

(1997) 08 PAT CK 0014
In the Patna High Court
Case No : C.R. No. 1386 of 1986

Kameshwar Prasad Sah

APPELLANT

Vs

The National Small Industries Corporation Ltd. and Others

RESPONDENT

Date of Decision : 14-08-1997

Acts Referred:

Citation : (1998) 1 PLJR 860

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Mahendra Thakur and Surendra Kishore Thakur, for the Appellant;
Kameshwar Prasad Gupta, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—This civil revision is by the Plaintiff. By the impugned order the plaint of the title Suit No. 174 of 1992 has been returned on the ground of lack of territorial jurisdiction in view of the ouster clause contained in Clause 9 of the agreement.

2. Clause 9 of the agreement runs as follows:

In the event of any dispute or difference arising between the partes relating to the construction, meaning and effect of performance or any other matter under these presents the Court at Calcutta alone shall have exclusive jurisdiction.

3. In A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, the Supreme Court considered the effect of ouster clause and observed:

...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 it 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

being against Public policy.

4. Earlier in *Hakam Sing Vs. Gammon (India) Ltd.*, , the Court had observed, "It was not open to the parties to agreement to confer by their agreement jurisdiction on a Court which it did not possess under the Code."

5. In the present case, no part of cause of action appears to have arisen at Calcutta. The parties, therefore, by so called agreement could not confer jurisdiction on Calcutta Court much less to the exclusion of the jurisdiction where the cause of action has arisen. The Hajipur Court is, therefore, competent to try the same. The order of the Court below returning the plaint for presentation in a Court of Calcutta, therefore, does not appear to be correct in law.

6. The impugned order dated 22.5.96 is, accordingly, set aside. This application is allowed.