

(1991) 08 SC CK 0018

In the Supreme Court Of India

Case No : Civil Appeals No's. 3050 and 3051 of 1991

M/s. Patel Roadways Limited, Bombay

APPELLANT

Vs

M/s. Prasad Trading Company
M/s. Patel Roadways
Ltd., Bombay Vs M/s. Tropical Agro Systems Pvt. Ltd. and
another

RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 20
Contract Act, 1872 — Section 28

Citation : (1991) ACJ 1001 : AIR 1992 SC 1514 : (1992) 94 BOMLR 882 :
(1991) 2 ComplJ 80 : (1991) 3 JT 337 : (1991) 1 MhLj 1386 : (1991) 2 OLR
342 : (1991) 2 SCALE 257 : (1991) 4 SCC 270 : (1991) 3 SCR 391 : (1991) 2 UJ
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Hon'ble Judges : S. Ranganathan, J;N.D. Ojha, J;M.S. Fathima Beevi, J

Bench : Full Bench

Advocate : T.S.K. Iyer, Rajiv Dutta and Shahid Azad, for the Appellant; D.M.
Nargolkar and -A.T.M. Sampath, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—Special leave granted

2. Since in both these appeals an identical question of law arises they are being decided by a common judgment. Facts in a nutshell necessary for appreciating the question involved may be stated. M/s. Patel Roadways (P) Limited, the appellant in both these appeals carries on the business of a carrier and transports goods on hire. It has its principal office at Bombay and branch offices at various other places which shall hereinafter be referred to as subordinate offices.

3. M/s. Prasad Trading Company, the respondent in the Civil Appeal arising out of SLP (C) No. 14660 of 1990 who is a dealer in cardamom entrusted a consignment of 850 kilograms of cardamom to the appellant at its subordinate

office at Bodinayakanur in Tamil Nadu to be delivered at Delhi. After the goods had been transported by the appellant and kept in a godown at Delhi the same got destroyed and damaged in a fire as a result whereof the consignee refused to take delivery. The respondent instituted a suit in the Court of Subordinate Judge, Periakulam within whose territorial jurisdiction the subordinate office of the appellant where the goods were entrusted for transport is situate for damages alleging that the fire was due to the negligence and carelessness on the part of the staff of the appellant.

4. M/s. Tropical Agro Systems Private Limited, the respondent 1 in the Civil Appeal arising out of SLP (C) No. 14692 of 1990 on the other hand entrusted certain packets of pesticides insured with the second respondent, M/s. Oriental Insurance Company Limited to the appellant at its subordinate office at Madras for being carried to New Delhi. According to the respondents the goods aforesaid were delivered at New Delhi in a damaged condition resulting in loss to the first respondent and a suit was instituted for recovery of the loss so sustained by the respondents in the Court of the Third Assistant Judge, City Civil Court, Madras. In both the suits the appellant inter alia took the plea in its defence, that in the contract entered into between them the parties had agreed that jurisdiction to decide any dispute between them would be only with the courts at Bombay and consequently the courts in Madras where the two suits referred to above had been instituted had no jurisdiction: This plea was repelled in both the suits by the trial court. The order of the trial court in each of the two suits was challenged by the appellant before the High Court of Judicature at Madras u/s 115 of the CPC (hereinafter referred to as the Code). This challenge having failed in each of the civil revisions, the appellant has preferred these civil appeals. The question which arises in both these civil appeals, therefore, is as to whether in view of the relevant clause in the contract between the parties the courts at Bombay alone had jurisdiction and the jurisdiction of the courts at Madras where the two suits were instituted was barred.

5. It has been urged by the learned Counsel for the appellant that apart from the courts within whose territorial jurisdiction the goods were delivered to the appellant for transport, the courts at Bombay also had jurisdiction to entertain a suit arising out of the contract between the parties in view of the Explanation to Section 20 of the Code inasmuch as the principal office of the appellant was situate in Bombay. According to learned Counsel for the appellant since courts at two places namely Madras and Bombay had jurisdiction in the matter, the jurisdiction of the courts in" Madras was ousted by the clause in the contract whereunder the parties had agreed that jurisdiction to decide any dispute under the contract would be only in the courts at Bombay. Consequently the courts where the two suits were instituted had no jurisdiction to entertain them and the trial court in each of the two cases as well as the High Court erred in law in taking a contrary view

6. Having heard learned Counsel for the parties we find it difficult to, agree with

this submission. For the sake of convenience Section 20 of the Code except the illustrations is reproduced hereunder:

20. Other suits to be instituted where defendants reside or cause of action arises: Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction:

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, at personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation: A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

7. In *Hakam Sing Vs. Gammon (India) Ltd.*, it was held that "corporation" referred to in Section 20 meant not only a statutory corporation but also a company registered under the Indian Companies Act. It was also held that it is not open to the parties by agreement to confer jurisdiction on any court which it did not otherwise possess under the Code. But where two courts have jurisdiction under the Code 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 nor does such an agreement contravene Section 28 of the Contract Act. In that case also there was a Clause in the agreement being Clause No. 13 which provided that notwithstanding the place where the work under the contract was to be executed the contract shall be deemed to have been entered into between the parties at Bombay and the court in Bombay alone shall have jurisdiction to adjudicate thereon. The trial court had held that the entire cause of action had arisen at Varanasi and the parties could not by agreement confer jurisdiction on the courts at Bombay which they did not otherwise possess. In a civil revision filed by the respondent the Allahabad High Court held that the courts at Bombay had also jurisdiction and in of Clause 13 of the agreement the jurisdiction of the courts at Varanasi stood ousted. It is in the appeal against the said judgment of the High Court that the propositions of law referred to above were laid down by this Court. It was held that since the respondent had its head office at Bombay the courts at Bombay also had jurisdiction by virtue of Section 20 of the Code read with its Explanation and in view of Clause 13 of the agreement between the parties the courts in Bombay alone had jurisdiction in the matter. The appeal was accordingly dismissed. This view was reiterated by

this Court in *Globe Transport Corporation Vs. Triveni Engineering Works and Another*, .

8. Reliance has been placed by learned Counsel for the appellant on these two decisions and if it can be held that the courts at Bombay also had jurisdiction in the two suits referred to above the judgments appealed against will have to be set aside on the basis of these decisions. The question, however, is as to whether in any of these two suits the courts at Bombay also had jurisdiction apart from the courts within whose jurisdiction the goods were entrusted to the appellant for purposes of transport. Having given our anxious consideration to the matter we are of the opinion that the courts at Bombay in these two cases did not at all have jurisdiction and consequently the agreement between the parties conferring exclusive jurisdiction on courts at Bombay is of no avail.

9. Clauses (a) and (b) of Section 20 *inter alia* refer to a court within the local limits of whose jurisdiction the defendant *inter alia* "carries on business". Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently Clause (c) is not attracted to the facts of these cases. What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

10. Here we may point out that the view which we take finds support from a circumstance which, in our opinion, is relevant. Section 20 of the Code before its

amendment by the CPC (Amendment) Act, 1976 had two Explanations being Explanations I and II. By the Amendment Act Explanation I was omitted and Explanation II was renumbered as the present Explanation. Explanation I so omitted read as hereunder:

Explanation I: Where a person has a permanent dwelling at one place and also temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

11. This Explanation dealt with the case of place of residence of the defendant and provided with regard to a person having a permanent dwelling at one place and also temporary at another place that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. The language used in Explanation II on the other hand which is the present Explanation was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places the language used in Explanation II would have been identical to that of Explanation I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place. The marked difference in the language of the two Explanations clearly supports the view which we have taken with regard to the interpretation of the present Explanation to Section 20 of the Code which was Explanation II earlier as indicated above.

12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of Clauses (a), (b) and (c) together with the first part of the explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under Clause (c) (irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose of the explanation. The explanation is really an explanation to Clause (a). It is in the nature of a clarification on the scope of Clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such

place. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of Clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the explanation, would have read ' and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place'.

13. As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under Clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one.

14. There may be only one extra-ordinary situation in which this interpretation may cause an apparent anomaly. This is where the plaintiff has also his/its place of business at the same place as the corporation but the cause of action has arisen at some other place. The above interpretation would preclude him from filing a suit in that place of business common to both parties and compel him to go to a court having jurisdiction over the place where the cause of action has arisen. But this is not really a hardship because such plaintiff must have had some nexus or connection with the place since some part of the cause of action had arisen there; if he can have dealings with the corporation at such a place giving rise to the cause of action, there is no reason why he should find it disadvantageous or difficult to file a suit at such place. Equally, the corporation, having a subordinate office at the place, will suffer no disadvantage.

15. In this view of the matter since in the instant two cases Clause (c) is not attracted to confer jurisdiction on courts at Bombay and the appellant has admittedly its subordinate offices at the respective places where the goods in these two cases were delivered to it for purpose of transport the courts at Bombay had no jurisdiction at all to entertain the suits filed by the respondents and the parties could not confer jurisdiction on the courts at Bombay by an agreement. Accordingly no exception can be taken to the findings in this behalf recorded by the trial court and the High Court in these two cases.

16. In the result, we find no merit in any of these two appeals and they are accordingly dismissed but in the circumstances of the case the parties shall bear their own costs.