

**(2003) 07 DEL CK 0112**  
**In the Delhi High Court**  
**Case No : CW No. 3177 of 2003**

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|----------------------------------------|----|------------|
| Tohil India Pvt. Ltd. and Another      | Vs | APPELLANT  |
| Deputy Commissioner (West) and Another |    | RESPONDENT |

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**Date of Decision :** 10-07-2003

**Acts Referred:**

Contract Act, 1872 — Section 23, 28  
State Financial Corporations Act, 1951 — Section 29

**Citation :** (2003) 07 DEL CK 0112

**Hon'ble Judges :** Badar Durrez Ahmed, J

**Bench :** Single Bench

**Advocate :** Bishwajit Bhattacharya and Gurpreet Singh, for the Appellant;  
Sandeep Aggarwal, for the Respondent

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## Judgement

Badar Durrez Ahmed, J.—In this petition the Petitioner No. 1 has sought a direction for quashing of the notice dated 26.11.2002 issued by the Respondent No. 1 whereby a sum of Rs. 1,12,89,264/- was sought to be recovered from the Petitioner No. 2 as arrears of land revenue.

2. The petition was argued on the preliminary question raised on behalf of Respondent No. 2 that this Court would not have territorial jurisdiction to entertain this writ petition. Some background would be necessary to appreciate the arguments and counter arguments on the question of territorial jurisdiction. One G.S. Rubber Products Pvt. Ltd. which had a registered office in Bulandshaher, U.P. had, inter alia, taken a loan of Rs. 20 lakhs from Respondent No. 2 (PICUP). The said G.S. Rubber Products Pvt. Ltd defaulted in the repayment of the loan and as of 18.2.1994 an amount of approximately Rs. 29.93 lakhs including principal and interest was due and owing from G.S. Rubber to PICUP.

3. u/s 29 of the State Financial Corporations Act, 1951, PICUP took over the entire immovable assets and plant and machinery of the said G.S. Rubber Products Pvt. Ltd. Thereafter the sale of the assets advertised. The Petitioner No.

1 made an offer and its offer was accepted. The sale consideration was settled at Rs. 112 lakhs. An Agreement to Sell dated 6.6.1997 was executed by and between the Petitioner No. 1 and PICUP. The Petitioner No. 2 who is the Managing Director of the Petitioner No. 1 gave a personal guarantee for the payment of the amount of sale consideration and interest thereon in case of late payment. Unfortunately, the Petitioner No. 1 was able to pay only Rs. 33 lakhs towards the sale consideration. The balance could not be paid and as such the Petitioner No. 1 defaulted in the payment of the same. The assets and plant and machinery which had been handed over to the Petitioner No. 1 were taken possession of by the PICUP.

4. The Agreement to Sell which is dated 6.6.1997 contains clause 10 which is relevant for the purposes of deciding the question with respect to territorial jurisdiction. The said Clause 10 reads as under:

"10. Jurisdiction

For purpose of any litigation arising out of this agreement, the jurisdiction shall be of the courts at Lucknow only."

5. In this context Mr. Sandeep Aggarwal, learned counsel appearing on behalf of Respondent No. 2 submitted that there is a decision of a Division Bench of this Court on an identical clause contained in an agreement which was the subject matter of the case of A.K. Surekha v. The Pradeshiya Industrial & Investment Corporation of U.P. Ltd. and Anr., CWP No. 2895/2002. In that case, the Division Bench in its judgment dated 27.5.2003 considered Clause 57 of the loan agreement which reads as under :

"57. Jurisdiction for litigation

The borrower and PICUP agree that for all purposes of litigation relating to his agreement this jurisdiction shall be of Lucknow Courts only." (underlining added).

6. The Division Bench noted the contention of the parties with regard to jurisdiction and, after referring to various decisions of the Supreme Court including the latest decision of the Supreme Court in Union of India and Others Vs. Adani Exports Ltd. and Another, and of other High Courts", finally came to the following conclusions:-

"28. We have examined the relevant clauses of the agreement and decided cases of various courts on question of territorial jurisdiction. If the principles which have been crystalised by the various courts are made applicable to the facts of this case, the conclusion would be irresistible that this court has no territorial jurisdiction to entertain this petition because in the instant case the respondent had entered into an agreement with the company of the petitioner at Lucknow and in the loan agreement, it was clearly stated that for the purposes of litigation relating to this agreement the territorial jurisdiction shall be of Lucknow courts alone. The petitioner on behalf of the company was signatory to the agreement. Thereafter a separate bond of guarantee was executed. In the bond of guarantee

it was clearly agreed that the guarantors herein waive all rights which the Guarantors may become entitled to as surety/sureties to compete with the Corporation in obtaining payment of the moneys due or to become due to the Corporation in respect of the said loan in favor of the Corporation, as against the said Company. In clause 9, the petitioner has agreed that in order to give effect to the guarantee herein contained the corporation shall be entitled to act as if the Guarantors were the principal debtors of the Corporation for all payments and Covenants guaranteed by them as aforesaid, to the Corporation."

7. In view of the clear and express finding and observations of the Division Bench, it is apparent that Clause 10 of the Agreement to Sell dated 6.6.1997 will also have to be construed accordingly. Therefore, the courts at Lucknow alone would have jurisdiction in this matter.

8. Mr. Bhattacharya, learned counsel appearing for the Petitioners next submitted that jurisdiction cannot be conferred by agreement of parties and that if a part of jurisdiction arose in Delhi then by agreement the jurisdiction of Delhi could not be excluded by agreement. In reply to this contention of Mr. Bhattacharya, the learned counsel for the Respondent placed reliance on the decision of the Hon"ble Supreme Court in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, a and in particular to the following passage in paragraph 18 at page 1245:

"Thus it is now a settled principle that where there may be two or more competent Courts which can entertain a suit consequent upon a part of the cause of action having arisen therewithin, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague it is not hit by Sections 23 and 28 of the Contract Act. This cannot be understood as parties contracting against the Statute. Mercantile Law and practice permit such agreements."

9. From the aforesaid observations and finding of the Hon"ble Supreme Court it is clear that where two or more competent courts have jurisdiction to entertain a matter if the parties contract or agree to vest jurisdiction in only one of them then such a contract or agreement would have to be held to be valid. The consequences whereof are that the court on which jurisdiction was conferred by agreement would be the only court exercising such jurisdiction. It is, Therefore, clear that the contention of the learned counsel appearing for the Petitioners cannot be upheld. Since there is an agreement conferring jurisdiction on the courts at Lucknow, even if it is assumed that this Court otherwise has territorial jurisdiction to entertain this petition the agreement being valid would be binding on the parties and accordingly the Petitioners would only be entitled to approach the court at Lucknow, U.P.

10. Learned counsel for the Petitioner raised further questions pertaining to the jurisdiction qua the issuance of the notice itself and as to whether such an action

could at all be taken in view of the express statutory provisions as well as upon an interpretation of the decision of the Supreme Court in AIR 2003 SC 2103 . Although the Petitioners have not taken this objection in the petition as it were, however, this being a legal objection it could be raised at an appropriate stage. Unfortunately, as I have already decided that this Court does not have territorial jurisdiction to entertain this petition the present stage would not be the appropriate stage for raising the other questions which relate to merits of the matter including the question relating to jurisdiction of the authority to issue a notice which is impugned herein as distinct from the question of territorial jurisdiction. I make it clear that apart from the question of territorial jurisdiction no other question has been decided in the present petition.

11. In view of the aforesaid discussion it is apparent that this Court does not have territorial jurisdiction to entertain the writ petition. Accordingly, the writ petition is dismissed. No orders as to costs.

12. All the pending applications also stand disposed of.