
(1962) 11 GUJ CK 0019
In the Gujarat High Court

Taj Iron and Steel Works (P) Ltd.

APPELLANT

Vs

Morvi Iron Syndicate (P) Ltd.

RESPONDENT

Date of Decision : 06-11-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 20, 20
Contract Act, 1872 — Section 10, 23, 28, 28

Citation : (1963) 4 GLR 995

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—This revision application filed by the original defendant arises out of Small Civil suit No. 93 of 1961 the cause of action for which arose both at Surendranagar as well as Bombay but the parties by their contract agreed that all disputes arising out of the contract between them shall be referred to a Court of competent jurisdiction in Bombay alone and at no other place. The learned Judge held that this term in the contract was not in contravention of Section 28 of the Contract Act. But he held that in view of the provisions of Section 23 of the Contract Act and Section 20 of the CPC such an agreement would defeat the provisions of Section 20 C.P.Code and he therefore held that that agreement could not be given effect to. He therefore held that the suit could be filed in Surendranagar Court Hence this revision application.

2. If the parties to a contract provide in the contract that legal proceedings if any should be started a one of the two places having jurisdiction then such a term would not clearly contravene the provisions of Section 28 of the Contract Act and this point is well settled and need not be argued before me. But it is contended by the Learned Counsel for the opponent that the lower Court was right in holding that the agreement could not be given effect to in view of Section 20 C.P.Code and Section 23 of the Contract Act. The lower Court also placed reliance on Dwarka Rubber Works v. Chhotelal AIR MP 120 where it has been observed as follows:

I have no doubt that there is considerable body of judicial opinion which it inclined to take the view that such an agreement is not void u/s 28 of the Contract Act because it is not in absolute restraint of legal proceedings.

With this view so far it interprets Section 28 Contract Act I find myself in accord but with respect and diffidence I venture to strike note of discord in the ultimate decision on the point. I find that in considering this question attention was almost entirely riveted on the construction of Section 28 Contract Act though in one or two cases a passing reference was also made touching the aspect of public policy u/s 23 Contract Act.

But I venture to suggest that Section 23 in its entirety was not considered. That aspect of the matter, which I propose to discuss shortly, was never canvassed at the Bar nor was it ever considered in any of the rulings cited above. Section 23 Contract Act contains five clauses showing what considerations and objects are lawful and what are not.

The consideration or object of an agreement is lawful unless it is of such a nature that if permitted it would defeat the provisions of any law.

Now what one has to see is whether the agreement under question tends to defeat the provisions of any law. In a case of contract the cause of action may arise at more than one place according to Section 20 Civil P. Code. If the parties agree to file a suit in only one of the Courts to the exclusion of others which may have the jurisdiction to try it u/s 20 Civil P.C. then this agreement I venture to suggest is one which if permitted to stand would defeat the provision of Section 20 Civil P.C. Should the parties be allowed to come to an agreement which in effect tends to give a different direction to law? No doubt such an agreement not being in absolute restraint of legal proceedings is not hit by Section 28 Contract Act but I venture to submit that it is of such a nature that if permitted it defeats the provisions of law u/s 20 C P. Code. This puts one in mind of the legal maxim so widely known and accepted that parties cannot by agreement oust the jurisdiction of any court nor can they vest jurisdiction in a court not otherwise competent

In this view of the matter I am of the opinion that although an agreement confining the parties to have recourse to only one of the several competent Courts may not be within the mischief of Section 28 yet being hit by Clause 2 Section 23 Contract Act it is not enforceable and cannot be pleaded in bar of an action rightly brought by the plaintiff.

3. With great respect Section 23 Contract Act does not refer to agreements but to the consideration or object of an agreement. It provides for cases where the consideration or object is lawful or unlawful. In the instant case we have an agreement relating to the sale of goods and the consideration is of Rs. 12 0 This is an agreement in which it cannot be said that the consideration or object of the agreement is unlawful. Section 23 Contract Act can have no application to such a case. It is a mistake to refer to one of the clauses for the purpose of the real

consideration of the agreement and its real object. So far as the clause relating to the filing of a suit goes that clause has no consideration at all and the object of such clause is the settlement of disputes between the parties. Section 23 Contract Act has no application to the object one of the clauses of the agreement. If the consideration or object of an agreement is unlawful then under Section 10 Contract Act the whole agreement would become void. But surely it is not the contention of either party that the whole contract in the present case is unlawful or void. With great respect therefore reference to Section 23 of the Contract Act is out of place. It is a mistake to consider that the object of the agreement is what is found in the clause relating to the settlement of disputes.

4. Even the object of the clause relating to the settlement of disputes between the parties which provided that disputes can be settled only in one of the two Courts having jurisdiction cannot be said to defeat the provisions of Section 20 C.P. Code. The object of Section 20 C.P. Code is to prevent suits from being filed in the Court having no jurisdiction of the kind referred to therein. To file a suit in one such Court having such jurisdiction can never defeat the object of Section 20 C.P. Code. For both these reasons I differ from the view taken by the learned Judge of the Madhya Bharat High Court and the Court below.

The view taken by the lower Court is therefore wrong and the lower Court is directed to return the plaint to the plaintiff under the provisions of Order 7 Rule 10 C.P. Code. No order as to costs.