
(1991) 03 KL CK 0005
In the High Court Of Kerala
Case No : C.R.P. 512/91

K.J. Chacko

APPELLANT

Vs

Union Bank of India and Another

RESPONDENT

Date of Decision : 27-03-1991

Acts Referred:

Contract Act, 1872 — Section 23, 28

Citation : (1991) 03 KL CK 0005

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : K.L. Varghese, for the Appellant; S.K. Brahmanandan and A.S.P. Kurup, for the Respondent

Judgement

M.M. Pareed Pillay, J.—Revision Petitioner (Plaintiff) filed O.S. 84 of 1990 before the II Additional Sub Court, Ernakulam for a prohibitory injunction restraining the first Respondent-bank (first Defendant) from releasing any amount to the second Respondent (second Defendant) covered by the Bank Guarantees furnished by the Bank. The Sub Judge ordered the return of the plaint on the ground that he has no jurisdiction to try the suit. A.S. 34 of 1991 filed by the Plaintiff was dismissed by the District Judge.

2. The Sub Judge construing Ext. A-1 agreement and Ext. A-2 Bank Guarantee held that he has no jurisdiction to entertain the suit as these documents specifically mentioned that the Courts in the City of Madras alone shall have jurisdiction over any dispute between the parties. Contention of the Plaintiff is that the suit is not based on Ext. A-1 agreement and as no relief is sought against the second Defendant and as the first Defendant is not a party to Ext. A-1 agreement the suit is really maintainable before the Sub Court, Ernakulam. The learned District Judge held that the averments in the plaint would show that the reliefs sought for in the suit are in relation to a dispute arising from Ext. A-1 agreement and so the Sub Judge's finding does not warrant interference.

3. In A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, the

Supreme Court held thus:

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 there within, 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 Section 23 and 28 of the Contract Act.

The above observation cannot be understood as giving unfettered liberty to the parties to contract against the statute. Section 23 of the Contract Act envisages that the consideration or object of an agreement is lawful, unless it is opposed to public policy. As any agreement of which the consideration or object is unlawful is void certainly an agreement to oust the existing jurisdiction of the Court would be unlawful and void being against public policy. If it can be shown that the jurisdiction to which the parties have agreed to submit had nothing to do with the contract it is against public policy and is unlawful. When parties agreed to a particular jurisdiction from among competent courts having jurisdiction it can never be held to be void as against any public policy. But if they agree to submit to the jurisdiction of a Court which lacked jurisdiction it will have to be held that it is opposed to public policy. In *Hakam Sing Vs. Gammon (India) Ltd.*, the Supreme Court made the position unambiguously clear that the parties cannot by agreement confer jurisdiction on a Court not really having jurisdiction under the Code, but can agree that one of the Courts having such jurisdiction alone shall try the dispute and such agreement is not opposed to public policy and does not contravene Section 28 of the Contract Act.

4. Thus the settled law is that though parties cannot confer jurisdiction on any Court, they can agree to the forum which will resolve the controversy between them provided it is vested with, necessary jurisdiction. As Ext. A-1 agreement was, executed at Madras and as the second Defendant Company is having its office at Madras, the Court at Madras is definitely having jurisdiction. Clause 6 of Ext. A-1 reads:

All disputes arising out of or in any way connected with this agreement shall be deemed to have arisen in the City of Madras and shall be referred to the arbitrator as provided in the contract document (a) and (j) mentioned above. For the purpose of settlement of any disputes arising out of the contract, the Courts in the City of Madras alone shall have jurisdiction.

When the parties contracted as per Ext. A-1 agreement is only to confine the jurisdiction to the Courts in the city of Madras alone. That does not mean that they have conferred jurisdiction in a Court which lacked jurisdiction to resolve the disputes between them. In a case where the contracting parties agreed to limit the jurisdiction to a particular Court to the exclusion of others one of the parties cannot later retract from it and contend that the contract with regard to the jurisdiction of the Court is opposed to Section 28 of the Indian Contract Act.

5. As Ext. A-1 agreement was executed at Madras where the second Defendant's office is functioning it can never be held that the Court specified in the agreement lacked territorial jurisdiction. Though by agreement between the parties they cannot confer jurisdiction on a Court which lacked it otherwise, it is always possible for them to make a choice of the forum from one among the Courts which has jurisdiction by agreeing that the disputes between them arising out of such contract shall be resolved by a specified Court. Such a contract will not contravene Section 28 of the Indian Contract Act. The position will be different if the parties agreed to a forum which lacked jurisdiction in entertaining the dispute. In other words, parties to a contract cannot agree by themselves to confer jurisdiction on a Court where no part of the cause of action arose. Where the law allows choice of forum and the parties agree that the controversy between them would be settled in a particular Court it only amounts to self imposed restriction of their rights and liabilities and Section 28 of the Contract Act will not be a bar. Whenever parties themselves agree to the resolution of the controversy between them by a particular Court naturally it would be accepted provided the chosen Court does not lack jurisdiction.

6. As the averments in the plaint shows that the reliefs sought for in the suit pertain to dispute arising out of Ext. A-1 agreement, Clause 6 is certainly attracted. In Clause 6 it is stated that for the purpose of settlement of any disputes arising out of the contract, the Courts in the City of Madras alone shall have jurisdiction. It is the common case that Ext. A-1 agreement was executed at Madras. The Plaintiff has no case that he was not aware of the ouster of jurisdiction of the Ernakulam Courts when Ext A-1 was executed. As Exts. A-1 and A-2 unequivocally stipulate that the Courts in the City of Madras alone shall have jurisdiction to settle any dispute arising out of the contract and as the Plaintiff cannot contend that the cause of action did not arise out of Ext. A-1 agreement the District Judge was justified in confirming the order of the Sub Judge that this Court has no jurisdiction to entertain the suit. The finding of the District Judge that the Sub Court, Ernakulam has no jurisdiction to entertain the suit is only to be confirmed. I do so.

The C.R.P. is dismissed. No costs.