
(1987) 02 KL CK 0027
In the High Court Of Kerala
Case No : C.M.A. No. 239 of 1982

United India Ins. Co. Ltd.

APPELLANT

Vs

Associated Transport Corpn. Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 18-02-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Contract Act, 1872 — Section 28

Citation : (1987) ACJ 801 : AIR 1988 Ker 36

Hon'ble Judges : U.L. Bhat, J;Chettur Sankaran Nair, J

Bench : Division Bench

Advocate : S. Parameswaran, N. Pottivel and N. Kumaran Poti, for the Appellant;
M.R. Rajendran Nair, for the Respondent

Final Decision : Allowed

Judgement

Bhat, J.—Appellant is the plaintiff in the Court below. Plaintiff filed a suit for realisation of damages from a carrier. Defendant raised several contentions including the contention that the Bombay Court alone had jurisdiction and not the local Court. The Court below took up the suit for trial and answered all the issues. In doing so, the Court below held that the Bombay Court alone had jurisdiction as the jurisdiction of all other Courts has been excluded. As a result, the Court returned the plaint for presentation in the proper Court. It is this order which is now challenged.

2. The consignor entrusted to the respondent cotton yarn for despatch and delivery to the consignee in Delhi in three consignments. The appellant, insurer, had covered these consignments at the request of the consignor. The goods reached Delhi. The consignee refused to take delivery of five bales of cotton yarn since they were found to be in damaged condition. The damaged yarn was re-booked through the Delhi office of the carrier on the request of the consignor. They were taken delivery of by the consignor in a damaged condition. The damage was assessed by the surveyor. The consignor submitted a claim to the

insurer. The claim was settled at Rs. 10,894.80 and paid by the insurer. The insurer became surrogated to the rights of the consignor in accordance with Section 89 of the Marine Insurance Act and Exts. A7 and A8. Thereafter, appellant filed the suit for recovery of damages from the carrier alleging negligence.

3. We are now concerned mainly with the question of jurisdiction of the Court below to entertain the suit. The respondent had two-pronged contention, Respondent contended that no part of the cause of action arose within the jurisdiction of the Court below and in any event the lorry receipts Ext. B1 series conferred exclusive jurisdiction on the Bombay Court. The lower Court held that a part of the cause of action arose within its own jurisdiction. The Court below further held that the parties agreed to exclude the jurisdiction of all Courts except the Bombay Court and therefore it had no jurisdiction to entertain the suit.

4. An almost identical case came up for consideration in *Economic Transport Organisation v. United India Insurance Co. Ltd.*, 1986 Ker LT 220. In that case also a way bill or receipt contained printed inscription of words "subject to Calcutta jurisdiction only". The question arose whether these printed words constitute an agreement to oust the jurisdiction of all Courts other than the Calcutta Court and whether the exclusion would be valid. After referring to practically all the decisions of this Court and some decisions of other High Courts as also decision of the Supreme Court in *Hakam Sing Vs. Gammon (India) Ltd.*, , the Court observed :

"17. When there is choice of forum, it is certainly open to the parties to agree on an exclusive forum for settlement of disputes. But such an agreement must be clearly spelled out either by express words or by necessary implication. Ouster of jurisdiction of Courts cannot be lightly assumed or presumed. If there is such a concluded agreement, it will certainly operate as estoppel against the parties to the contract. If it is merely a unilateral affirmation or statement made by one of the parties, as long as it is not shown that the statement has been accepted by the other party as a term or condition of the agreement, it cannot be held that there is an agreement to confer exclusive jurisdiction on any Court. Particular caution is necessary in regard to such a clause contained in a printed form, as in this case. Where the printed form is signed by both the parties or where a form printed by one party is signed by the other party and forwarded by the latter to the former and the printed form contains clear words conferring exclusive jurisdiction on a Court at any particular place or ousting jurisdiction of the Court at any other place, it may not be difficult to hold that the parties have agreed on such a term. Even in such cases, Courts must remember that, people often sign order forms containing a good deal of printed matter without caring to read what is printed. It cannot always be said that everything which is printed may be deemed to form part of the contract. Where a form printed by one party is signed only by that party and delivered to the other party, without anything more it will be difficult for the Court to hold that there has been consensus ad idem in

regard to the particular clause. Of course, if there is some other material to indicate acceptance or consent of the party who received the printed form, then the Court is free to infer that the clause formed part of the agreement.

18. If it can be held that the printed clause in the consignment note in this case formed part of the agreement, there is clearly ouster of jurisdiction of Courts at Calicut. The form was got printed by the transport undertaking. It was signed by an employee of the undertaking. It was not signed by the consignor, second plaintiff. It was merely delivered to the consignor. Contract was entered into not by correspondence. It was a case of a single transaction covered by a single bill. The words themselves are printed in small letters at the very bottom of the way bill. There is no other material before the Court to show that this printed material was brought to the notice of the second plaintiff or that the second plaintiff had accepted the same. In these circumstances, I hold that this particular clause did not form part of the agreement between the Parties. Parties did not agree to oust the jurisdiction of the Court at Calicut or to vest exclusive jurisdiction in Courts at Calcutta."''

5. We are in respectful agreement with the view expressed in the above decision. Ext. B1 series in this case also contain printed words "subject to Bombay jurisdiction alone"; Apart from the existence of these printed words, respondent has no case that there was a meeting of minds between the consignor and the carrier and there was a specific agreement in that behalf. The consignment was delivered to the carrier, the carrier took custody of the goods and thereafter issued the receipt or consignment note which contained the printed words. The note was signed only by an employee of the respondent. No doubt, they were handed over to the consignor. But there was nothing to indicate that there was an agreement between the parties to confer exclusive jurisdiction to Bombay Court. These printed words by themselves and without anything more would not be sufficient to constitute an agreement to oust the jurisdiction of all Courts other than the Court specified. In these circumstances, we set aside the finding of the Court below that it had no jurisdiction to entertain the suit. We find that the Court below had answered all the issues either in favour of one party or the other. The parties have no right of appeal against those findings in as much as the plaint itself was returned. In these circumstances, we deem it expedient to direct the Court below to re-try all the issues and dispose of the suit afresh. Learned counsel for the respondent pointed out that the Court below had held that the appellant was incompetent to sue. This issue also will be retried along with the other issues.

6. In the result, we set aside the impugned Judgment and hold that the Court below has jurisdiction to entertain the suit. The Court below will take up the suit afresh for trial and disposal. Evidence recorded earlier shall be treated as evidence for the purpose of fresh disposal also. The parties will appear in the Court below on 6-3-1987. Parties will bear their costs in this appeal.

7. Issue photostat copies or carbon copies, whichever is available.