

(2012) 08 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1248 of 2012

Manoj Kumar and Company

APPELLANT

Vs

General Manager Works, Hindustan Salt Ltd. and Another

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Arbitration Act, 1940 — Section 34
Arbitration and Conciliation Act, 1996 — Section 8
Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1(a), Order 7 Rule 10, 20
Contract Act, 1872 — Section 23, 28

Citation : (2013) ILR (MP) 407 : (2012) 4 MPHT 488

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : V.K. Dubey, for the Appellant; Akshay Sapre, for the Respondent

Final Decision : Dismissed

Judgement

Mr. A.K. Shrivastava, J.—Feeling aggrieved by the order dated 24-11-2009 passed by the learned 2nd Addl. District Judge, Satna in C.S. No. 4-B/2009 whereby the plaint has been returned to the plaintiff by directing him to present before the Competent Court, this appeal under Order 43 Rule 1 (a) of the CPC has been filed by the plaintiff. Facts shorn of unnecessary detail lie in a narrow compass. A suit for realisation of ` 4,68,000/- has been filed by the plaintiff/appellant in the Court of learned 2nd Addl. District Judge, Satna praying that the suit be decreed along with the interest. An application u/s 34 of the Arbitration Act, 1940 (in short "old Act") read with Section 8 of the Arbitration and Conciliation Act, 1996 was filed in the suit by the defendants/respondents praying that an agreement was executed between the parties on 25/26-7-2004, wherein there is a clause of arbitration and further it was agreed upon by the parties that if any dispute would arise, the Jaipur Court shall have the territorial jurisdiction. Hence, it was prayed that the matter be stayed by referring the dispute to the arbitrator.

2. The learned Court below by the impugned order has directed the plaintiff to file the suit before the Jaipur Court in terms of the agreement and by exercising power conferred under Order 7 Rule 10, CPC returned the plaint to the plaintiff for filing the same before the Court at Jaipur. In this manner, this appeal has been filed by the plaintiff assailing the impugned order of the Court below.

3. By placing reliance on the Full Bench decision of this Court in *Laxminarayan Vs. Food Corporation of India and Another*, it has been submitted by the learned Counsel for the appellant that after putting appearance through Counsel by the defendants, even if there is a clause of arbitration in the agreement, the same has been forfeited and waived by the defendants and therefore, Satna Court is having jurisdiction to try the suit. Learned Counsel further submits that since the cause of action arose at Satna, therefore, rightly the suit has been filed at Satna.

4. On the other hand, Shri Sapre, learned Counsel for the respondents has argued in support of the impugned order and submitted that because the parties have agreed in the agreement that Civil Court at Jaipur will have territorial jurisdiction, rightly the impugned order has been passed by learned Court below returning the plaint to the plaintiff to file it at Civil Court, Jaipur. In support of his contention, learned Counsel has placed reliance upon three decisions of the Supreme Court *Hakam Sing Vs. Gammon (India) Ltd.*, *M/s. Angile Insulations Vs. M/s. Davy Ashmore India Ltd.* and another, and *Hanil Era Textiles Ltd. Vs. Puromatic Filters (P) Ltd.*, Hence, it has been prayed that this appeal be dismissed.

5. Having heard learned Counsel for the parties, I am of the view that this appeal deserves to be dismissed.

6. So far as first objection raised by the learned Counsel for the appellant that the defendants have waived their rights to refer the matter for arbitration is concerned, suffice it to say that on the first date of hearing after the defendants were served with the summons, they filed an application u/s 34 of the old Act and also filed an application u/s 8 of the Act of 1996 to refer the matter to the arbitrator and therefore, it cannot be said that respondents/defendants have waived their rights. Hence, the Full Bench decision of this Court in *Laxminarayan (supra)*, is not applicable in the present case.

7. On the point of territorial jurisdiction Section 20, CPC is quite clear. However, in the present case, Civil Court at Satna and Civil Court at Jaipur both are having territorial jurisdiction and, therefore, in these circumstances if the parties have agreed to confer the territorial jurisdiction to Satna Court, said Clause in the agreement cannot be said to be in contravention of Sections 23 and 28 of the Indian Contract Act. The matter would have been certainly different if the Jaipur Court was not at all having any territorial jurisdiction. In that situation, it can be very well said that Civil Court at Satna is not having territorial jurisdiction. In this context, I may profitably place reliance on the decision of the Supreme Court in *Hakam Singh (supra)*, wherein it has been categorically held that it is not open to

the parties by agreement to confer jurisdiction on a Court, which it does not possess under the Code. But, where two Courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy and such an agreement would not in contravention of Section 28 of the Contract Act. In later decisions *Angile* (supra) and *Hanil* (supra), same principles have been reiterated by the Apex Court.

8. In the decision of *Angile* (supra), the Supreme Court by placing reliance on the principles laid down in its earlier decision in *A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem*, has laid down the following law :-

The controversy has been considered by this Court in *A.B.C. Laminart (P) Ltd. Vs. A.P. Agencies*. Considering the entire case law on the topic, this Court held that the citizen has the right to have his legal position determined by the ordinary Tribunal except, of course, subject to contract (a) when there 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 dispute in respect of the contract shall be subject. This is clear from Section 28 of the Contract Act. But an agreement to oust absolutely the jurisdiction of the Court will be unlawful and void being against the public policy u/s 23 of the Contract Act. We do not find any such invalidity of clause (21) of the contract pleaded in this case. On other hand, this Court laid that 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 therewith, 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 Sections 23 and 28 of the Contract Act. This cannot be understood as parties contracting against the statute. Mercantile law and practice permit such agreements.

9. By testing aforesaid principles laid down by the Apex Court on the touchstone and anvil on the given case in hand, I find that same situation has arisen here also and, therefore, all the aforesaid case laws cited by learned Counsel for the respondents are squarely applicable in the present case.

10. I have gone through the reasonings assigned by the learned Court below for returning the plaint to the plaintiff to file it before Jaipur and I do not find any illegality in it. Resultantly, this appeal fails and is hereby dismissed. No costs.