

(2003) 08 DEL CK 0049
In the Delhi High Court
Case No : CW 1730 of 2003

Mr. Mahesh Chand Gupta

APPELLANT

Vs

Assistant Collector and Another

RESPONDENT

Date of Decision : 11-08-2003

Acts Referred:

Citation : (2003) 8 AD 594 : AIR 2004 Delhi 101 : (2003) 107 DLT 778 : (2003) 71 DRJ 409

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Sudhir Kumar Makkar, for the Appellant; Malaya Chand and Sandeep Aggarwal and Mukul Chandra, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—As indicated in paragraph 1 of the writ petition itself, it is clear that the writ petition has been filed challenging, inter alia, the legality and validity of the recovery proceedings initiated by the Respondent No 1 in pursuance of the recovery certificate issued by Pradeshia Industrial and Investment Corporation of Uttar Pradesh i.e. Respondent No 2 herein. The petitioner has also prayed for a writ of certiorari or any other appropriate writ or direction for quashing the recovery proceedings and the notice of recovery dated 14.02.2003 issued by the Respondent No 1.

2. A preliminary objection has been taken by the respondents and in particular Respondent No 2 that this Court does not have the territorial jurisdiction to entertain this petition. It is Therefore necessary to first examine the question of territorial jurisdiction before proceeding with the hearing on the merits of the case.

3. There are two aspects to the present writ petition. The first is the challenge to the proceedings initiated by the Respondent No 2 under the provisions of the U. P. Public Monies (Recovery of Dues) Act, 1972. The second is the challenge to the

notice of recovery dated 14.02.2003 issued by the Respondent No 1. The latter notice has been issued by the Respondent No 1 who is an authority in Delhi. The Petitioner claims that this Court has jurisdiction to entertain the present writ petition in view of the fact that the said recovery notice dated 14.02.2003 has been issued in Delhi to the Petitioner who also resides in Delhi. The property in connection with which the said recovery notice has been issued is also situate in Delhi. Thus, it is the petitioner's contention, that part of the cause of action has arisen in Delhi and that is sufficient to clothe this Court with territorial jurisdiction to entertain the present writ petition.

4. To appreciate the arguments and counter arguments on this question of territorial jurisdiction it would be necessary to briefly narrate the background facts. The Petitioner was one of the directors in Elite Appliances Ltd which was engaged in the manufacture of kitchenware under the brand name of "Litware". The said company approached the Respondent No 2 for grant of financial assistance for its project to be located at B-202, NOIDA phase-II, district Ghaziabad, U. P. On 11.01.1994, the said company executed a loan agreement with the Respondent No 2. The loan agreement was made at Lucknow. The Respondent No 2 also gave a working capital term loan of Rs 75, 00, 000/- to the said company and an agreement in respect thereof was also executed on 8.07.1997. Clause 16 of the said loan agreement specifically provided that all the promoters viz. Shri P. C. Gupta, Shailesh Gupta, Sudesh Chand Gupta, Mahesh Chand Gupta, Smt. Sushma Gupta and Shrimati Indu Gupta shall give irrevocable guarantee for repayment of principal and interest in their personal capacity and they will not be paid any commission for such guarantee. It is to be noted that Mahesh Chand Gupta is the Petitioner in the present writ petition. Pursuant to the said agreement and particularly the working capital term loan agreement dated 8.7.1997 between the Respondent No 2 and the said company, the Petitioner, along with the other directors, executed a bond of personal guarantee on 8.7.1997 itself. This bond of personal guarantee was executed at NOIDA, U. P. Clause 3 of this bond of guarantee provided that the guarantor shall, upon demand, forthwith pay to the Respondent No 2 without demur all the amounts payable by the said company under the loan agreement on the footing and as if the loan were directly made to the guarantor and on the said terms and conditions.

5. It is pertinent to note that the working capital term loan agreement as well as the bond of personal guarantee included clauses in respect of jurisdiction. Clause 17 of the working capital term loan agreement reads as under:-

"17. Jurisdiction: All suits, claims and other legal proceedings whatsoever arising out of this agreement shall be instituted in a court or courts of competent jurisdiction at Lucknow only."

Clause 22 of the bond of personal guarantee provided as under:-

"22. For purposes of all litigation arising out of this guarantee, the jurisdiction

shall be exclusively that of the Courts at Lucknow only."

As the company allegedly did not meet with its obligations under the loan agreement as well as the working capital term loan agreement, recovery proceedings were initiated by the Respondent No 2, inter alia, under the U.P. Public Monies (Recovery of Dues) Act, 1972. As stated in the Counter affidavit filed on behalf of the Respondent No 1, a recovery certificate dated 20.3.2002 was received by the Respondent No 1 from the Collector, Lucknow, U. P. and in compliance of the same the Respondent No 1 had issued the impugned notice dated 14.2.2003 against the Petitioner for recovery of a sum of Rs 363.63 lakhs.

6. In this backdrop, it is to be decided as to whether this Court has territorial jurisdiction to entertain the present writ petition. The learned counsel appearing on behalf of the Petitioner submitted that the impugned notice of recovery dated 14.02.2003 has been received by the Petitioner at New Delhi. The Respondent No 1 issued the impugned notice at New Delhi. The Respondent No 1 has his office at New Delhi. In these circumstances, the learned counsel contends that insofar as the petitioner is concerned, the cause of action for the present petition has substantially arisen in New Delhi and accordingly this Court would have territorial jurisdiction to entertain the present petition. However, when the learned counsel for the Petitioner was confronted with the decision of a Division Bench of this Court in the case of A.K. Surekha Vs. The Pradeshia Investment Corpn. of UP Ltd. and Another and Govt. of NCT and Another, he sought to distinguish the same and submitted that the same would not be applicable to the facts and circumstances of the present case.

7. To appreciate the submission of the learned counsel for the Petitioner it would be necessary to examine the said decision of the Division Bench. In that case and almost identical clause with respect to jurisdiction was the subject matter. The clause that was under consideration of the Division Bench was as under:

"57. Jurisdiction for litigation

The borrower and PICUP agree that for all purposes of litigation relating to this agreement the jurisdiction shall be of Lucknow courts only."

(Underlining added)

The Division Bench noted the contention of the parties with regard to jurisdiction and after considering several decisions of the Supreme Court and of other high Courts concluded in the following words:-

"28. We have examined the relevant clause of the agreement and decided cases of various courts on question of territorial jurisdiction. If the principles which have been crystallised by the various courts are made applicable to the facts of this case, the conclusion would be irresistible that this Court has no territorial jurisdiction to entertain this petition because in the instant case the Respondent had entered into an agreement with the company of the Petitioner at Lucknow and in the loan agreement, it was clearly stated that for the purposes of litigation

relating to this agreement the territorial jurisdiction shall be of Lucknow courts alone."

Applying the ratio of the said decision of the Division Bench to the facts of the present case, it would be clear that clause 22 of the bond of personal guarantee executed by the Petitioner would have to be construed as limiting jurisdiction to the Courts at Lucknow alone.

8. Yet, the learned counsel for the Petitioner submitted that on the strength of the decision of the Supreme Court in the case of Union of India and Others Vs. Adani Exports Ltd. and Another, since a part of the cause of action had arisen in Delhi Therefore this Court had the territorial jurisdiction to entertain the present petition. In paragraph 17 of the aforesaid Supreme Court decision it is observed thus:-

"17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute the cause so as to empower the Court to decide the dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgments that each and every fact pleaded by the respondents in the application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned."

Obviously, no exception can be taken in respect of the aforesaid observation of the Supreme Court. However, the question in the present case is not so much as to whether this Court has any territorial jurisdiction as it is whether, despite the fact that this Court may have territorial jurisdiction, parties by agreement may have excluded this jurisdiction and conferred it exclusively on another Court. The Division Bench decision referred to above in the case of Surekha (supra), after noticing the aforesaid decision in the case of Adani Exports Ltd (supra), construed the clause as limiting jurisdiction to a particular Court. The Division Bench of this Court was clearly of the view that if there was such a clause then jurisdiction would be limited to the courts specifically indicated in the clause. In the case before the Division Bench as well as in the present case, jurisdiction was limited to the Courts at Lucknow alone. Thus, the decision of the Supreme Court in the case of Adani Exports Ltd (supra) does not in any way detract from the position that although this Court may have jurisdiction in view of the fact that part of the cause of action may have arisen within the territory over which this Court exercises jurisdiction, its jurisdiction may still be excluded by agreement. The question, Therefore, is whether such an agreement would be valid or not?

9. The learned counsel appearing for the Petitioner placed reliance on the

decision of the Supreme Court in the case of Hakam Sing Vs. Gammon (India) Ltd., and on a decision of the High Court of Orissa in the case of Pattnaik Industries Pvt. Ltd. Vs. Kalinga Iron Works and Another, in support of his contention that there cannot be any conferment of jurisdiction by agreement. We need examine only the Supreme Court decision inasmuch as the decision of the High Court of Orissa merely follows the same. In paragraph 3 of the decision of the Supreme Court in the case of Gammon (India) Ltd (supra) it is clearly observed as under:-

"It is not open to the parties by agreement to confer by their agreement 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. Such an agreement does not contravene section 28 of the contract Act."

This position is reiterated in a more recent decision of the Supreme Court in the case of A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, and, in particular, in paragraph 18 thereof in the following terms:

"Thus it is now a settled principle 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 therewithin, 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 clearly, unambiguous and explicit and not vague it is not hit by Ss. 23 and 28 of the Contract Act. This cannot be understood as parties contracting against the Statute. Mercantile law and practice permit such agreements."

From the aforesaid two decisions of the Supreme Court it is clear that where two or more competent Courts have jurisdiction to entertain a matter, if the parties by contract agree to vest jurisdiction in only one of them then such a contract or agreement would have to be held to be valid. The consequences thereof are that the Court on which jurisdiction was conferred by agreement would be the only Court entitled to exercise such jurisdiction. It is in fact not so much a question of conferment of the jurisdiction but one of election and exclusion of jurisdiction. Where two or more Courts have jurisdiction because part of the cause of action may have arisen therewithin, parties may contract to exclude jurisdiction and elect to restrict it to one or more of the courts. In the facts of the present case the Petitioner executed the bond of personal guarantee which contained clause 22 whereby it was clearly indicated that "for purposes of all litigation arising out of this guarantee, the jurisdiction shall be exclusively that of the Courts at Lucknow only". In view of the aforesaid decision of the Supreme Court, such a clause would be valid and binding on the parties. The only thing that has to be examined is whether the Courts at Lucknow would at all have jurisdiction to entertain the present petition. If it is found that the Court at Lucknow would not have jurisdiction to entertain the present petition then, in view of the aforesaid

decisions of the Supreme Court themselves, it is apparent that such a clause would not be valid. This would be so because by agreement parties cannot confer jurisdiction on a Court which otherwise would not have jurisdiction.

10. In the present case even if we assume that part of the cause of action has arisen in Delhi we would still have to examine the validity of the said clause 22 in the bond of personal guarantee. If the same is found to be valid then, jurisdiction of this Court would be excluded. The validity of clause 22 of the said bond of personal guarantee hinges on the question as to whether the Court at Lucknow would have jurisdiction *de hors* the said clause to entertain a petition of the present nature. In this context, it must be seen that the impugned notice dated 14.2.2003 has been issued by the Respondent No 1 on the basis of a recovery certificate dated 20.3.2002 issued by the Collector, Lucknow, U.P. The impugned notice has been issued in compliance of the said recovery certificate. The basis of the issuance of the impugned notice dated 14.2.2003 is the recovery certificate dated 20.3.2002 which has been issued by the Collector, Lucknow, U.P. Thus, the issuance of the recovery certificate by the Collector at Lucknow has a clear nexus with the *lis* that is involved in the present case. Moreover, from the very nature of the prayers contained in the petition it is apparent that the main thrust of the petition is with regard to seeking a direction quashing the entire recovery proceedings initiated by the Respondents and in particular the Respondent No 2. Admittedly, these proceedings were initiated in Lucknow. It is, Therefore, clear that a part of the cause of action has arisen in Lucknow and that, in terms of the decisions of the Supreme Court in the case of *Adani Exports Ltd (supra)* and *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, and *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, the Court at Lucknow would also have jurisdiction to entertain a petition of the present nature. That being the case, assuming that part of the cause of action has also arisen in Delhi, both Delhi and Lucknow would have jurisdiction in the matter. Thus an agreement limiting jurisdiction to either Delhi or Lucknow would be valid. Accordingly, this case would be fully covered by the ratio of the decision of the Division Bench of this Court in the case of *A. K. Surekha (supra)*. As such, clause 22 of the Bond of Personal Guarantee which excludes jurisdiction in any other Court other than the Courts at Lucknow would be valid and operative. Consequently, this Court would not have territorial jurisdiction to entertain the present writ petition.

11. In this view of the matter, the preliminary question of territorial jurisdiction is decided against the Petitioner. It is made clear that this Court has not expressed anything on the merits of the matter and it has only considered the question of territorial jurisdiction which has been decided as above. The writ petition is dismissed on the ground that this court does not have territorial jurisdiction to entertain it. No order as to costs.