

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.10184 of 2008

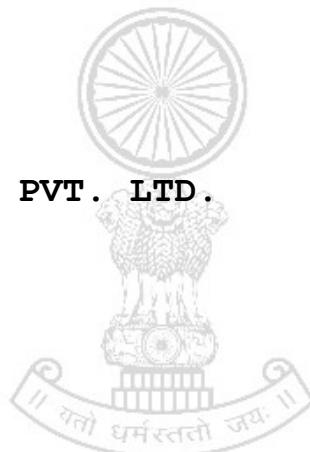
A.V.M. SALES CORPORATION

... PETITIONER

VS.

M/S. ANURADHA CHEMICALS PVT. LTD.

... RESPONDENT



JUDGMENT

ALTAMAS KABIR, J.

1. On 23rd December, 1988, the parties to the Special Leave Petition entered into an Agreement at Calcutta

for supply of chemicals manufactured by the Respondent to the Petitioner. In continuation of the aforesaid Agreement, the parties arrived at a Mutual Understanding on 15th May, 1989, whereby the Respondent would adjust the advance lying with it and would exclusively supply to the Petitioner its two products, namely, Sodium Chromate and Sodium Dichromate in West Bengal, Bihar, Orissa and Assam. The Understanding between the parties included other terms and conditions as well. The terms of the Understanding entered into between the parties were reduced into writing in an agreement and the same was executed at Calcutta on 5th August, 1989, reiterating the terms of the Understanding and containing an additional clause indicating that "**Any dispute arising out of this agreement will be subject to Calcutta jurisdiction only.**" [Emphasis supplied].

2. Since certain differences arose between the parties relating to the supply of goods in question, the

Petitioner herein filed Original Suit No.588 of 1991 in the Calcutta High Court on 27th August, 1991, for recovery of its alleged dues from the Respondent, after giving due adjustment of the amount of the Invoices raised by the Respondent and filed its claim only for the balance amount, along with penalties etc. Upon receiving summons of the suit filed by the Petitioner, the Respondent on 12th September, 1991, filed a separate suit against the Petitioner at Vijayawada for recovery of a sum of ₹3,86,453.05, treating the Purchase Order dated 12th February, 1990, to be independent of the Agreement and also sought recovery of supplies made under the Invoices raised by the Respondent upon the Petitioner.

JUDGMENT

3. The Petitioner duly contested the Suit filed by the Respondent by filing Written Statement, along with relevant documents, in support of its case. Out of the several issues raised by the Petitioner, one was the issue relating to the jurisdiction of the Vijayawada

Court to entertain the Suit on account of the exclusion clause by which all actions arising out of the Agreement and the Memorandum of Understanding were to be subject to the Calcutta jurisdiction only. The other issue of importance was with regard to adjustment, inasmuch as, the Purchase Order dated 12th February, 1990, was treated as independent of the Understanding and Agreement arrived at between the parties. Rejecting the objection relating to jurisdiction, the Principal Senior Civil Judge, Vijayawada, by his judgment and decree dated 5th March, 1999, decreed the Respondent's Suit (Original Suit No.519 of 1991) with costs for a sum of ₹3,86,453.05, together with interest at the rate of 12% per annum, from the date of the Suit till realisation of the principal amount of ₹2,98,267.50. The Petitioner filed First Appeal No.1352 of 1999 before the Andhra Pradesh High Court against the aforesaid judgment and decree dated 5th March, 1999. By judgment and order dated 18th January, 2007, the learned Single Judge of the High

Court dismissed the Appeal filed by the Petitioner. It is against the aforesaid judgment of the learned Single Judge of the Andhra Pradesh High Court in the First Appeal preferred by the Petitioner that the present Special Leave Petition has been filed.

4. Apart from the other grounds taken with regard to factual aspect of the matter, grounds have also been taken regarding the exclusive jurisdiction of the Courts at Calcutta agreed to by the parties in the Agreement and whether the same was not binding upon the parties. A further ground has also been taken as to whether in breach of the Agreement, the Respondent was entitled to invoke the jurisdiction of a Court at Vijayawada, whose jurisdiction stood ousted by the Agreement entered into between the parties.

5. On the strength of the pleadings of the parties, five issues were framed by the Trial Court, of which the first issue was whether the Court at Vijayawada had

territorial jurisdiction to entertain the suit. By his judgment and decree dated 5th March, 1999, in O.S. No.519 of 1991, the learned Principal Senior Civil Judge, Vijayawada, held that the Court at Vijayawada had jurisdiction to entertain the Suit as part of the cause of action for the suit arose within its jurisdiction. The learned Trial Judge, accordingly, decreed the Suit, as indicated hereinabove. In the First Appeal, being F.A. No.1352 of 1992, the learned Single Judge of the Andhra Pradesh High Court observed that the main contention of the Appellant before the High Court, who is the Petitioner herein, was that the Principal Senior Civil Judge, Vijayawada, had no jurisdiction to entertain the Suit as no part of the cause of action had arisen at Vijayawada. According to the Petitioner, its place of business was at Calcutta and the Agreement for the supply of the goods in question was also entered into at Calcutta. The goods were to be delivered at Calcutta and payment in respect thereof was to be made at Calcutta and, accordingly,

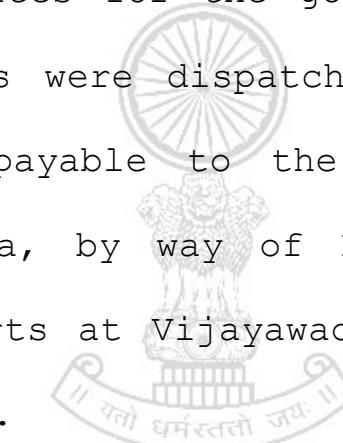
the Court at Vijayawada had no territorial jurisdiction to entertain the Suit under Section 20 of the Code of Civil Procedure as no part of the cause of action had arisen within its jurisdiction. It was also emphasised that in the Agreement which was made Exh.D-5, it has been stipulated in Column 13 that any dispute arising out of the Agreement would be subject to the Calcutta jurisdiction only.

6. The question involved in this Special Leave Petition 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. However, in this case a slightly

different question arises, namely, as to whether if two Courts have jurisdiction to try a suit, can the parties to an agreement mutually agree to exclude the jurisdiction of one Court in preference to the other and as to whether the same would amount to violation of the provisions of Sections 23 and 28 of the Indian Contract Act? The said question has been answered in the affirmative by the Trial Court and has been upheld by the High Court.

7. The question which has been raised in this Special Leave Petition is not new and has been considered by this Court earlier in several decisions. We are, therefore, required to consider as to whether the cause of action for the Suit filed by the Respondent in Vijayawada arose within the jurisdiction of the Court of the Principal Senior Civil Judge at Vijayawada, exclusively, or whether such cause of action arose both in Vijayawada and also in Calcutta? As has been mentioned hereinbefore on behalf of the Petitioner, it

had been urged that the entire cause of action for the Suit had arisen within the jurisdiction of the Calcutta Courts and the Courts at Vijayawada had no jurisdiction whatsoever to entertain a suit pertaining to the Understanding and Agreement arrived at between the parties. However, it was contended on behalf of the Respondent that its Registered Office was situate at Vijayawada, the Invoices for the goods were raised at Vijayawada, the goods were dispatched from Vijayawada and the money was payable to the Plaintiff or its nominee at Vijayawada, by way of Demand Drafts and, accordingly, the Courts at Vijayawada had jurisdiction to entertain the Suit.



JUDGMENT

8. 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 under Section 20 of the Code of Civil Procedure to try the Suit, as part of the cause of action of the Suit had arisen within the jurisdiction of both the said Courts.

9. This leads us to the next question as to whether, if two Courts have jurisdiction to entertain a Suit, whether the parties may by mutual agreement exclude the jurisdiction of one of the Courts, having regard to the

provisions of Sections 23 and 28 of the Indian Contract Act, 1872. Section 23 of the aforesaid Act indicates what considerations and objects are lawful and what are not, including the considerations or objects of an agreement, if forbidden by law. Section 28 of the Act, which has a direct bearing on the facts of this case, clearly spells out that any agreement in restraint of legal proceedings is void. For the sake of reference, the same is extracted hereinbelow :

"28. Agreements in restraint of legal proceedings, void - [Every agreement,

- (a) 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, or which limits the time within which he may thus enforce his rights, or
- (b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.]

Exception 1 : Saving of contract to refer to arbitration dispute that may arise.- This

section shall not render illegal contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2 : Saving of contract to refer question that have already arisen. - Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to reference to arbitration."

10. 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.

11. One of the earlier cases in which this question had arisen, was the case of A.B.C. Laminart Pvt. Ltd. & Anr. Vs. A.P. Agencies, Salem [AIR 1989 SC 1239 = (1989) 2 SCC 163]. In the said case, the cause of action for the suit had arisen both within the jurisdiction of the Civil Court at Salem in Andhra Pradesh and in the Civil Court of Kaira in the State of Gujarat. The question arose as to whether since by mutual agreement the jurisdiction had been confined only to the Courts within Kaira jurisdiction, the suit filed at Salem was at all maintainable? This Court, *inter alia*, held that there could be no doubt that an agreement to oust absolutely the jurisdiction of the Court will be unlawful and void, being against public policy. However, such a result would ensue if it is shown that the jurisdiction to which the parties had agreed to submit had nothing to do with the contract. If, on the other hand, it is found that the jurisdiction agreed would also be a proper jurisdiction in the matter of the contract, it could not be said

that it ousted the jurisdiction of the Court. After considering the facts involved in the said case and the submissions made on behalf of the parties, this Court observed as follows :

"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 and cannot also be understood as parties contracting against the statute."

12. A similar view was taken by this Court in Angile Insulations vs. Davy Ashmore India Ltd. & Anr. [(1995) 4 SCC 153], wherein the Hon'ble Judges while referring to the decision of this Court in A.B.C. Laminart Pvt. Ltd.'s case (supra), inter alia, held that where two Courts have jurisdiction consequent upon the cause of action or a part thereof arising therein, if the parties agree in clear and unambiguous terms to exclude

the jurisdiction of the other, the said decision could not offend the provisions of Section 23 of the Contract Act. In such a case, the suit would lie in the Court to be agreed upon by the parties.

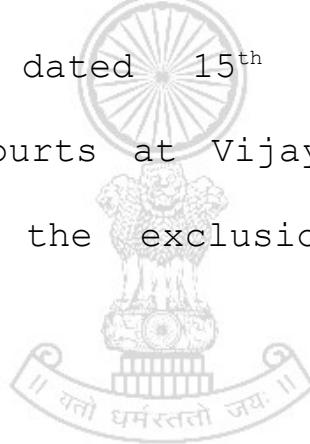
13. This Court has consistently taken the same view in several subsequent cases. We may refer to one such decision of this Court in Hanil Era Textiles Ltd. Vs. Puromatic Filters (P) Ltd. [AIR 2004 SC 2432 = (2004) 4 SCC 671], where part of the cause of action arose at both Delhi and Bombay. This Court held that the mutual agreement to exclude the jurisdiction of the Delhi Courts to entertain the suit was not opposed to public policy and was valid.

JUDGMENT

14. As indicated herein earlier, in this case also the cause of action for the Original Suit No.519 of 1991, filed by the Respondent before the Principal Senior Civil Judge, Vijayawada, arose partly within the

jurisdiction of the Calcutta Courts and the Courts at Vijayawada.

15. Having regard to the provisions referred to hereinabove, though the Courts at Vijayawada would also have jurisdiction, along with the Courts at Calcutta, to entertain and try a suit relating to and arising out of the Agreement dated 23rd December, 1988, and the Mutual Understanding dated 15th May, 1989, such jurisdiction of the Courts at Vijayawada would stand ousted by virtue of the exclusion clause in the Agreement.



16. The Special Leave Petition has, therefore, to be allowed. The decree passed by the Principal Senior Civil Judge, Vijayawada in O.S. No.519 of 1991, and the impugned judgment of the High Court dated 18th January, 2007, are set aside. The Trial Court at Vijayawada is directed to return the plaint of the Original Suit No.519 of 1991 to the Plaintiff to present the same

before the appropriate Court in Calcutta having jurisdiction to try the suit.

17. The Special Leave Petition is, accordingly, allowed, but there will be no order as to costs.

New Delhi
Dated: 17.01.2012

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)



JUDGMENT