

(2013) 03 AHC CK 0263
In the Allahabad High Court
Case No : Arbitration Case No. 20 of 2012

Sikta Incorporation

APPELLANT

Vs

Mahindra Holidays and Resorts (P.) Ltd.

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Arbitration Act, 1940 — Section 41
Civil Procedure Code, 1908 (CPC) — Section 20
Contract Act, 1872 — Section 23, 28

Citation : (2013) 5 ADJ 512 : (2013) 4 ALJ 143 : (2013) 3 ARBLR 423 : (2013) 6 AWC 5712

Hon'ble Judges : Uma Nath Singh, J

Bench : Single Bench

Advocate : Ratnesh Chandra and Tushar Hirwani, for the Appellant; Pushkar Baghel, for the Respondent

Final Decision : Allowed

Judgement

Uma Nath Singh, J.—Learned counsel for petitioner submitted that contrary to the fact that the arbitration agreement was entered into between the parties in Lucknow, the place of arbitration has been mentioned as Chennai vide Clause 19 of the agreement. It is also a submission of learned counsel for the petitioner that the address of the respondent is noted as Mahindra Holidays & Resorts (P) Ltd., 7A, Second Floor, Habibullah Estate Ground, Hazratganj, Lucknow. The petitioner/contractor is also a native of State of U.P. and the subject-matter of agreement namely the job of contractor was to be completed in the State of Madhya Pradesh. Thus, according to learned counsel, since the cause of action has arisen in Lucknow and no part of cause of action arose at Chennai, nor even the site of work is situated there, this Court can exercise jurisdiction to appoint Arbitrator. On the other hand, learned counsel for respondent submitted that since the arbitration clause provides for appointment of arbitrator and holding of arbitration proceedings at Chennai and further that the headquarter of the company is situated there, the petitioner should have invoked the jurisdiction of

Chennai High Court for the purpose of appointment of arbitrator.

2. On giving an anxious consideration to the submissions, I find considerable force in the arguments of learned counsel for petitioner for the reason that no part of cause of action has arisen at Chennai to invite the jurisdiction of that High Court. Besides, the Arbitration agreement was executed at Lucknow, the petitioner as well as the respondent Company is established in U.P. and even the site of work is also located outside Chennai.

3. In two judgments of Hon'ble the Apex Court, namely, (1) Hakam Singh Vs. Gammon (India) Ltd., and (2) A.V.M. Sales Corporation Vs. Anuradha Chemicals Pvt. Ltd., , their Lordships have discussed the question in detail. In Hakam Singh's case (supra) vide paragraph 3, the discussion is as follows:

Section 41 of the Arbitration Act 1940 provides insofar as it is relevant:

Subject to the provisions of this Act and of rules made thereunder

(a) the provisions of the Code of Civil procedure, 1908, shall apply to all proceedings before the court, and to all appeals under this Act.

The CPC in its entirety applies to proceedings under the Arbitration Act. The jurisdiction of the Courts under the Arbitration Act to entertain a proceeding for filing an award is accordingly governed by the provisions of the Code of Civil Procedure. By Cl. 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the City of Bombay. In any event the respondent have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the Courts at Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the CPC jurisdiction 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. Such an agreement does not contravene S. 28 of the Contract Act.

4. Coming to the ratio of A.V.M. Sales Corporation Vs. Anuradha Chemicals Pvt. Ltd., of paras 6, 8, 10 of AIR SCW) (supra), vide Paragraphs 10, 14 and 17, it has been held as:

10. The question involved in this SLP has several dimensions, including the question as to whether the parties to an agreement can contract in violation of Sections 23 and 28 of the Indian Contract Act, 1872. Obviously, the parties cannot contract against the statutory provisions. A connected question would arise as to whether the parties to an agreement can confer jurisdiction on a Court which has no territorial or pecuniary jurisdiction to entertain a matter? The answer to the second question is also in the negative.

14. It has often been stated by this Court that cause of action comprises a

bundle of facts which are relevant for the determination of the lis between the parties. In the instant case, since the invoices for the goods in question were raised at Vijayawada, the goods were dispatched from Vijayawada and the money was payable to the Respondent or its nominee at Vijayawada, in our view, the same comprised part of the bundle of facts giving rise to the cause of action for the suit. At the same time, since the Petitioner/Defendant in the suit had its place of business at Calcutta and the Agreement for supply of the goods was entered into at Calcutta and the goods were to be delivered at Calcutta, a part of the cause of action also arose within the jurisdiction of the Courts at Calcutta for the purposes of the suit. Accordingly, both the Courts within the jurisdiction of Calcutta and Vijayawada had jurisdiction u/s 20 of the CPC to try the suit, as part of the cause of action of the suit had arisen within the jurisdiction of both the said Courts.

17. Basically, what Section 28 read with Section 23 does, is to make it very clear that if any mutual agreement is intended to restrict or extinguish the right of a party from enforcing his/her right under or in respect of a contract, by the usual legal proceedings in the ordinary Tribunals, such an agreement would to that extent be void. In other words, parties cannot contract against a statute.

5. In view of all the aforesaid discussions, I am of the considered view that the arbitration application deserves to be allowed. It is accordingly allowed. Consequently Sri V.K. Sircar, retired District Judge residing at A1/108 Vijai Khand, Gomti Nagar, Lucknow, is appointed to act as Arbitrator subject to his consent, and upon his supplying the terms and conditions of engagement, within 15 days from the date of service of a copy of this order. The Arbitration application, thus, stands disposed of.