

## Spray Engineering Devices Limited Company Vs Kay Bouvet Engineering Private Limited

**Court:** High Court of Himachal Pradesh

**Date of Decision:** April 29, 2015

**Acts Referred:** Arbitration Act, 1940 - Section 20

Arbitration and Conciliation Act, 1996 - Section 11, 11(12)(b), 2(e), 9

Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, 15, 151, 16, 17

Contract Act, 1872 - Section 23, 28

**Citation:** (2015) 3 ShimLC 1532

**Hon'ble Judges:** Tarlok Singh Chauhan, J

**Bench:** Single Bench

**Advocate:** Rahul Mahajan, for the Appellant; Y.P. Sood, Advocates for the Respondent

**Final Decision:** Dismissed

### Judgement

Tarlok Singh Chauhan, J.

OMP No. 447 of 2014.

1. The defendant/applicant by moving this application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure has sought

rejection of the plaint on the ground that this Court has no territorial jurisdiction to try the suit. It is submitted that the perusal of various purchase

orders filed alongwith the plaint would show that the parties to the suit had agreed that only the Court at Satara, Maharashtra will have the

jurisdiction to try the dispute between the parties. Since the parties had agreed to the jurisdiction of the Court at Satara, therefore, this Court has

no jurisdiction to try the suit.

2. In reply to this application, the plaintiff/non-applicant has submitted that the cause of action had taken place within the territorial jurisdiction of

this Court as the plaintiff/non-applicant was having its industrial unit at Baddi, District Solan, Himachal Pradesh and the devices were manufactured

and shipped from Baddi to the destination as directed by the defendant, the bills/invoices were issued from Baddi, the payments were received at

Baddi and encashed at Baddi within the territorial jurisdiction of this Court. It is further claimed that in the invoices issued by the plaintiff, it was

specifically stated that all disputes would be subject to the jurisdiction of Court at Solan.

3. It is clear that there is no consensus or agreement on the question of jurisdiction of Courts while the purchase order mentions ""subject to

jurisdiction of Satara (Maharashtra) Courts only"", the invoice of the plaintiff, on the other hand, states that ""all disputes are subject to Solan

jurisdiction"". The acceptance by the plaintiff as indicated in the invoice clearly indicates its intention that any dispute should be settled by the Courts

at Solan only as against the intention expressed by the defendant in its purchase order that it is subject to the jurisdiction of the Courts at Satara

(Maharashtra) only. Thus, there is no agreement or consensus on this point.

4. In light of the aforesaid pleadings, the following question arises for determination:--

i) Whether this Court has territorial jurisdiction to try and adjudicate the suit?

5. The learned counsel for the plaintiff has relied upon the judgment of a Division Bench of the Andhra Pradesh High Court in *Sponge Iron India*

*Ltd. Vs. Andhra Steel Corporation Ltd.*, AIR 1989 AP 206 to claim that ouster of jurisdiction of the Courts cannot be readily inferred and in case

the purchase orders had certain stipulations regarding jurisdiction and the invoices in turn specified the jurisdiction of another Court, then both the

Courts would be having concurrent jurisdiction. The learned counsel for the plaintiff has further relied upon *C. Satyanarayana versus*

*Kanumarlapudi Lakshmi Narasimham LAWS (APH)-1966-9-2*, *Messrs. Delux Roadlines versus National Insurance Co Ltd. LAWS (MAD)-*

*1986-9-25*, and *Baldev Steel Limited versus Empire Dyeing and Manufacturing Company Limited LAWS(DLH)-2001-5-141*.

6. On the other hand, Mr. Y.P. Sood, learned counsel for the defendant has relied *Hanil Era Textiles Ltd. Vs. Puromatic Filters (P) Ltd.*, AIR

*2004 SC 2432 : (2004) 3 CTC 220 : (2005) 1 CTLJ 118 : (2004) 1 JT 57 Supp : (2004) 138 PLR 308 : (2004) 4 SCALE 617 : (2004) 4 SCC*

*671 : (2004) 1 SCR 333 Supp : (2004) AIRSCW 2914 : (2004) 3 Supreme 287*, *Rajasthan State Electricity Board Vs. Universal Petro*

*Chemicals Ltd.*, *(2009) 1 JT 315 : (2009) 1 SCALE 354 : (2009) 3 SCC 107 : (2009) 1 SCR 138 : (2009) 1 UJ 311 : (2009) AIRSCW 607 :*

*(2009) 1 Supreme 121* and *M/s. JHS Svendgaard Laboratories Limited Vs. M/s. Procter and Gamble Home Product Limited and Others*, *(2014)*

*1 ShimLC 1 .*

7. I have heard the learned counsel for the parties and have gone through the records of the case. There is no need to make reference to the

judgments cited by both the learned counsel for the parties in view of the three Judges" judgment of the Hon"ble Supreme Court in *Swastik Gases*

*P. Ltd. Vs. Indian Oil Corporation Ltd.*, *(2014) 2 AD 325 : (2013) 3 ARBLR 161 : (2013) 115 CLA 174 : (2013) 5 CTC 527 : (2013) 10 JT*

35 : (2013) 171 PLR 789 : (2014) 1 RCR(Civil) 52 : (2013) 8 SCALE 433 : (2013) 9 SCC 32 wherein the entire law on the subject was

discussed in the following manner:--

11. Hakam Sing Vs. Gammon (India) Ltd., AIR 1971 SC 740 : (1971) 1 SCC 286 : (1971) 3 SCR 314 : (1971) 3 UJ 167 is one of the earlier

cases of this Court wherein this Court highlighted that where two Courts have territorial jurisdiction to try the dispute between the parties and the

parties have agreed that dispute should be tried by only one of them, the court mentioned in the agreement shall have jurisdiction. This principle has

been followed in many subsequent decisions.

12. In Globe Transport Corporation Vs. Triveni Engineering Works and Another, (1984) 2 ACC 34 : (1984) ACJ 465 : (1984) 86 PLR 259 :

(1983) 4 SCC 707 while dealing with the jurisdiction clause which read ""the Court in Jaipur City alone shall have jurisdiction in respect of all

claims and matters arising (sic) under the consignment or of the goods entrusted for transportation"", this Court held that the jurisdiction clause in the

agreement was valid and effective and the courts at Jaipur only had jurisdiction and not the courts at Allahabad which had jurisdiction over Naini

where goods were to be delivered and were in fact delivered.

13. In A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, AIR 1989 SC 1239 : (1989) 2 ARBLR 340 : (1989) 2 JT 38 : (1989)

1 SCALE 633 : (1989) 2 SCC 163 : (1989) 2 SCR 1(1) : (1989) 2 UJ 80 , this Court was concerned with clause 11 in the agreement which

read, ""any dispute arising out of this sale shall be subject to Kaira jurisdiction"". The disputes having arisen out of the contract between the parties,

the respondents therein filed a suit for recovery of amount against the appellants therein and also claimed damages in the court of subordinate judge

at Salem. The appellants, inter alia, raised the preliminary objection that the subordinate judge at Salem had no jurisdiction to entertain the suit as

parties by express contract had agreed to confer exclusive jurisdiction in regard to all disputes arising out of the contract on the civil court at Kaira.

When the matter reached this Court, one of the questions for consideration was whether the court at Salem had jurisdiction to entertain or try the

suit. While dealing with this question, it was stated by this Court that the jurisdiction of the court in the matter of contract would depend on the situs

of the contract and the cause of action arising through connecting factors. The Court referred to Sections 23 and 28 of the Indian Contract Act,

1872 (for short, "Contract Act") and Section 20(c) of the Civil Procedure Code (for short "Code") and also referred to Hakam Singh and in para

21 of the Report held as under: (A.B.C. Laminart case, SCC pp.175-76).

21.....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" - expression of one is the exclusion of another - 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 others from its operation may in such cases be inferred. It has therefore to be properly construed.

14. Then, in paragraph 22 of the report, this Court held as under: (A.B.C. Laminart case, SCC p.176).

22.....We have already seen that making of the contract was a part of the cause of action and a suit on a contract therefore could be filed at the

place where it was made. Thus Kaira Court would even otherwise have had jurisdiction. The bobbins of metallic yarn were delivered at the

address of the respondent at Salem which, therefore, would provide the connecting factor for court at Salem to have jurisdiction. If out of the two

jurisdictions one was excluded by clause 11 it would not absolutely oust the jurisdiction of the court and, therefore, would not be void against

public policy and would not violate Sections 23 and 28 of the Contract Act. The question then is whether it can be construed to have excluded the

jurisdiction of the court at Salem. In the clause "any dispute arising out of this sale shall be subject to Kaira jurisdiction" ex facie we do not find

exclusionary words like "exclusive", "alone", "only" and the like. Can the maxim "expressio unius est exclusio alterius" be applied under the facts

and circumstances of the case? The order of confirmation is of no assistance. The other general terms and conditions are also not indicative of

exclusion of other jurisdictions. Under the facts and circumstances of the case we hold that while connecting factor with Kaira jurisdiction was

ensured by fixing the situs of the contract within Kaira, other jurisdictions having connecting factors were not clearly, unambiguously and explicitly

excluded. That being the position it could not be said that the jurisdiction of the court at Salem which court otherwise had jurisdiction under law

through connecting factor of delivery of goods thereat was expressly excluded.

15. In R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd., AIR 1993 SC 2094 : (1993) 1 JT 617 : (1993) 1 SCALE 262 :

(1993) 3 SCC 518 Supp : (1993) 2 SCC 130 the question that fell for consideration in the appeal was, in light of the endorsement on the deposit

receipt ""subject to Anand jurisdiction"", whether the Bombay High Court had jurisdiction to entertain the suit filed by the appellant therein.

Following A.B.C. Laminart, this Court in para 9 of the Report held as under: (R.S.D.V. Finance Case, SCC pp. 136-37).

9. We may also consider the effect of the endorsement "Subject to Anand jurisdiction" made on the deposit receipt issued by the defendant. In

the facts and circumstances of this case it cannot be disputed that the cause of action had arisen at Bombay as the amount of Rs. 10,00,000 itself

was paid through a cheque of the bank at Bombay and the same was deposited in the bank account of the defendant in the Bank of Baroda at

Nariman Point, Bombay. The five post-dated cheques were also issued by the defendant being payable to the plaintiff at Bombay. The

endorsement "Subject to Anand jurisdiction" has been made unilaterally by the defendant while issuing the deposit receipt. The endorsement

"Subject to Anand jurisdiction" does not contain the ouster clause using the words like "alone", "only", "exclusive" and the like. Thus the maxim

"expressio unius est exclusio alterius" cannot be applied under the facts and circumstances of the case and it cannot be held that merely because

the deposit receipt contained the endorsement "Subject to Anand jurisdiction" it excluded the jurisdiction of all other courts who were otherwise

competent to entertain the suit. The view taken by us finds support from a decision of this Court in A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies

16. The question under consideration in M/s. Angile Insulations Vs. M/s. Davy Ashmore India Ltd. and another, AIR 1995 SC 1766 : (1995) 2

BC 375 : (1996) 1 CTC 174 : (1995) 5 JT 179 : (1995) 3 SCALE 203 : (1995) 4 SCC 153 : (1995) 3 SCR 443 was whether the court of

subordinate judge, Dhanbad possessed the jurisdiction to entertain and hear the suit filed by the appellant for recovery of certain amounts due from

the first respondent. Clause 21 of the agreement therein read, ""This work order is issued subject to the jurisdiction of the High Court situated in

Bangalore in the State of Karnataka"". This Court relied upon A.B.C. Laminart and held that having regard to clause 21 of the work order which

was legal and valid, the parties had agreed to vest the jurisdiction of the court situated within the territorial limit of High Court of Karnataka and,

therefore, the court of subordinate judge, Dhanbad in Bihar did not have jurisdiction to entertain the suit filed by the appellant therein.

17. Likewise, in Shriram City Union Finance Corporation Ltd. Vs. Rama Mishra, AIR 2002 SC 2402 : (2002) 9 SCC 613 : (2002) AIRSCW

2617, the legal position stated in Hakam Singh was reiterated. In that case, clause 34 of the lease agreement read ""subject to the provisions of

clause 32 above it is expressly agreed by and between the parties hereinabove that any suit, application and/or any other legal proceedings with

regard to any matter, claims, differences and for disputes arising out of this agreement shall be filed and referred to the courts in Calcutta for the

purpose of jurisdiction". This Court held that clause 34 left no room for doubt that the parties had expressly agreed between themselves that any

suit, application or any other legal proceedings with regard to any matter, claim, differences and disputes arising out of this claim shall only be filed

in the courts in Calcutta. Whilst drawing difference between inherent lack of jurisdiction of a court on account of some statute and the other where

parties through agreement bind themselves to have their dispute decided by any one of the courts having jurisdiction, the Court said: (Shriram City

Case SCC pp.616-17, para 9)

9.....It is open for a party for his convenience to fix the jurisdiction of any competent court to have their dispute adjudicated by that court

alone. In other words, if one or more courts have the jurisdiction to try any suit, it is open for the parties to choose any one of the two competent

courts to decide their disputes. In case parties under their own agreement expressly agree that their dispute shall be tried by only one of them then

the parties can only file the suit in that court alone to which they have so agreed. In the present case, as we have said, through clause 34 of the

agreement, the parties have bound themselves that in any matter arising between them under the said contract, it is the courts in Calcutta alone

which will have jurisdiction. Once parties bound themselves as such it is not open for them to choose a different jurisdiction as in the present case

by filing the suit at Bhubaneswar. Such a suit would be in violation of the said agreement.

18. In Hanil Era Textiles Ltd. Vs. Puromatic Filters (P) Ltd., AIR 2004 SC 2432 : (2004) 3 CTC 220 : (2005) 1 CTLJ 118 : (2004) 1 JT 57

Supp : (2004) 138 PLR 308 : (2004) 4 SCALE 617 : (2004) 4 SCC 671 : (2004) 1 SCR 333 Supp : (2004) AIRSCW 2914 : (2004) 3

Supreme 287 , this Court was concerned with the question of jurisdiction of court of District Judge, Delhi. Condition 17 in the purchase order in

respect of jurisdiction read, ""..... legal proceeding arising out of the order shall be subject to the jurisdiction of the courts in Mumbai."" Following

Hakam Singh, A.B.C. Laminart and Angile Insulations, it was held in para 9 of the Report as under: (Hanil Era Textiles case, SCC p.676)

9. Clause 17 says - any legal proceedings arising out of the order shall be subject to the jurisdiction of the courts in Mumbai. This 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 plaintiff's 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.

19. In New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. and Others, (2004) 2

ACC 19 : (2004) ACJ 1324 : AIR 2004 SC 2154 : (2004) 98 CLT 81 : (2004) 121 CompCas 180 : (2004) 3 CTC 154 : (2004) 1 JT 294

Supp : (2005) 139 PLR 61 : (2004) 5 SCALE 73 : (2004) 4 SCC 677 : (2004) 1 SCR 623 Supp : (2004) AIRSCW 2379 : (2004) 3 Supreme

400 , the question that fell for consideration before this Court was whether the High Court's conclusion that the civil court at Barnala had

jurisdiction to try the suit was correct or not? The clause in the consignment note read, ""the court at head office city shall only be the jurisdiction in

respect of all claims and matters arising under the consignment at the goods entrusted for transport."" Additionally, at the top of the consignment

note, the jurisdiction has been specified to be with Udaipur court. This Court considered Section 20 of the Code and following Hakam Singh and

Shriram City, in para 19 of the Report held as under : (New Moga Transport case, SCC p.683)

19. The intention of the parties can be culled out from use of the expressions ""only"", ""alone"", ""exclusive"" and the like with reference to a particular

court. But the intention to exclude a court's jurisdiction should be reflected in clear, unambiguous, explicit and specific terms. In such case only the

accepted notions of contract would bind the parties. The first appellate court was justified in holding that it is only the court at Udaipur which had

jurisdiction to try the suit. The High Court did not keep the relevant aspects in view while reversing the judgment of the trial court. Accordingly, we

set aside the judgment of the High Court and restore that of the first appellate court. The court at Barnala shall return the plaint to Plaintiff 1

(Respondent 1) with appropriate endorsement under its seal which shall present it within a period of four weeks from the date of such endorsement

of return before the proper court at Udaipur.

20. The question for consideration in Shree Subhlaxmi Fabrics Pvt. Ltd. Vs. Chand Mal Baradia and Others, AIR 2005 SC 2161 : (2005) 1

ARBLR 623 : (2005) 124 CompCas 811 : (2005) 4 CompLJ 549 : (2005) 11 JT 155 : (2005) 10 SCC 704 : (2005) 2 SCR 1138 : (2005) 1 UJ

654 : (2005) AIRSCW 1807 : (2005) 3 Supreme 189 , was whether city civil court at Calcutta had territorial jurisdiction to deal with the dispute

though condition 6 of the contract provided that the dispute under the contract would be decided by the court of Bombay and no other courts.

This Court referred to Hakam Singh, A.B.C. Laminart and Angile Insulations and then in paras 18 and 20 of the Report held as under: (Shree

Subhlaxmi Fabrics Case, SCC pp.713-14)

18. In the case on hand the clause in the indent is very clear viz. ""court of Bombay and no other court"". The trial court on consideration of material

on record held that the court at Calcutta had no jurisdiction to try the suit.

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20. In our opinion the approach of the High Court is not correct. The plea of the jurisdiction goes to the very root of the matter. The trial court

having held that it had no territorial jurisdiction to try the suit, the High Court should have gone deeper into the matter and until a clear finding was

recorded that the court had territorial jurisdiction to try the suit, no injunction could have been granted in favour of the plaintiff by making rather a

general remark that the plaintiff has an arguable case that he did not consciously agree to the exclusion of the jurisdiction of the court.

21. In Harshad Chiman Lal Modi Vs. DLF Universal and Another, AIR 2005 SC 4446 : (2006) 101 CLT 5 : (2005) 5 CTC 133 : (2005) 8 JT

561 : (2005) 7 SCALE 533 : (2005) 7 SCC 791 : (2005) AIRSCW 5369 : (2005) 6 Supreme 634 , the clause of the plot buyer agreement read,

Delhi High Court or courts subordinate to it, alone shall have jurisdiction in all matters arising out of, touching and/or concerning this transaction.

This Court held that the suit related to specific performance of the contract and possession of immovable property and the only competent court to

try such suit was the court where the property was situate and no other court. Since the property was not situated in Delhi, the Delhi Court had no

jurisdiction though the agreement provided for jurisdiction of the court at Delhi. This Court found that the agreement conferring jurisdiction on a

court not having jurisdiction was not legal, valid and enforceable.

22. In Rajasthan State Electricity Board Vs. Universal Petro Chemicals Ltd., (2009) 1 JT 315 : (2009) 1 SCALE 354 : (2009) 3 SCC 107 :

(2009) 1 SCR 138 : (2009) 1 UJ 311 : (2009) AIRSCW 607 : (2009) 1 Supreme 121 , two clauses under consideration were clause 30 of the

general conditions of the contract and clause 7 of the bank guarantee. Clause 30 of the general conditions of the contract stipulated, ""the contract

shall for all purposes be construed according to the laws of India and subject to jurisdiction only at Jaipur in Rajasthan courts only....."" and clause



7 of the bank guarantee read, ""all disputes arising in the said bank guarantee between the Bank and the Board or between the supplier or the

Board pertaining to this guarantee shall be subject to the courts only at Jaipur in Rajasthan"". In light of the above clauses, the question under

consideration before this Court was whether Calcutta High Court where an application under Section 20 of the Arbitration Act, 1940 was made

had territorial jurisdiction to entertain the petition or not. Following Hakam Singh, A.B.C. Laminart and Hanil Era Textiles, this Court in paras 27

and 28 of the Report held as under: (Rajasthan SEB case, SCC pp. 114-15)

27. The aforesaid legal proposition settled by this Court in respect of territorial jurisdiction and applicability of Section 20 of the Code to the

Arbitration Act is clear, unambiguous and explicit. The said position is binding on both the parties who were contesting the present proceeding.

Both the parties with their open eyes entered into the aforesaid purchase order and agreements thereon which categorically provide that all

disputes arising between the parties out of the agreements would be adjudicated upon and decided through the process of arbitration and that no

court other than the court at Jaipur shall have jurisdiction to entertain or try the same. In both the agreements in Clause 30 of the general conditions

of the contract it was specifically mentioned that the contract shall for all purposes be construed according to the laws of India and subject to

jurisdiction only at Jaipur in Rajasthan courts only and in addition in one of the purchase order the expression used was that the court at Jaipur only

would have jurisdiction to entertain or try the same.

28. In the light of the aforesaid facts of the present case, the ratio of all the aforesaid decisions which are referred to hereinbefore would squarely

govern and apply to the present case also. There is indeed an ouster clause used in the aforesaid stipulations stating that the courts at Jaipur alone

would have jurisdiction to try and decide the said proceedings which could be initiated for adjudication and deciding the disputes arising between

the parties with or in relation to the aforesaid agreements through the process of arbitration. In other words, even though otherwise the courts at

Calcutta would have territorial jurisdiction to try and decide such disputes, but in view of the ouster clause it is only the courts at Jaipur which

would have jurisdiction to entertain such proceeding.

23. Then, in para 35 of the Report, the Court held as under: (Rajasthan SEB case, SCC p.116)

35. The parties have clearly stipulated and agreed that no other court, but only the court at Jaipur will have jurisdiction to try and decide the

proceedings arising out of the said agreements, and therefore, it is the civil court at Jaipur which would alone have jurisdiction to try and decide

such issue and that is the court which is competent to entertain such proceedings. The said court being competent to entertain such proceedings,

the said court at Jaipur alone would have jurisdiction over the arbitration proceedings and all subsequent applications arising out of the reference.

The arbitration proceedings have to be made at Jaipur Court and in no other court.

24. In Balaji Coke Industry Pvt. Ltd. Vs. Maa Bhagwati Coke (Guj) Pvt. Ltd., (2010) 1 CompLJ 11 : (2009) 12 JT 250 : (2009) 12 SCALE

343 : (2009) 9 SCC 403 : (2009) 14 SCR 241 the question was, notwithstanding the mutual agreement to make the high-seas sale agreement

subject to Kolkata jurisdiction, whether it would be open to the respondent-company to contend that since a part of cause of action purportedly

arose within the jurisdiction of Bhavnagar (Gujarat) Court, the application filed under Section 9 of the 1996 Act before the Principal Civil Judge

(Senior Division), Bhavnagar (Gujarat) could still be maintainable. This question arose in light of clause 11 of the agreement which contained an

arbitration clause and read as under : (Balaji Coke case, SCC p. 404, para 4)

4.....In case of any dispute or difference arising between the parties hereto or any claim or thing herein contained or the construction thereof or

as to any matter in any way connected with or arising out of these presents or the operation thereof or the rights, duties or liabilities of either party

thereof, then and in every such case the matter, differences or disputes shall be referred to an arbitrator in Kolkata, West Bengal, India in

accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996, or any other enactment or statutory modifications

thereof for the time being in force. The place of arbitration shall be Kolkata.

(emphasis in original)

25. This Court held in para 30 of the Report, that : (Balaji Coke Case, SCC p.409)

30...the parties had knowingly and voluntarily agreed that the contract arising out of the high-seas sale agreement would be subject to Kolkata

jurisdiction and even if the courts in Gujarat also had the jurisdiction to entertain any action arising out of the agreement, it has to be held that the

agreement to have the disputes decided in Kolkata by an arbitrator in Kolkata was valid and respondent had wrongly chosen to file its application

under Section 9 of the 1996 Act before the Bhavnagar court (Gujarat). ....

26. The question in Inter Globe Aviation Ltd. Vs. N. Satchidanand, (2011) 3 ARBLR 1 : (2011) 3 CPJ 1 : (2011) 8 JT 106 : (2011) 3

RCR(Civil) 666 : (2011) 7 SCC 463 , inter alia, was whether the Permanent Lok Adalat at Hyderabad had territorial jurisdiction to deal with the

matter. The standard terms which governed the contract between the parties provided, ""all disputes shall be subject to the jurisdiction of the courts

of Delhi only"". The contention on behalf of the appellant before this Court was that the ticket related to travel from Delhi to Hyderabad. The

complaint was in regard to delay at Delhi and, therefore, the cause of action arose at Delhi and that as contract provided that the courts at Delhi

only will have jurisdiction, the jurisdiction of other courts was ousted. This Court in para 22 of the Report held as under : (SCC pp.476-77)

22. As per the principle laid down in A.B.C. Laminart, any clause which ousts the jurisdiction of all courts having jurisdiction and conferring

jurisdiction on a court not otherwise having jurisdiction would be invalid. It is now well settled that the parties cannot by agreement confer

jurisdiction on a court which does not have jurisdiction; and that only where two or more courts have the jurisdiction to try a suit or proceeding, an

agreement that the disputes shall be tried in one of such courts is not contrary to public policy. The ouster of jurisdiction of some courts is

permissible so long as the court on which exclusive jurisdiction is conferred, had jurisdiction. If the clause had been made to apply only where a

part of cause of action accrued in Delhi, it would have been valid. But as the clause provides that irrespective of the place of cause of action, only

courts at Delhi would have jurisdiction, the said clause is invalid in law, having regard to the principle laid down in A.B.C. Laminart Pvt. Ltd. and

Another Vs. A.P. Agencies, Salem, AIR 1989 SC 1239 : (1989) 2 ARBLR 340 : (1989) 2 JT 38 : (1989) 1 SCALE 633 : (1989) 2 SCC 163 :

(1989) 2 SCR 1(1) : (1989) 2 UJ 80 . The fact that in this case, the place of embarkation happened to be Delhi, would not validate a clause,

which is invalid.

27. In a comparatively recent decision in A.V.M. Sales Corporation Vs. Anuradha Chemicals Pvt. Ltd., (2012) 1 CTC 867 : (2012) 1 JT 175 :

(2012) 1 RCR(Civil) 859 : (2012) 1 SCALE 349 : (2012) 2 SCC 315 : (2012) AIRSCW 1028 : (2012) 1 Supreme 753 , the terms of the

agreement contained the clause, ""any dispute arising out of this agreement will be subject to Calcutta jurisdiction only"". The respondent before this

Court had filed a suit at Vijayawada for recovery of dues from the petitioner while the petitioner had filed a suit for recovery of its alleged dues

from the respondent in Calcutta High Court. One of the questions under consideration before this Court was whether the court at Vijayawada had

no jurisdiction to entertain the suit on account of exclusion clause in the agreement. Having regard to the facts obtaining in the case, this Court first

held that both the courts within the jurisdiction of Calcutta and Vijayawada had jurisdiction to try the suit. Then it was held that in view of the

exclusion clause in the agreement, the jurisdiction of courts at Vijayawada would stand ousted.

After analyzing the various judgments, it was held as under:--

29. When it comes to the question of territorial jurisdiction relating to the application under Section 11, besides the above legislative provisions,

Section 20 of the Code is relevant. Section 20 of the Code states that subject to the limitations provided in Sections 15 to 19, every suit shall be

instituted in a Court within the local limits of whose jurisdiction:

(a) the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily

resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries

on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or

carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part arises.

30. The explanation appended to Section 20 clarifies that a corporation shall be deemed to carry on business at its sole or principal office in India

or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of

action has also arisen in Jaipur and, therefore, Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the

application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of

the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High

Court has jurisdiction in the matter. The question is, whether parties by virtue of clause 18 of the agreement have agreed to exclude the jurisdiction

of the courts at Jaipur or, in other words, whether in view of clause 18 of the agreement, the jurisdiction of Chief Justice of the Rajasthan High

Court has been excluded.

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall

be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone",

"only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference.

The intention of the parties -by having clause 18 in the agreement - is clear and unambiguous that the courts at Kolkata shall have jurisdiction which

means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like clause 18 in the

agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means

that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata,

the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place

and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts.

A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It

does not offend Section 28 of the Contract Act in any manner.

8. Thus, what would be seen from the perusal of the aforesaid judgment is that the jurisdiction clause of an agreement the words like "alone",

only", "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a Court. The

very existence of a jurisdiction clause in an agreement would be required to be looked into to find out whether the intention of the parties to the

agreement was quite clear to restrict the jurisdiction to entertain the disputes only at one place.

9. Now the question which, therefore, is required to be considered is as to whether the condition in the purchase order which has been accepted

by the plaintiff would show intention of the parties to confer jurisdiction only on the Court situate at Satara, Maharashtra or would thereafter the

separate condition in the invoice confining the jurisdiction to the Courts at Solan only be effective which will also have to be taken into

consideration.

10. To my mind, in order to determine the jurisdiction, if the Court was required to consider only the purchase order probably the defendant would

have been right that it was the Court at Satara, Maharashtra which alone would have jurisdiction to try the suit. But, once this purchase order has

been accepted and sale invoice issued which in itself incorporates the clause of jurisdiction, then this condition with respect to jurisdiction cannot be

ignored because the contract can only be said to have concluded once the offer is accepted. Therefore, unilateral condition in the purchase order in

the teeth of terms and conditions of the invoice cannot stand and will have to be read with the conditions as envisaged in the invoice.

11. The learned counsel for the defendant/applicant would, however, contend that the conferment of jurisdiction upon one Court would specifically

be to the exclusion of the jurisdiction of other Court and the conferment of jurisdiction would have to be honoured and respected and that would

constitute the intention of the parties. The reason for this, according to him, was obvious because the parties would not have otherwise included the

ouster clause in the agreement before it if the same was to carry no meaning at all. The very fact that the ouster clause is included in the agreement

between the parties conveys the clear intention to exclude the jurisdiction of Courts other than those mentioned in the clause concerned.

Conversely, if the parties had intended that all Courts where the cause of action or part thereof had arisen would continue to have jurisdiction over

the dispute, the exclusion clause would not have found a place in the agreement between the parties.

12. This submission appears to be attractive, but probably, what has been missed out by the learned counsel for the defendant/applicant is the fact

that the proposition canvassed by him also applies equally to the case of the plaintiff whereby the exclusion clause with respect to jurisdiction finds

mentioned in the sale invoice confining the jurisdiction of the Courts at District Solan only.

13. In view of there being no consensus or agreement on the question of jurisdiction of Courts, it can safely be concluded that the condition

contained in the purchase order in regard to jurisdiction is only a unilateral condition and merely because the plaintiff started supplying the goods,

cannot in itself be construed that there was acceptance by the plaintiff of all the terms and conditions specified in the purchase order, especially,

when in the sale invoice separate terms and conditions including jurisdiction is in variance with what had been set out in the purchase order.

14. Once this is the position, it can safely be concluded that the parties were at liberty to have the lis instituted either at Satara, Maharashtra or

before this Court. Therefore, the contention of the learned counsel for the defendant-applicant that this Court has no jurisdiction to try and entertain

and adjudicate upon the suit for want of territorial jurisdiction is without merit and accordingly the present application is dismissed.