

**(1992) 10 MP CK 0007**  
**In the Madhya Pradesh High Court**

Raigarh Judge and Textile Mills Ltd.

APPELLANT

Vs

New Haryana Transport Co.

RESPONDENT

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**Date of Decision :** 14-10-1992

**Acts Referred:**

Contract Act, 1872 — Section 28

**Citation :** (1994) 1 ACC 252

**Hon'ble Judges :** P.P. Naolekar, J

**Bench :** Single Bench

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## Judgement

P.P. Naolekar, J.—The Trial Court returned the plaint for presentation to the proper Court at Calcutta, exercising the powers under Order 7, Rule 10 of the CPC and aggrieved by this order the plaintiff/appellant has filed the present appeal.

2. The suit, as it is filed, is for recovery of Rs. 39,040/- and the allegation is that on 25.12.82, 16 bales of gunny bags were given to the respondent/defendant for transportation in his truck from Raigarh to Raipur; the goods so consigned to the respondent were not delivered to the appellant/plaintiff inspite of notice and the goods are said to have been retained by the respondent/defendant and, therefore, the suit was filed for recovery of the value of the goods so assigned to the defendant/respondent.

3. The respondent filed its written statement, amongst other defences raised, an objection to the jurisdiction of the Court at Raigarh to try the suit was taken by the defendant on the ground that on the top of the consignment note (Ex. P-1) it is written: "All disputes subject to Calcutta jurisdiction only" and, therefore, it is Calcutta Court alone which can adjudicate and decide the dispute between the parties arising out of the contract entered into between the parties, i.e. the plaintiff and the defendant. It may be mentioned here that no objection to the jurisdiction of the Court was raised on account of the term No. 18 in Ex. P/2.

4. As per the pleadings of the parties, it is clear that the goods were assigned at

Raigarh for transportation to Raipur, delivery was self and the plaintiff and the defendant have their principal place of business at Calcutta and branches at Raigarh. Thus, ordinarily the suit could have been filed at Raigarh, Raipur or at Calcutta. It is well-settled that the parties by mutual agreement can choose one out of several Courts having jurisdiction to try the dispute and such a contract is not contrary to public policy and does not contravene Section 28 of the Contract Act. In *Hakam Sing Vs. Gammon (India) Ltd.*, it has been held by the Supreme Court that the parties cannot by agreement confer jurisdiction on Court not possessed by it under the Code of Civil Procedure. But the agreement that one of the Courts having such jurisdiction alone shall try dispute is not contrary to public policy and does not contravene Section 28 of the Contract Act. Therefore, if the parties have agreed, whereby out of the three Courts having jurisdiction to try the dispute between the parties to confer jurisdiction to Calcutta Court only, then such an agreement will not be violative of the Contract Act and will be enforceable.

5. The plaintiff can either bring a suit for breach of contract entered into between the, parties, and in that eventuality it is the Court on which jurisdiction is conferred under the contract alone normally will have jurisdiction to adjudicate the matter, or to bring a suit in torts. The plaintiff has an authority to choose the cause of action either for breach of contract under the torts. The plaintiff's choice is not controlled by the defendant. The plaintiff is free to choose a Court, having jurisdiction, to be the Court of competent jurisdiction to institute the suit. If the plaintiff brings an action in torts, which is independent of the cause of action for breach of contract, the plaintiff is not bound by the terms of the agreement. However, if the plaintiff chooses to bring a suit for breach of contract, then he is bound by the terms of the agreement. One of such term may be of selecting one of the Courts having jurisdiction to try the cause of action.

6. According to me, the plaintiff has based his case for value of the goods wrongfully detained by the defendant/respondent which is an act of conversion. An act of conversion may be committed:

1. When property is wrongfully taken.
2. When it is wrongfully parted with.
3. When it is wrongfully sold.
4. When it is wrongfully retained.
5. When it is wrongfully destroyed.
6. When there is a denial of the lawful owner's right.

A conversion is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it In *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, the Supreme Court has held that:-

A conversion is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. If a carrier or other bailee wrongfully and mistakenly delivers the chattel to the wrong person or refuses to deliver it to the right person, he can be sued as for a conversion. Every person is guilty of a conversion, who without lawful justification, deprives a person of his goods by delivering them to some one else so as to change the possession.

7. When a person holds a possession of another's chattel and refuses to deliver it or fails to deliver it inspite of notice, the act will amount to assertion of a right inconsistent with the general domain over it, and the use which at all times, and in all places, he is entitled to make of it, and consequently amounts to an act of conversion. An act of conversion is an act of tort and the plaintiff can base his case on torts of conversion which is torts to immovable property. In *Sukul Brothers v. H.K. Kavarana* AIR 1958 Cal 1730 the learned Judges Justice S.B. Das Gupta and R.S. Bachawat, JJ. have held:

The duties and obligations of a common carrier are governed by the English Common Law as modified by the provisions of the Indian Carriers Act. By the common law a common carrier is bound to deliver the goods within a reasonable time and to insure their safety during their carriage and until delivery; act of God and the King's enemies only excepted. The obligation is not founded upon contract, but on the exercise of public employment for reward. The duty arises irrespective of the contract. The owner of the goods may sue the common carrier for breach of the common law duty in an action of tort.

Where there is a contract between the owner and the carrier the owner may sue the carrier either on contract or in tort at his option.

8. As the plaintiff brought the suit in torts for recovery of the value of the property delivered to the defendant at Raigarh for transportation of the same to Raipur, the Court at Raigarh has jurisdiction to entertain the suit.

9. In the circumstances of the case, it is not necessary for me to decide the question whether the printed term contained at the top of the agreement conferring jurisdiction to one of the Courts out of several Courts having jurisdiction and whether it is the integral term forming part of the contract or whether if such a term is incorporated in the contract will it bound the parties to the agreement and will act as estoppel against the parties and not against the Court.

10. As a result thereof, I hold that the order passed by the Trial Court returning the plaint for presentation to the proper Court, i.e. at Calcutta, is illegal and set aside. The matter is pending in the Court of the First Addl. Judge to the Court of District Judge, Raigarh since 1983. The parties have already led evidence. I, therefore, direct both the parties to appear in the Court of the First Addl. Judge to the Court of District Judge, Raigarh on 6.11.1992. The Trial Court is directed to decide the matter on merits in accordance with law. The records of the Trial

Court be sent back forthwith. In the circumstances of the case, the parties shall bear their own costs.