

**(1990) 09 P&H CK 0007**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 158 of 1989

Cement Corporation of India  
Limited

APPELLANT

Vs

Haryana Cement and Another

RESPONDENT

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**Date of Decision:** Sept. 13, 1990

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115, 9

**Citation:** (1991) 99 PLR 58

**Hon'ble Judges:** G.R. Majithia, J

**Bench:** Single Bench

**Advocate:** N.B.S. Gujral, for the Appellant; Nemo, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

G.R. Majithia, J.

This revision petition by defendant No. 1 is directed against the order of the Appellate Court reversing on appeal that of the trial Judge, whereby the latter had directed that the plaint be returned to the plaintiff since the Civil Court at Gurgaon had no jurisdiction to entertain the suit.

2. The facts : -

The respondent No. 1 (hereinafter referred to as the plaintiff) filed a suit for permanent injunction against the petitioner (hereinafter referred to as defendant No. 1) that it was given a contract for clearing, handling, transportation and storage of non levy cement of the Cement Corporation of India defendant No. 1) for a period of three years commencing from August 19 1986, vide which it was allowed to handle 2000 Mts of Cement per month. The plaintiff had submitted a bank guarantee dated November 2, 1987 in the sum of Rs. 3,00,000/- in favour of defendant No. 1 through its bankers, namely, State Bank of Patiala, Safderjang Enclave, New Delhi (defendant No. 2) Defendant No. 2 undertook to pay the amount

due and payable under the guarantee with out any damour merely on a demand from defendant No, 1. It was further agreed between the parties that in the event of any dispute, breach of difference arising in respect of any terms and conditions, the same be referred for arbitration It is further stated that an amount of Rs. 7 83,521/- was due towards defendant No. 1. However, the plaintiff received a letter from its bankers that defendant No. 1 had requested them to revoke the bank guarantee and to encash the same immediately. It was further mentioned in the letter that the action had been taken due to the loss suffered from the contractor by defendant No. 1 It was further stated that no intimation of the alleged loss had been sent to the plaintiff. Defendant No i had no l"gal right to ask the bankers for revoking the bank guarantee and encashment in their favour without getting any dispute being referred to the arbitrator and, as such the action of defendant No. 1 was illegal, arbitrary and unconstitutional On receipt of the letter from defendant No. 2, the plaintiff asked defendant No. 1 not, to encash or revoke the bank guarantee, but the request had been turned down. If, was in these circumstances that the suit was filed

3 On the pleadings of the parties, the following preliminary issue regarding jurisdiction of the Civil Court was framed :-

"Whether the Civil Court at Gurgaon has jurisdiction to try the present suit ? OPP

4. The trial Court found that the Civil Court at Gurgaon had no jurisdiction to entertain the present suit and directed that the plaint be returned to the plaintiff for presentation to the proper Court.

5. The Appellant Court, on appeal, found that the Civil Court at Gurgaon had the jurisdiction to entertain the suit. In coming to this conclusion, she learned Judge held that where two or more Courts under the CPC had jurisdiction to try the suit, the agreement between the parties vesting jurisdiction in one Court does not oust the jurisdiction of the Court and the clause can operate as estoppel against the party, but it cannot deprive the Court of its power to do justice. The Appellate Court, be that analysis, found that since the plaintiff had chosen to file the suit at Gurgaon where the defendant is carrying on its business and is having its branch office and cause of action had also arisen at Gurgaon the Court could ignore ouster clause stipulated in the agreement Such a stipulation is certainly oppressive in nature and operates harshly against the plaintiff It according held that the Civil Court at Gurgaon had the jurisdiction to try the suit.

6. I find no infirmity in the reasoning and conclusions arrived at by the Appellate Court. The well reasoned judgment of the Appellate Court calls for no interference.

7. The revision petition is devoid of force and it is accordingly dismissed with no order as to costs.