
(1982) 03 MAD CK 0064
In the Madras High Court

Prakash Roadlines (P.) Ltd.

APPELLANT

Vs

United India Insurance Co., Ltd. and Another

RESPONDENT

Date of Decision : 12-03-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (1983) ILR (Mad) 177 : (1983) 96 LW 440 : (1984) 1 MLJ 167

Hon'ble Judges : V. Balasubrahmanyam, J

Bench : Division Bench

Judgement

V. Balasubrahmanyam, J.—This case raises a question of jurisdiction u/s 20, CPC that is to say, in which Court the suit should be instituted ; whether in a Court at Madurai or in the Court at Bangalore? The suit was actually instituted in the Sub-Court, Madurai. The contention of the defendant is that the one and only Court having jurisdiction to entertain the suit is the appropriate Court in Bangalore. The question has to be decided in the light of certain facts.

2. The Tamil Nadu Dairy Development Corporation, Madurai Unit which has its office at Madurai, entrusted with the defendant--Prakash Road-lines (Pte) Ltd. Bangalore, 360 bags of milk powder to be carried by the defendant-lorry and delivered over to the consignee at Calcutta. The defendant took delivery of the goods and carried them in its lorry. But, the goods were damaged in transit and became unfit for human consumption when the bags were delivered at Calcutta to the consignee. The Tamil Nadu Dairy Development Corporation, along with the Insurance Company, with whom the goods were insured, then filed the suit in the Sub-Court, Madurai for recovery of a sum of Rs, 1, 390,53.91 as damages from the defendant.

3. The defendant opposed the suit on many grounds, one of which was that under an agreement, which is binding on the consignor, the Tamil Nadu Dairy Development Corporation, any claim or matter arising under the consignment of goods entrusted with the defendant for transport can only be laid in the Courts in Bangalore city and in no other Court. This agreement was stated to be in the

form of a printed condition in the goods consignment note which was given to the Tamil Nadu Dairy Development Corporation at the time when the goods were received by the defendant-company for transportation.

4. The issue as to jurisdiction was tried by the Sub-Court as a preliminary issue. In the plaint it was admitted by the plaintiffs that the defendant-company had its registered office in Bangalore City. However, in regard to the consignment Bangalore city did not enter into the discussion at all, because the delivery for the consignment to the defendant for carriage was at Madurai, the consignment was to be delivered over to the consignee at Calcutta, and the route did not cover Bangalore on the way. In terms of the language of Section 20, Civil Procedure Code, no part of the cause of action accrued in Bangalore, whereas, a part of the cause of action did accrue in Madurai, where the goods were entrusted to the defendant. This was the basis, on which the institution of the suit in the Sub-Court, Madurai, was sought to be sustained by the plaintiff. It was also urged on behalf of the plaintiff that the printed term in the goods forwarding-note which the defendant issued, to the extent that it stipulated for all suits being filed in Bangalore irrespective of the place of accrual of the cause of action, must be regarded as being opposed to public policy and not enforceable in a Court as contract. This last contention was accepted by the learned Subordinate Judge and he recorded a finding on the issue to the effect that the Sub-Court, Madurai, had jurisdiction to try and determine the suit.

5. The defendant has brought this revision before this Court against the decision of the Sub-Court. Mr. Natarajan, learned Counsel for the defendant, submitted that the learned Subordinate Judge has not properly instructed himself in the law in rendering his decision. Learned Counsel submitted that the defendant company has its registered office at Bangalore and it has a branch office at Madurai. Besides, in this particular suit consignment, the delivery of the goods for carriage was entrusted to the defendant at Madurai. The result was that u/s 20 of the CPC suit may be instituted against the defendant either in Bangalore where the defendant's branch registered office was situate or at Madurai, where the defendant's branch office was situate and where part of the cause of action had arisen. In this situation, it was urged by the defendant that if there was an agreement between the parties that of the two places, namely Bangalore on the one hand and Madurai, on the other the suit should be filed only at Bangalore, the contractual stipulation in that regard can by no means be regarded as opposed to public policy or unenforceable for, Bangalore was not a place excluded u/s 20.

6. Learned Counsel relied on a decision of the Supreme Court in *Hakam Sing Vs. Gammon (India) Ltd.*, That case was a suit for breach of a construction contract. The terms and conditions of the contract between the parties were set out in a number of clauses in a document called "written tender". One of the clauses in the written tender, clause 13, related to the Court which, according to the parties, would alone have jurisdiction to adjudicate on the disputes between the

parties. It was laid down in this clause that notwithstanding the place where the work under the contract was to be executed, it was agreed between the parties that the contract shall be deemed to have been entered into in the city of Bombay alone and the Courts of law in the city of Bombay alone shall have jurisdiction to adjudicate on the disputes. The written tender also had a clause which incorporated an agreement for arbitration. The controversy in that case was as to which was the Court in Which the agreement for arbitration had to be filed. The jurisdiction of a Court under the Arbitration Act has to be determined on the basis of the jurisdiction of the Court in regard to the institution of regular suits. Before the Supreme Court it was urged that clause 13 of the written tender in which the parties had agreed to abide by the exclusive jurisdiction of the Bombay Court was an unenforceable contract. The Supreme Court repelled this contention. They pointed out if one were to look at the matter purely with reference to Section 20, Civil Procedure Code, Courts in Bombay would have jurisdiction, in the ordinary course, to entertain a suit if the defendant should ordinarily reside within the local limits of the jurisdiction of the Bombay Courts. The defendant in that case was carrying on business in Bombay. Apart from this consideration relating to the defendant's place of residence being Bombay, the Supreme Court relied on clause 13 of the written tender in which the contract was deemed to have been entered into in Bombay. In these circumstances, Courts in Bombay could have jurisdiction even in the ordinary course. The Supreme Court, therefore, had no difficulty in holding that any agreement investing the Courts in Bombay with exclusive jurisdiction cannot be rejected as unenforceable on grounds of public policy.

7. This judgment of the Supreme Court was pressed into service by the learned Counsel for the defendant in this case. It is necessary to point out that the whole context of the discussion of the Supreme Court in that case and similar discussion in other reported cases arising under similar circumstances, is provided by the suit arising out of a contractual relationship, either on the basis of breach of contract or in connection with enforcement of some term in the contract. In the context of contractual relationships in which there are mutual rights and obligations settled by the terms of the operative contract, it is quite understandable that parties should restrict the matter of institution of suits to a single place, for purposes of convenience. The question whether an agreement between the parties in regard to the place of institution of a suit is or is not a contract opposed to public policy in the sense that it goes against Section 20, Civil Procedure Code, raises a controversy which possesses meaning and content only in cases where the very relationship between the parties arises out of contract, and the suit or other legal proceeding happens to be an offshoot of either breaches of contract or causes of action arising out of the performance of the contract. For, it is difficult to conceive of parties entering into a contractual relationship on one subject and one subject alone, namely, the subject of the jurisdiction of Courts. The jurisdiction of Courts as a subject-matter of agreement between the parties is contemptible only as part and parcel of comprehensive

contractual terms dealing with various mutual rights and obligations of parties in the gross. In the context of such relationships, the judgment of the Supreme Court cited above fits in perfectly, laying down the effect of contract as to the forum of action in the context of Section 20, Civil Procedure Code. The choice of forum in the matter of institution of suits either in one Court or in another Court arises u/s 20 where the defendant ordinarily resides in more than one place, or where the cause of action arises in several places. In such cases there is scope for the interplay of contract between the parties and, indeed, such a contract must be most welcome to decide which of the Courts will have jurisdiction. In such a case, when the agreement between the parties does not name an entirely strange Court, but; takes its choice from Section 20 and does not go beyond that section, the contract will usually be respected by the Courts. But this practice can hardly extend to other jural relationships between the litigants.

8. In the present case, the suit has been instituted by the plaintiffs against the defendant on a cause of action which does not arise out of any contractual relationship between the parties. It is necessary to point out that what was averred in the plaint was that the goods were entrusted to the defendant not under a contract of affreightment, but in virtue of the defendant being a common carrier, bound under the Carriers Act to carry goods from place to place for persons without any discrimination. Before the Carriers Act came into the statute book, the obligation of a common carrier as well as the interrelation between the carrier and the consignor and consignee, were all governed by the common law. The rules of common law have been incorporated to a large extent in the Carriers Act. Whether the carriage of goods by common carriers is governed by the statute law or by the common law, certainly the relationship between the consignor and consignee, on the one hand and the common carrier on the other, is not a contractual relationship. It is true that common carriers in this country have a habit of printing in bills of affreightment, forwarding notes, or goods consignment notes, certain conditions relating to the exclusive forum of jurisdiction of suits and other proceedings. It is commonly assumed that these terms are contractual terms and binding on the parties as such. If the relations between the common carrier and the parties at both ends of carriage of goods are not relations governed by contracts, it would be quite curious to suppose that the term found in the goods consignment note represents a contract in itself. To entertain any such notion would be to hold that amidst a statutory or common law obligation or relationship, there can be an island of contract whose exclusive concern is the jurisdiction of Courts and nothing else besides. It is needless to say that such a contract cannot exist because there can be no consideration spelled out for such a contract. We can very well understand such a term in a bigger contract where mutual rights and obligations of parties to the contract are drawn up, the jurisdiction of the Courts figuring as only one item in the terms of the contract. But in a case, such as the present, where the parties are drawn to each other, not under the terms of the contract, but under the terms of the Carriers Act, any stipulation by the carrier can hardly be regarded as an exercise

in contractual obligations. Therefore, I am inclined to hold that the decisions u/s 20 of the Code relating to contracts which tend to fix exclusive jurisdiction in one Court rather than the other cannot be extended to suits based on obligations arising under the Carriers Act. If a contract in such circumstances cannot be within the contemplation of the law at all, it follows that the stipulation in the goods consignment note can have no binding effect, least of all, any overriding effect over the provisions of Section 20 of the Code.

9. The defendant's contention is not that under the ordinary law, no suit can be filed in the Sub-Court, Madurai. The provision is unarguable because not only there is a branch office of the defendant which brings the case within the Explanation of Section 20, but it is also indisputable that part of the cause of action for the suit accrued within the local limits of the jurisdiction of the Sub-Court, Madurai. It follows, therefore, that when the suit was instituted in the Sub-Court, Madurai, it was instituted in a Court of competent jurisdiction, competent in every way u/s 20 of the Code.

10. For the reasons stated above, this civil revision petition has no merits and is dismissed. There will, however, be no order as to costs.