

(1934) 11 BOM CK 0001

In the Bombay High Court

Case No : Appeal from Order No. 3 of 1934

The Khandesh Lakshmivilas Mills Co.

APPELLANT

Vs

Vinayak Atmaram Karpurkar

RESPONDENT

Date of Decision : 15-11-1934

Acts Referred:

Contract Act, 1872 — Section 28

Citation : AIR 1935 Bom 198 : (1935) 37 BOMLR 157

Hon'ble Judges : Broomfield, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Broomfield, J.—The principal question in this appeal is whether the parties to a contract, one of whom resides at Jalgaon and the other in Bombay, may validly agree that litigation arising out of the contract should be tried in Bombay and not in Jalgaon, it being admitted that apart from the agreement such litigation might be tried in either place. The plaintiff is a company owning oil mills in Jalgaon. The defendant is a resident of Bombay. He agreed to supply funds to the company for the purpose of carrying on their business in groundnuts which were to be purchased and milled in the plaintiff's mill at Jalgaon. He failed to supply the money, and in consequence the company brought a suit to recover Rs. 7,500 damages, that being what, it is alleged, the company would have earned in the business if the defendant had supplied the funds. There was a formal written agreement between the parties, one clause of which provides ;-

If any dispute arises in respect of the aforesaid business between us under this agreement, the same shall be referred to the Bombay High Court or in such Courts in the Town and Island of Bombay, as shall have jurisdiction in the matter.

2. In spite of this clause the plaintiff company filed their suit for damages in the Subordinate Court of Jalgaon. The trial Judge upheld the objection of the defendant that in view of the agreement between the parties the suit could only

be tried in Bombay. The question in this appeal is whether that finding is right, and in my opinion it is.

3. The learned advocate who appears for the appellant-plaintiff has admitted that he cannot call in aid the provisions of Section 28 of the Indian Contract Act. That section provides that every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, is void to that extent. But here obviously there is no absolute restriction. Both the Jalgaon Court and the Courts in Bombay would ordinarily be competent to entertain the suit. All that has happened is that the parties have agreed to select one of two competent tribunals for the disposal of their disputes. Mr. Pradhan contends that parties cannot by agreement make such a change in the law. But if the case does not come within the mischief of Section 28-and it clearly does not-then, as far as I am aware, it is not contrary to any law. Moreover, agreements of the same kind have been held valid (see *A. Milton & Co. v. Ojha Automobile Engineering Co.* I.L.R.(1930) Cal. 1280 following *Achratlal Kesavlal Mehta and Co., by Proprietor Achratlal and Kesavlal Vs. Vijayam and Co.,* .

4. A further point taken was that, as the trial Judge has mentioned in his judgment, the plaintiff made an application for joining another defendant who is an agriculturist residing at Dhulia. If that application had been granted, so the learned Subordinate Judge says, the suit would have had to go to the Court at Dhulia u/s 11 of the Dekkhan Agriculturists' Relief Act. Mr. Pradhan uses this as an argument for holding that the Courts in Bombay cannot have jurisdiction. I think, however, there is no substance in this point. So far no additional party has been joined, but if he were to be joined, it would not apparently have the effect which the learned Judge supposed. Two persons on behalf of the company entered into the agreement with the defendant. The suit is brought by the company. The person sought to be added as a co-defendant is one of the persons who executed the agreement on the company's behalf. No relief is or could be sought against him. He would be a purely formal party. But apart from that, Section 11 of the Dekkhan Agriculturists' Relief Act, to which the learned Judge refers, does not appear to have any application. That provides that every suit of the description mentioned in Section 3, Clause (w), shall be instituted and tried in a Court within the local limits of whose jurisdiction the defendant resides. But this being a suit for damages is not a suit u/s 3, Clause (w), but one u/s 3, Clause (x).

5. There is one other small point as to the construction of the agreement. It was urged in the trial Court-and Mr. Pradhan has repeated the argument- that the disputes contemplated by the clause in the agreement, which I have quoted, must mean disputes arising in the course of the business, not one like the present, which has arisen before, the business was actually started at all.

6. I do not think there is any force in this argument. Reading the agreement as a whole, "the aforesaid business" clearly means the projected business or trade in

groundnuts and the present must be regarded as a dispute which has arisen in respect of that business. Moreover, it is expressly provided in clause 14 of the agreement that the business should be deemed to have begun on the date of the agreement. In my opinion the appeal fails and must be dismissed with costs.