

**(1979) 01 MAD CK 0057**  
**In the Madras High Court**

Renown Biscuit Company

APPELLANT

Vs

Kamalanathan

RESPONDENT

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**Date of Decision :** 25-01-1979

**Acts Referred:**

Contract Act, 1872 — Section 28

**Citation :** (1979) 92 LW 556 : (1979) 2 MLJ 377

**Hon'ble Judges :** M. M. Ismail, J

**Bench :** Division Bench

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**Judgement**

M. M. Ismail, J.—The defendant in O. S. No. 1317 of 1975 on the file of the Court of the District Munsif, Coimbatore, is the petitioner herein. The suit was filed by the respondent herein for recovery of a sum of Rs. 2,500 on the basis of the appointment of the plaintiff-respondent as the sole selling distributor in the biscuits manufactured by the petitioner in the Districts of Coimbatore and Nilgiris on 5th July, 1961, and on account of the transactions that took place between the parties, the plaintiff-respondent claiming to be entitled to the amount in question. The petitioner raised a preliminary objection to the jurisdiction of the Court of the District Munsif, Coimbatore. The petitioner's case was that Clause 13 of the agreement entered into between the parties contemplated the Courts situate in the City of Bombay alone having jurisdiction to entertain any dispute between the parties. The existence of such a Clause in the agreement is not disputed. Equally, as part of the cause of action arose within the Court of the District Munsif, Coimbatore, there is no dispute that that Court has jurisdiction. In view of this, the petitioner's case is that notwithstanding the fact that in law the Court in Coimbatore has jurisdiction, in view of the agreement entered into between the parties, the respondent should have filed the suit only in the Court in Bombay, and, therefore, the Court in Coimbatore did not have jurisdiction to entertain the suit in question. The learned District Munsif held that he had jurisdiction to entertain the suit, therefore, decided the question of jurisdiction in favour of the respondent herein. It is this order which is sought to be revised in the present petition.

2. There is no controversy on the following facts: (1) The Court in Bombay has jurisdiction because the petitioner-defendant resides in Bombay. (2) The Court in Coimbatore has jurisdiction because a part of the cause of action arose there. (3) The parties, in" Clause 13 of the agreement entered into between them, have agreed that no Court other than the Courts in the City of Bombay shall have jurisdiction to decide any dispute that may be arising between the parties. In such a context, the general rule is no doubt that the plaintiff-respondent will have to file the suit in the Court in Bombay. However, the Gujarat High Court in *Snehalkumar Sarabhai Vs. Economic Transport Organisation and Others*, . had struck a new path. In paragraph 3 of the judgment, it was stated that,

While parties can lawfully enter into an agreement to restrict a dispute to a particular Court having jurisdiction, that stipulation though valid cannot take away the jurisdiction of the Court which admittedly has jurisdiction. The ouster Clause can operate as estoppel against the parties to the contract. It cannot tie the hands of the Court and denude it of the power to do justice. It is no doubt true that ordinarily Courts would respect the agreement between the parties which is born out of the meeting of their minds and out of considerations of convenience. But the Courts are not obliged to do so in every case. In a case like the present where the claim is of Rs. 1,207-92 to oblige the plaintiff to go to Calcutta merely for the pleasure of respecting the stipulation embedded in the contract between the parties is to deny justice. A new approach to this question deserves to be made for the ouster Clause is calculated to operate as an engine of oppression as a means to defeat the ends of justice for in a case like the present it would be oppressive to drive the plaintiff all the way to Calcutta to recover a small sum of Rs. 1,208. The costs of travelling and litigation will far exceed the stakes involved, and even a rightful claimant would be obliged to abandon his claim rather than incur greater expenditure than the sum involved in order to seek redress. In this back-drop the question assumes importance whether the stipulation to confirm the jurisdiction in one of the Courts robs the excluded Court of its power to try the suit. Now such a stipulation may be legal and binding on parties. That, however, does not mean that it divests the Court of its jurisdiction. The plaintiff cannot insist that a Court other than the stipulated Court should try the suit. But the court on its part is not bound by the stipulation. The stipulation can be ignored by the excluded Court which otherwise possesses jurisdiction if it is considered to be oppressive having regard to the surrounding circumstances including the stakes involved.

It is this judgment of the Gujarat High Court that was followed by the learned District Munsif in the present case. As soon as this judgment was cited, I asked the learned Counsel for the petitioner to bring to my notice any authority or principle which will render the decision of the Gujarat High Court erroneous. The learned Counsel, even after taking an adjournment was not able to bring to my notice any authority or principle to that effect. All that he contends, is that the Courts have held that when the parties so agreed to oust the jurisdiction in law and vests the jurisdiction in another Court, which also has jurisdiction, then the

parties must go to that Court only. But that is not a principle which can be said to render the new approach referred to by the Gujarat High Court erroneous. If every new approach has to be frowned upon solely on the ground that it is new, there will be neither growth nor progress. Under the circumstances, in the absence of anything directly contrary to the decision of the Gujarat High Court. I do not see any justification for following it.

3. The matter could be looked at from another point of view also. What is involved in the present case is not the total want of jurisdiction on the part of the Court of the District Munsif, Coimbatore. But for the contract entered into between the parties, there is no dispute that under the CPC the learned District Munsif, Coimbatore, will have jurisdiction since a part of the cause of action arose within his jurisdiction. In such a context, when the plaintiff is to be compelled to file a suit in the Court of Bombay, it is not because that the Court in Coimbatore did not have jurisdiction, in law, but the parties having entered into a contract between them, they are compelled to stick to the terms of the contract. As pointed out by a Bench of this Court in *Nanak Chand Shadurain Vs. The Tinnelvely-Tuticorin Electric Supply Co. Ltd.*, Calcutta, .

A marked distinction exists between cases in which Courts lack jurisdiction to try the cases and control jurisdiction is irregularly exercised by Courts. In the former case the Court ought not to have entered upon trial of the suit; in the latter it could have avoided trial, but necessarily not. Competency of Court to try an action goes to the root of the matter and when such competence is not found, it has no jurisdiction at all to try the case. But objection based on jurisdiction is a matter which parties could waive and it is in this sense if such jurisdiction is exercised by Courts, it does not go to the core of it so as to make the resultant judgment a nullity. Equally well-settled is the proposition that where there are two or more competent Courts which can entertain a suit consequent upon a part of the cause of action having arisen within the jurisdiction of each of these Courts, parties to the concerned transaction can contract to vest jurisdiction in one of such Courts to try disputes which might arise as between themselves. If such a contract is clear, unambiguous, not vague and explicit, it is not hit by Section 28 of the Contract Act. This should not be understood as parties contracting against statute. But this is one of many series of contracts available in mercantile practice and forged in the name of commercial expediency.

Thus, it will be seen that even if the learned District Munsif of Coimbatore entertains and disposes of the suit, it will only be an irregular exercise of jurisdiction and the resultant decree will not be a nullity. In such a situation, when the matter is brought before this Court, u/s 115 of the Code of Civil Procedure, this Court has a discretion not to interfere with the order is allowed to stand, it would occasion failure of justice or complained of, unless if the order cause irreparable injury to the party against whom it was made. In this particular case, having regard to the stake involved and the distance between Coimbatore and Bombay, it will be causing failure of justice if the plaintiff is driven to go to

Bombay for the purpose of instituting the suit for recovery of this small amount. Therefore even if the decision of the Gujarat High Court is not correct, and therefore, the learned District Munsif is wrong in holding that he had jurisdiction to try the suit, yet I am not bound to interfere with that conclusion in exercise of the power of this Court u/s 115 of the Code of Civil Procedure.

4. There is another aspect of the matter which also can be taken note of. Section 21 of the Code of Civil Procedure, states :

No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of the first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

It is true that in this case the objection has been taken by the petitioner at the earliest possible opportunity, and yet what has to be established u/s 21(1) of the CPC is that entertainment of the suit by the learned District Munsif, Coimbatore, has caused failure of justice. I am unable to hold that on the facts of this case, for the reasons already mentioned, there has been a failure of justice by the learned District Munsif holding that he had jurisdiction to entertain and try the ,suit. For all these reasons, the civil revision petition fails and is dismissed. There will be no order as to costs.