

CASE NO.:
Appeal (civil) 2490 of 2004

PETITIONER:
M/s Hanil Era Textiles Ltd.

RESPONDENT:
M/s Puromatic Filters (P) Ltd.

DATE OF JUDGMENT: 16/04/2004

BENCH:
S. Rajendra Babu & G.P. Mathur

JUDGMENT:
JUDGMENT
(Arising out of Special Leave Petition (Civil) No.5552 of 2002)

G.P. MATHUR, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 21.12.2001 of the High Court of Delhi by which the appeal preferred by the appellant against the order of rejection of the appellant's application under Order VII Rule 10 CPC passed by the Additional District Judge, Delhi on 28.3.1998 was dismissed.

3. The appellant Hanil Era Textiles Limited, New Era House, Mogul Lane, Matunga (West), Bombay placed a purchase order bearing No.CA/32/95 dated 31.5.1995 with M/s Puromatic Filters Pvt. Ltd. 25/100, Yashwant Nagar, Goregaon (W), Bombay for supply of 136 numbers Coarse Filters and 136 numbers Fine Filters. The purchase order was in following terms :
"Dear Sir,

We are pleased to order the Material parts listed below subject to terms, conditions and instructions, on the reverse hereof and the attachments, if any hereto. Please acknowledge your acceptance by returning the duplicate copy duly signed within one week."

Thirty per cent of the amount was paid as advance. The delivery instructions contained a clause \026 Deliver the material at NEW ERA HOUSE/Patalganga Factory. The purchase order mentioned that the same was subject to the terms and conditions mentioned thereon. Condition No.17 reads as under :

"17. JURISDICTION

Any legal proceeding arising out of the order shall be subject to the jurisdiction of the Courts in Mumbai."

According to the respondent, it dispatched the ordered materials to the appellant through M/s Transport Corporation of India but the price thereof was not paid. The respondent M/s Puromatic Filters Pvt. Ltd., 12, D.S.I.D.C. Scheme-II, Okhla Industrial Area, Phase-II, New Delhi, accordingly filed Suit No.162 of 1997 in the Court of District Judge, Delhi, for recovery of Rs.3,93,344.80 and pendente lite and future interest at the rate of 24 per cent per annum from the date of filing of the suit till the date of realization of the decretal amount. The dispute in the present appeal is

regarding the territorial jurisdiction of the Court at Delhi to try the suit and para 8 of the plaint which contains the necessary averment in this regard is reproduced hereinbelow :

"8. That the cause of action has arisen at Delhi as the ordered goods were delivered to the defendant through their transporters M/s Transport Corpn. of India Ltd., the value of goods was to be paid by the defendant to the plaintiff at Delhi and as such this Hon'ble Court is having jurisdiction to try and adjudicate upon the matter in dispute."

4. The appellant (defendant in the suit) moved an application under Section 20 read with Order VII Rule 10 and Section 151 CPC before the trial Court praying that the plaint in Suit No.162 of 1997 be returned for presentation before the Court having territorial jurisdiction in which the suit should have been instituted. The main plea taken in the application was that as per Clause 17 of the Local Purchase Order No.CA/32/95 dated 31.5.1995 any legal proceedings arising out of the order shall be subject to the jurisdiction of the Courts in Bombay and the plaintiff having accepted the terms and conditions of said Local Purchase Order, it was bound by the said clause. It was also pleaded that notwithstanding the aforesaid clause 17 of the purchase order, the contract for supply of coarse filters and fine filters was entered into between the parties at Bombay and the advance payment of Rs.1,16,353.44 was made by the defendant to the plaintiff at Bombay. The respondent (plaintiff) filed a reply on the ground, inter alia, that the defendant had issued a certificate for removal of excisable goods (Form CT-3) bearing No.CCEX/KphII/HETL/95/116 dated 13.1.1996 vide which the defendant sought permission to remove the ordered goods from the factory premises of the plaintiff at Delhi and as such the Court at Delhi had territorial jurisdiction to try the suit. The plaintiff also denied that it had accepted the terms and conditions printed on the back of the purchase order or is bound by clause 17. It was also submitted that the goods in question were delivered to the agent of the defendant at Delhi from the factory premises of the plaintiff at Delhi under certificate in Form CT-3.

5. The learned Additional District Judge, Delhi, held that in absence of the written statement having been filed by the defendant, he had to decide the controversy on the basis of the allegations made in the plaint and especially when the plaintiff had asserted that the goods were delivered to the defendant at Delhi on the basis of Form CT-3, the Court at Delhi had territorial jurisdiction to try the suit. The appeal preferred by the appellant against the said order was dismissed by the High Court on 21.12.2001.

6. There is no dispute that the appellant placed the order for supply of 136 coarse filters and 136 fine filters with the respondent (plaintiff) vide Purchase Order No.CA/32/95 at Bombay on 31.5.1995 and that an advance payment of Rs.1,16,353.44 was also made at Bombay. According to the averments made in the plaint, the appellant (defendant) sent Form CT-3 and thereafter the plaintiff dispatched the goods from their factory in Delhi through M/s Transport Corporation of India, as per the directions of the defendant. Original documents were sent to the branch office of the plaintiff at 25/100, Yashwant Nagar, Goregaon (W), Bombay but the defendant did not retire the documents from the branch office of the plaintiff and illegally and unauthorisedly took the delivery of the goods from Transport Corporation of India. These averments show that the offer to purchase the goods was made by the defendant at Bombay and the same was accepted by the plaintiff's branch office at Bombay. The advance payment was also made by the defendant at Bombay. Thus, a part of cause of action accrued at Bombay. According to the plaintiff, the goods were dispatched from Delhi through M/s Transport Corporation of India Ltd. after receipt of Form CT-3, which was sent by the defendant. In this manner, the plaintiff claims that a part of cause of action accrued in Delhi.

7. The effect of Clause 17 of the Purchase Order which mentions \026 any legal proceedings arising out of the order shall be subject to the jurisdiction of the Courts in Mumbai, has to be examined in the aforesaid background. Under sub-sections (a) and (b) of Section 20, the place of residence of the defendant or where he carries on business or works for gain is determinative of the local limits of jurisdiction of the Court in which the suit is to be instituted. Sub-section (c) of Section 20 provides that the suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, accrues. As shown above, in the present case, a part of cause of action had accrued in both the places, viz., Delhi and Bombay. In *Hakam Singh v. Gammon (India) Ltd.* 1971 (1) SCC 286, it was held that it is not open to the parties to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two Courts or more have under the Code of Civil Procedure jurisdiction to try a suit or a proceeding, an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. It was also held that such an agreement does not contravene Section 28 of the Contract Act.

8. The same question was examined in considerable detail in *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies* AIR 1989 SC 1239 (headnote D) and it was held as under :

"When the Court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the ouster expression or clause properly. Often the stipulation is that the contract shall be deemed to have been made at a particular place. This would provide the connecting factor for jurisdiction to the Courts of that place in the matter of any dispute on or arising out of that contract. It would not, however, ipso facto take away jurisdiction of other Courts. Where an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other Courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of *ad idem* can be shown, the other Courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like 'alone', 'only', 'exclusive' and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim '*expressio unius est exclusio alterius*'\026 expression of one is the exclusion of another \026 may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all other from its operation may in such cases be inferred. It has therefore to be properly construed."

This view has been reiterated in *Angile Insulations v. Davy Ashmore India Ltd.* 1995 (4) SCC 153.

9. Clause 17 says - any legal proceedings arising out of the order shall be subject to the jurisdiction of the Courts in Mumbai. The clause is no doubt not qualified by the words like "alone", "only" or "exclusively". Therefore, what is to be seen is whether in the facts and circumstances of the present case, it can be inferred that the jurisdiction of all other Courts except Courts in Mumbai is excluded. Having regard to the fact that the order was placed by the defendant at Bombay, the said order was accepted by the branch office of the plaintiff at Bombay, the advance payment was made by the defendant at Bombay, and as per the plaintiffs' case the final payment was to be made at Bombay, there was a clear intention to confine the jurisdiction of the Courts in Bombay to the exclusion of all other Courts.

The Court of Additional District Judge, Delhi had, therefore, no territorial jurisdiction to try the suit.

10. In the result, the appeal succeeds and is hereby allowed. The order dated 28.3.1997 of the Additional District Judge, Delhi as affirmed by the order dated 21.12.2001 by the Delhi High Court is set aside. The plaint filed by the respondent herein is ordered to be returned for presentation before the competent Court at Bombay. No costs.

JUDIS