

(2002) 07 OHC CK 0059
In the Orissa High Court
Case No : Civil Revision No. 8 of 2002

Prakash Roadlines Ltd.

APPELLANT

Vs

Shree Jagannath Weavers' Co-operative Spinning Mills Ltd.
and Others

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 2003 Ori 17 : (2002) 2 OLR 358

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : Padmaja Patnaik and S.R. Patnaik, for the Appellant; B.S. Das and A.K. Panigrahi, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—In this revision application u/s 115 of the CPC ("C.P.C." hereinafter), the question falls for determination is--whether the conditions incorporated in the consignment note can confer jurisdiction on one Court where two or more Courts have the Jurisdiction to try a suit or proceeding?

2. The facts leading to the present application are that O.P. No. 1, M/s. Shree Jagannath Weavers' Co-operative Spinning Mills Ltd. at Nuapatna under Tigriria Police Station in the district of Cuttack, has filed Money Suit No. 39 of 1999 in the Court of the Civil Judge (Senior Division), Athagarh, for recovery of a sum of Rs. 1,66,000/- towards loss of goods and a further sum of Rs. 50,000/- towards damages.

3. The plaintiff-O.P. No. 1 on 21-9-1994 booked a consignment of 70. bales of cotton yarn with the transport company of defendant No. 1, namely, Prakash Headlines Ltd. for delivery at Kanchipuram in the State of Karnataka. On 1-11-1994 when the consignment reached Kanchipuram, it was found that out of 70 bales of cotton yarn, 20 were damaged for which the consignee did not

receive the same and thereby the plaintiff sustained a loss to the tune of Rs. 1,66,000/-. Ultimately the plaintiff filed the present suit against the defendant-transporter and its functionaries for recovery of the amounts indicated above.

4. According to the petitioner, Prakash Roadlines Ltd. is a registered company having its registered office at Kalasi Palayam in Bangalore and its principal business is transportation of goods. It has an area office at Feet Road in Visakhapatnam in Andhra Pradesh, the Area Manager of which, i.e., defendant No. 3 (the present petitioner), is one of the principal officers of the company having jurisdiction over Orissa. The company has got various branches throughout the country including the one at Cuttack. After the suit was filed, defendant No. 3, the present petitioner, filed written statement taking various pleas including the one that the Civil Judge (Senior Division), Athagarh, has no jurisdiction to try/entertain the suit as the plaintiff accepted the terms and conditions set out in the consignment note which stipulated that the Courts in Bangalore City alone will have the jurisdiction in respect of all claims and matters arising in relation to the consignment of goods entrusted to the company. After the trial Court, framed issues including an issue under issue No. 4 relating to jurisdiction of the Court to try the suit, defendant No. 3 -petitioner filed a petition under Order 14, Rule 2, CPC to treat and decide issue No. 4 as a preliminary issue. The plaintiff-opposite party No. 1 filed objection to the aforesaid petition.

5. The trial Court after hearing both the sides on the aforesaid preliminary issue came to the conclusion that there was no legal problem to adjudicate the suit in this Court and that the suit would continue at the place where the goods were entrusted and it could not be filed in the Court enumerated in the agreement and accordingly rejected the petition filed by defendant No. 3. The aforesaid order is under challenge in the present revision.

6. During the course of argument, learned counsel for the petitioner places reliance on a decision of the Apex Court in M/s. Shriram City Union Finance Corporation Ltd. v. Rama Mishra 2001 (1) Ori LR 164 (SC), in which a similar question came up for consideration and the Court dealing with the provision of Section 28 of the Contract Act, 1872 observed as follows :--

"..... A party is bound either by provision of the Constitution, statutory provisions or any rule or under terms of any contract which is not against the public policy. It is open for a party for his convenience to fix the jurisdiction of any competent Court to have their dispute adjudicated by that Court alone....."

Relying on the aforesaid decision, the counsel for the petitioner forcefully submits that here is a case where both the parties have fixed the jurisdiction, on a competent Court in Bangalore City, which is not against the public policy and, therefore, the parties are bound by the realm of the agreement and the suit should be filed in a competent Court in Bangalore City. The dispute involved in the aforesaid decision arose out of an arbitration proceeding and as per Clause

34 of the Agreement, it was expressly agreed by and between both the parties that any dispute arising out of the agreement would be filed and referred to the Courts in Calcutta for the purpose of Jurisdiction. In the present case the petitioner relied upon the consignment note in which, apart from other terms and conditions, there is a condition that the Courts in Bangalore City will have jurisdiction over the dispute, if any, arising between the parties.

7. In this connection I may refer a decision of this Court in Pattnaik Industries Pvt. Ltd. Vs. Kalinga Iron Works and Another, , which dealing with a similar question relied upon a number of decisions of the Apex Court and various High Courts including the decision in Messrs Black Sea State Steamship Line v. The Minerals and Metals Trading Corporation of India Ltd. (1970) 1 Mad LJ 548, and held as follows :--

"8. The principle that can be called from the aforesaid decisions is that the agreement between the parties does not oust the jurisdiction of the Court. It may operate as an estoppel against the parties but it cannot deprive the Court of its power to do justice. Ordinarily the Court would have regard to the choice of the parties. Where, however, the Court whose Jurisdiction has been ousted is satisfied that the stipulation would operate harshly, is oppressive in character, Inequitable or unfair, for the ends of justice, it can relieve the party of the bargain. The ouster clause can be ignored."

8. In the present case the goods which belonged to the plaintiff were booked within the jurisdiction of the Civil Judge (S.D.), Athagarh, and if the stipulation in the consignment note is enforced, the same would operate harshly and is oppressive in character and it would be inequitable to drive the plaintiff to get its dispute tried at Bangalore, even though the transport company is having a branch office at Cuttack and running its business through that branch office.

9. That apart, the next question that arises for consideration is whether the condition stipulated in the consignment note can oust the jurisdiction of the Court which admittedly has the jurisdiction, i.e., the Court at Athagarh. In this regard reliance is placed on a decision of this Court in The Paradeep Port Trust Vs. Hindusthan Mercantile Transport Corporation and Another, which dealt with the aforesaid question raised by Smt. Patnaik, learned counsel for the petitioner, that since the consignment note contained the clause regarding the jurisdiction, the proper Court would be the Court at Bangalore. In the aforesaid decision, this Court relied upon Pattnaik Industries Pvt. Ltd. Vs. Kalinga Iron Works and Another, as well as the case in Surajmall Shiwbhagawan Vs. Kalinga Iron Works, and came to the following conclusion (at p. 108, Para 6 of AIR) :--

"..... In view of the principles indicated above, the view taken by the Court below that merely because of the existence of Clause 25 of the consignment note. Its jurisdiction stands ousted is not sustainable. Further, in this case, no independent material has been produced to show that there was an agreement between the parties to this effect. Admittedly, no evidence has been

laid on the issue and excepting the consignment note, no other document has been produced. Since the very existence of the agreement itself has not been established, the Court below erred in assuming that the parties had agreed to abide by Clause 25 simply because it was printed on the reverse of the consignment note. The onus lies on the party who pleads ouster of jurisdiction of a competent Court to establish by independent evidence that there was a bilateral agreement between the parties vesting jurisdiction in one Court or excluding the same In the other."

10. In this case also, save and except the consignment note, there is nothing to indicate that there is a bilateral agreement entered into between the parties agreeing or the question of jurisdiction which was done tn Shriram City Union Finance Corporation's case, (2001 (1) Ori LR 164) (supra) wherein a specific clause was incorporated in the agreement regarding the jurisdiction of the Court.

11. As I find in the present case, since the goods were booked within the jurisdiction of the trial Court and the petitioner is having a branch office at Cuttack, the petitioner will never suffer any disadvantage if the suit is tried at Athagarh. That apart, the condition Incorporated in the consignment note cannot be attracted to confer jurisdiction on the Court at Bangalore. This being the factual and legal position, I am not inclined to interfere in the Impugned order.

12. The revision application is accordingly, dismissed. No costs.