

## Cheema Enterprises Vs Mayur Enterprises

**Court:** Gauhati High Court

**Date of Decision:** Sept. 12, 1997

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 9  
Contract Act, 1872 â€” Section 23

**Citation:** AIR 1998 Guw 86

**Hon'ble Judges:** J.N. Sharma, J

**Bench:** Single Bench

**Advocate:** C.K. Sarma Baruah, D.R. Gogoi, D.C. Borah and A.J. Sarma, for the Appellant; G.N. Sahewalla, A.K. Goswami, P. Bora and S. Murarkar, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

J.N. Sarma, J.

This revision application has been filed against an order dated 3-1-97 passed by the Civil Judge (Senior Division), Nagaon

Assam in Money Suit No. 33/94.

2. A suit was filed for realisation of Rupees 6,73,251/- against the defendant along with other reliefs. It may be stated herein that necessity to file

the suit arose because of the supply of a machine to the plaintiff by the defendant and that order of acceptance was signed at Guwahati. It was

signed on behalf of the defendant by its authorised signatory and on behalf of the plaintiff it was signed by somebody else stating that the order is

confirmed. There is a printed Clause at the back of this form and Clause 11 states inter alia as follows:

All disputes are subject to Kashipur Jurisdiction.

3. It was on the basis of this Clause that the defendant when got the summons of the suit and filed an objection stating therein that the Court at

Nagaon has no territorial jurisdiction to try the suit. This contention of the defendant was rejected by the impugned order. It was found by the trial

Court that on the back side of this form though there are as many as 11 terms and conditions, they were simply printed and there was no signature

of either of the party indicating acceptance of the clause. It was also found by the trial Court that in the back page there is no provision for

signature of the parties. The trial Court placed reliance in a judgment reported in United India Ins. Co. Ltd. Vs. Associated Transport Corpn. Pvt.

Ltd. and Another, and another and paragraph 5 of that judgment has been quoted. For better appreciation of the contention, that paragraph which

finds place in the judgment of the trial Court is quoted below at page 38 ;

Where the consignment note contained printed words ""subject to Bombay jurisdiction alone"" and apart from existence of these printed notes, the

carrier has no case that there was meeting of minds between the consignor and the carrier or there was specific agreement in that behalf and the

consignment note was signed only by employee of the carrier and was handed over to the consignor but there was nothing to indicate that there

was an agreement between the parties to confer exclusive jurisdiction of the Bombay Court, it was held, that the printed Words by themselves and

without anything more would not be sufficient to constitute an agreement to oust jurisdiction of all Courts other than the Court specified.

4. It is stated in the plaint that out of the amount an amount of one lac was sent as advance by Demand Bank Draft of the State Bank of India,

Haibargaon Branch, Nagaon and after the supply of the machine another Bank Draft of the same bank was sent. Thereafter, when the machine

was installed by the mechanic of the defendant it was found that the machine is defective, and it cannot produce the bricks and the mechanic of the

defendant himself issued a certificate at Nagaon to the effect that the machine is defective and there after the demand was made for the refund of

the amount but that was not done. Thereafter, this suit has been filed and now the defendant relying on that printed clause has raised the technical

objection that the Court at Nagaon has no territorial jurisdiction. The Kerala case stated above is a Division Bench judgment. There also in the

consignment note, there was printed words ""Subject to Bombay Jurisdiction alone"" and the Court found there was no meeting of minds between

the consignor and the carrier nor there was specific agreement in that behalf and the consignment note as in the present case was signed on the

front page and as such it was held by the Kerala High Court that the printed words by themselves and without anything more would not be

sufficient to constitute an agreement to oust jurisdiction of all Courts other than the Court specified in that clause. That is what has happened in the

instant case.

5. Sri Sahewalla, learned Advocate for the respondents places reliance on the following decisions :

(i) 1984 (1) Gau LR 405 : All Bengal Transport Agency and Others Vs. Hare Krishna Banik, The question which arose for determination in that

case was as follows :

The jurisdiction to try a case is derived by the Courts from a statute: parties cannot confer the same by agreement. The question that was posed

before the Court was : Can they oust the same totally by mutual agreement? If so, when?

6. In paragraph 9 it was pointed out that before a Court's due jurisdiction can be ousted on the strength of a clause like the one at hand, the

meeting of mind must not be in doubt. The Court must be satisfied that the party who is sought to be bound down by the term had the knowledge

of the same. This Court pointed out that knowledge cannot be attributed if such clauses are appended at the back and if it does not bear the

signature of the person concerned. This Court in paragraph 14 has laid down the law as follows:

14. The following principles emerge, on the basis of what has been stated above, on the question as to when such an agreement would oust the

jurisdiction of a competent Court ;

(a) The agreement must be clear and unambiguous.

(b) Any one sided declaration will not do in this regard.

(c) The Court must be satisfied that party sought to be bound by the agreement had knowledge of the same.

(d) Plea of waiver, if taken, shall also have to be examined.

(e) The Court which is mentioned in the agreement must be one which has jurisdiction de hors the agreement to entertain the matter (Hakam Singh

makes this aspect very clear).

(f) The agreement will not be an absolute bar to the jurisdiction, but while trying to uphold the solemnity of the contract, the Court will see if there

are countervailing oppressive circumstances.

(g) A revisional Court will not interfere with the matter unless there is failure of justice.

7. On the authority of this case, it is not necessary for this Court to interfere with the impugned order inasmuch as the order has not caused any

failure of justice but at the same time it has tried to take resort to countervailing oppressive circumstance sought to be imposed by the defendant on

the plaintiff by their misdeeds and wrong conducts. A person cannot be allowed to make a wrongful gain and go scot free. It can be well

conceived and imagined that for the plaintiff to go to Kashipur and file a suit there is practically impossible.

8. Sri C.K. Sarma Baruah, learned Advocate for the petitioner places reliance on the following decisions :

(i) A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, Salem and he relied on paragraph 18 of the judgment where the case of

Hakam Singh was considered wherein it was pointed out by the Supreme Court that objection based on jurisdiction is a matter which parties could

waive and it is in this sense if such jurisdiction is exercised by the Court it does not go to the core of it so as to make the resultant judgment a

nullity. Thereafter, the following observation was made at page 1245 (of AIR):

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 there within, 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. This cannot be understood as parties contracting against the statute. Mercantile law and practice permit

such agreements.

9. The Supreme Court has pointed out that the contract must be unambiguous and explicit and not vague as pointed out by the trial Court and as

found by this Court in the eye of law there is no such contract between the parties. So, the question of interference does not arise. In paragraph 22

of the judgment it has been pointed out as follows :

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 there at was expressly excluded. We accordingly find no error or infirmity in the impugned judgment of the High Court.

10. In this case also the clause which has been quoted will show that nowhere it has been stated that Kashipur will have the only jurisdiction and

the case cited by Sri Sarma Baruah instead of helping him goes as against him because the Supreme Court found in that case that if other Court has

the jurisdiction under the law that Court will have the territorial jurisdiction to try the suit.

11. The next case relied on by Sri Sarma Baruah is M/s. Angile Insulations Vs. M/s. Davy Ashmore India Ltd. and another, That case also

reiterated the same law and it is the case of 1989 (supra) which the Supreme Court quoted above was relied on by the Court.

12. This being the position, there is no merit in this civil revision and the same is dismissed with cost of Rs. 3,000/-.