

(2011) 02 SHI CK 0078
In the High Court Of Himachal Pradesh
Case No : FAO No. 79 of 2006

Lt. Col. H.S. Gyani

APPELLANT

Vs

Tata Engineering and Locomotive Co. and Others

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (2011) 02 SHI CK 0078

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—This is the Plaintiff's appeal against the judgment of the learned Additional District Judge (Presiding Officer, Fast Track Court, Solan) returning the plaint to the Plaintiff for presentation by him to a Court of competent jurisdiction.

2. The Plaintiff is a retired Army Officer and is also a practising Advocate in this Court. He instituted a suit for recovery of Rs. 10 lacs as damages against the four Defendants/Respondents on the allegations that he had purchased a truck on Hire Purchase basis from TELCO which vehicle was delivered to him at Solan. He was called upon by Defendant Nos. 2 and 3 Sikand and Company and Shri Randeep Singh Verma, Sales Manager of the Company to complete the formalities etc. The Plaintiff pleads that after the entire staff of the Company had left the office, Defendant No. 3 called upon him to sign a bundle of blank papers telling him that the documents were related to Hire Purchase Agreement etc. According to him, the contents of these documents etc. were not explained to him. These documents contained blanks which according to him were filled in later on. One another allegation made was that the documents were ante-dated.

3. The Plaintiff states that Defendant Nos. 1 and 3 were in dominating position and he had no choice but to sign the documents in the manner in which he was

asked to do. He could not send any notice but personally informed Defendant/ Respondent No. 1 on 30.1.1995 as also in the year 1996, 1997 bringing these facts to its notice. The Plaintiff submits that because of the ante-dating of the documents, he was shown to be a defaulter of two instalments.

4. The vehicle which was purchased by the Plaintiff was converted by him into a tanker and for this he had spent more than Rs. 5 lacs. The other allegations related to the fact that even the guarantor proforma Defendant No. 5 did not sign in his presence but his signatures were obtained after the signatures of the Plaintiff had been obtained.

5. After conversion, the vehicle was granted registration No. HR-37-2206. It met with an accident on 25.3.1997 near Baruch (Gujarat). The Plaintiff suffered grievous injuries in this accident and was admitted in Military Hospital at Baruch (Gujarat), Bombay and Shimla for about six months. When he was recuperating he had the vehicle repaired in the end of May, 1997 at Ambica (TATA) Motors Surat and this tanker was driven to Bombay on 10th June, 1997. The First Information Report with respect to the accident was lodged with Police Station Nabi (Barucha) in Gujarat. The crucial part of the pleadings is that since the vehicle could not be plied for carrying LPG from 25.3.1997 to August, 1997 as the Plaintiff was suffering serious physical disability, he entrusted the vehicle to Defendant No. 4 Shri B. Krishnamurthi who had parked the same in his garage at Bombay. He charged Rs. 4,000/- for driving the vehicle and as garage charges. At this time Defendant Nos 1 to 3 started demanding payment of the instalments. The Plaintiff then pleads that ultimately Defendant No. 1 in connivance with Defendant No. 4 took possession of the said vehicle at Bombay. Defendant No. 1 informed the Plaintiff vide letter dated 25.9.1997 that the vehicle had been seized on 19.9.1997 alleging that the tanker was surrendered to them by Defendant No. 4 as the agent of Plaintiff. Defendant No. 4 was never the agent of Plaintiff nor had the Plaintiff authorised Defendant No. 4 to hand over possession of the vehicle to Defendant No. 1. The vehicle was taken over illegally and wrongfully by Defendant No. 1 in collusion with Defendant No. 4. Repeated requests of the Plaintiff to show some consideration and relaxation fell on deaf ears. The vehicle was ultimately sold by the Defendant. The Plaintiff had paid a sum of Rs. 5.57 lacs towards instalments and only about Rs. 1.98 lacs and its interest was outstanding. The Plaintiff was neither associated nor informed about the proposed sale, mode of sale by auction or by negotiation by Defendant No. 1. The price of the vehicle fetched was not disclosed. The value of the vehicle including LPG tanker etc. was not less than Rs. 15 lacs and in any case it would not have in any event fetched a price less than Rs. 12.50 lacs. The Plaintiff claimed decree of Rs. 10 lacs alongwith interest at the rate of 18; from the date of filing of the suit till its payment.

6. The suit was resisted by the Defendants on a number of grounds including preliminary objections that the Courts at Himachal Pradesh more especially Solan had no jurisdiction to try the case. Without going into other merits of the case,

the point for determination in this appeal is as to whether the Court at Solan had jurisdiction to decide the case. For this purpose, the pleading of the Plaintiff is that the High Court at Shimla had jurisdiction to try the case. (The suit was initially filed in the High Court but with the change of pecuniary jurisdiction, the case was sent to Solan for trial) as (a) Defendant No. 1 was interalia carrying the business through Defendant No. 2 at Solan, (b) Defendant No. 2 is carrying its business at Solan, (c) Defendant No. 3 the Sales Manager is also working at Solan and the offer for sale through Hire Purchase Scheme was made at Solan. Similarly the agreement was executed at Solan and delivery was also made there. Most of the instalments were paid to Defendant No. 2 at Solan. The entire cause of action arose at Solan.

7. The learned trial Court settled seven issues. Issue No. 4 related to the jurisdiction of the Court. The evidence of the Plaintiff was recorded when he stepped into the witness box as his own witness and tendered his affidavit of examination in chief and more than 150 documents. The learned trial Court has reproduced the affidavit in its judgment. The learned Court considered condition No. 14 of the Hire Purchase Agreement Ext.DW2/A (Mark P-92) produced by the Plaintiff stating therein that the Courts at Bombay alone will have jurisdiction to try the case exclusively. The Court relying upon the decision of the Supreme Court in *M/s. Angile Insulations Vs. M/s. Davy Ashmore India Ltd. and another*, *M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company*, *A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem*, held that when there are more than two Courts vested with jurisdiction to try the cause, the parties can exclude one and the dispute be resolved by the other Court.

8. Learned Counsel appearing for the Appellant has vehemently argued that the genesis of the entire case is the repossession of the tanker by Defendant No. 1 which is unauthorised and illegal as also the subsequent sale. Defendant No. 1 had no right to take possession of the vehicle in the manner in which it has been done. In particular, he refers the judgments of the Supreme Court in *Patel Roadways Ltd.'s* and *A.B.C. Laminart's* case (*supra*).

9. Before advertng to these judgments I need to notice one fact which is that the tanker had been entrusted by the Plaintiff to Defendant No. 4 who had parked it in Bombay and for this purpose, the Plaintiff had paid some money for driving the vehicle from Gujarat to Bombay and it is from this Defendant, that Defendant No. 1 had seized the vehicle. It further pleaded that Defendant Nos. 1 and 4 had acted in connivance with each other illegally depriving the Plaintiff of the vehicle and causing damage as pleaded. In other words, the act of Defendant No. 4 was illegal, unauthorised and he could not under any circumstance surrender the possession of the vehicle to Defendant No. 1.

10. In these circumstances, it is not only the Hire Purchase Agreement which becomes actionable but also the act of Defendant No. 4 allowing Defendant No. 1 to take charge/possession of the vehicle. Admittedly, no part cause of action of this act has arisen within the jurisdiction of this Court but at Bombay only.

Adverting to the decision of the Supreme Court in Patel Roadways" case (supra) the averment made by the Plaintiff is that he cannot be compelled to institute the suit at Bombay as the Plaintiff has a choice under Clauses (a) to (c) of Section 20 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) to choose any forum. In Patel Roadways" case (supra) the Supreme Court held that despite the exclusionary clause which vested exclusive jurisdiction to the Court at Bombay. However, the cause of action in that case arose at Madras where the suit was instituted for the reason that consignment had been entrusted to the Roadways in Madras to be delivered at Delhi. The goods had been transported by the Appellant and kept in a godown at Delhi, but the same got destroyed and damaged in a fire there.

11. In the case of R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd., the Court again held that endorsement "subject to Anand (Gujarat) jurisdiction" did not exclude the jurisdiction of the Courts at Bombay as nothing had been incorporated that the Courts at Anand would have exclusive jurisdiction. Learned Counsel contends that suit could be instituted at Solan because the suit is for damages in breach of the contract and the cause of action also arises there.

12. Learned Counsel also relies upon the decision of the Supreme Court in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, in support of his submission that jurisdiction of the Court at Solan was not ousted. I cannot persuade myself to accept this submission. Adverting to the ouster clause of jurisdiction, the Supreme Court holds:

21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other Courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other Courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like "alone", "only" "exclusive", and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim "expressio unius est exclusio alterius"- expression of one is the exclusion of another may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed.(at p. 1246)

13. Each case is to be considered on its own facts. In the present case, it is not only the Hire Purchase Agreement which is to be considered but also the factum of illegal possession of the vehicle having been surrendered to Defendant No. 1 by Defendant No. 4, which acts admittedly were committed at Bombay and outside the jurisdiction of any Court in Himachal. The signing of the Hire Purchase Agreement cannot be considered in its isolation. In these circumstances, I hold that there is no illegality in the order passed by the learned

trial Court, returning the plaint for presentation to a Court of competent jurisdiction.

14. I have not adjudicated or pronounced upon the merits of the claim of the Plaintiff or on the correctness of the pleaded illegalities of the Defendants. The decision in this case on the question of jurisdiction will not preclude the Plaintiff from lodging/persuing any criminal action against the Defendants in accordance with law in the Court of competent jurisdiction. It shall also not be construed as a bar for instituting any claim before any Consumer Disputes Redressal Forum or any other Forum. Appeal dismissed.