of R.S.D.V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Works Ltd. (supra), it was held that no objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been consequent failure of justice. The above provision clearly lays down that such objection as to the place of suing shall be allowed by the appellate or revisional court subject to the following conditions:-

- (i) That such objection was taken in the Court of first instance at the earliest possible opportunity;
- (ii) in all cases where issues are settled then at or before such settlement of issues;
- (iii) there has been a consequent failure of justice.

16. In that case though the first two conditions were satisfied but the third condition of failure of justice was not fulfilled. Hon''ble Supreme Court held that there is no failure of justice to the defendant decreeing the suit. It was further held that on the contrary it would be totally unjust and failure of justice to the plaintiff in case such objection relating to jurisdiction is to be maintained.

17. Thus it is settled law that the jurisdiction of the Court where the cause of action wholly or partly arises cannot be taken away by the choice of the party to the contract merely on the basis of the condition printed on the bills or the bill as the case may be. The parties cannot create a jurisdiction in the Court in whose territorial jurisdiction no cause of action has at all arisen. In the instant case, the cause of action do arise to the appellant plaintiff at Jodhpur and the suit has rightly been instituted at the Court situated at Jodhpur. In the instant case the defendants failed to establish that if the said suit is tried in the Courts at Jodhpur it would result in failure of justice. Admittedly, the defendant's Branch Office is situated at Jodhpur from where the goods are transported and the defendants are carrying on their business of career/transportation. Admittedly goods were booked and handed over to the defendants for

transportation to M/s. Modi Steel at Jodhpur Branch Office and under these circumstances by contesting the case At Jodhpur no failure of justice would occasion to the defendants.

18. In my considered opinion, the first appellate court fell in error by holding that Jodhpur Court has no jurisdiction and the courts at Delhi only had jurisdiction. This part of finding is against the well settled law and, therefore, the order impugned is not sustainable in law and deserves to be set aside. No other point was pressed.

19. In view of the aforesaid discussion, this appeal succeeds and is hereby allowed. The order impugned dated 23rd Aug. 1984 passed by learned Additional District Judge No. 2, Jodhpur in Civil Appeal Decree No. 25/81 is hereby set aside and quashed and the judgment and decree passed by trial court dated 24.9.1981 is hereby restored. In the facts and circumstances of the case, this is a fit case in which exemplary cost is to be awarded as the appellant-plaintiff has unnecessarily been dragged in litigation. I therefore, quantify the cost at Rs. 1,500/-.