
(1990) 09 P&H CK 0115
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3889 of 1986

Indian Woollen Textile Mills (P) Ltd.

APPELLANT

Vs

The Rajasthan State Road Transport Corporation

RESPONDENT

Date of Decision : 12-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 9

Citation : (1991) 99 PLR 346

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : P.S. Rana, for the Appellant; Munishwar Puri, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The impugned order of the lower appellate court holding that the suit of the petitioner was triable only by the courts in Jaipur, warrants no interference in revision.

2. The petitioner filed a suit for the recovery of Rs. 32,800/- in the court at Amritsar. The amount claimed comprising Rs. 20,000/- as security deposited under the contract between the parties and the balance amount of Rs. 12,800/- being the interest claimed thereon. The respondent, on appearance, filed an application u/s 34 of the Arbitration Act. seeking stay of the proceedings on account of the arbitration clause in the agreement between the parties. An objection was also taken to the effect that the Court at Amritsar lacked jurisdiction to try the suit.

3. Clause-27 of the agreement between the parties reads as under:-

"All legal proceedings, if necessity arises to institute by any of the parties (Corporation or the approved suppliers) shall have to be lodged in courts at Jaipur and nowhere else."

It was on the basis of this clause that both the courts below have held that the

jurisdiction in the matter lies only with the courts at Jaipur.

4. The law is well-settled that though it is not open to the parties, by agreement, to confer jurisdiction upon a court, not possessing it, but where two or more courts have jurisdiction, the parties can, by agreement decide that the dispute between them shall be tried in one of such courts. Such an agreement would not be contrary to public policy. Admittedly, in the present case, both the courts at Amritsar and Jaipur have jurisdiction. By virtue of clause 27 of the agreement, between the parties however, it is only the courts at Jaipur that the petitioner can approach to seek the relief they claim and the suit could not, therefore, be filed at Amritsar.

5. Faced with this situation, counsel for the petitioner sought to contend that the refund of security formed a new contract between the parties and therefore, he could not be barred from approaching the courts at Amritsar in the matter. This is indeed an untenable contention as the deposit of the security and its eventual refund on completion of the contract was very much a part of the agreement that the parties had entered into.

6. Next, there was a half hearted attempt to seek to question the finding of the courts below, on the issue of jurisdiction, on the plea that it had been returned without a specific issue having been framed on the point. It would be pertinent to note that there is no suggestion that any such issue was ever asked for nor indeed was counsel able to point any prejudice that may have been caused by the matter being decided in this manner without a formal issue being framed.

7. Counsel for the petitioner then fell back upon *Pattnaik Industries Pvt. Ltd. Vs. Kalinga Iron Works and Another*, in support of his contention that even where parties agree that suit shall be filed in one particular court out of the two or more courts having the requisite jurisdiction, it is open to the court to relieve the party aggrieved of the burden of such agreement.

8. What had been held in *M/s Patnaik Industries Pvt. Ltd.*'s case (supra) was that where parties by agreement settle that suits shall be filed in one court, out of the two or more courts possessing the requisite jurisdiction, such agreement does not oust the jurisdiction of the courts concerned and the court can relieve the party of the burden of this stipulation, if it operates harshly, is oppressive in character, inequitable or unfair. There is, however, no material on record here on the basis of which it could be said that the filing of the suit in the present case at Jaipur would be oppressive, harsh, inequitable or unfair or that the ends of justice require that, the petitioner be relieved of the burden of the stipulation to this effect. The mere inconvenience of the petitioner- firm being located in Amritsar, having to depute its officials to go to Jaipur for this purpose, cannot suffice to absolve the petitioner from the agreement to this effect.

9. No exception can thus be taken to the plaint being returned to the petitioner for presentation before the competent court at Jaipur. This revision petition is accordingly hereby dismissed. In the circumstances, however, there will be no

order as to costs.