

(2010) 08 AP CK 0030

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 153 of 2010

Tirumala Tirupathi Devasthanam

APPELLANT

Vs

Shree Distributors

RESPONDENT

Date of Decision: Aug. 31, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 2, 20

Citation: (2010) 6 ALT 634 : (2011) 1 CivCC 341

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Y.V. Ravi Prasad, for the Appellant; R. Raghunandan, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.

The Respondent filed O.S. No. 1557 of 2006 against the Petitioner in the Court of Additional Judge, City Small Causes Court-cum-VI Senior Civil Judge, City Civil Court, Hyderabad, for recovery of Rs. 1,08,042/- . The suit claim arises out of a contract between the parties. The Petitioner invited tenders for supply of Art Paper Material for the year 2004-05, and the tender submitted by the Respondent was accepted on 30-04-2004. Material worth Rs. 24,01,373/- was supplied by the Respondent, and the entire amount, except a sum of Rs. 1,08,042/-, was paid by the Petitioner. The said amount was withheld, on the ground that some quantity, supplied by the Respondent, did not accord with specifications.

2. On receipt of summons in the suit, the Petitioner filed written-statement. Apart from denying its liability to pay the amount, the Petitioner raised an objection, as to the territorial jurisdiction of the trial Court. It has also filed I.A. No. 174 of 2008, under Rule 2(ii)(a) of Order XIV Code of Civil Procedure, with a prayer to pronounce the judgment on the preliminary issue, as to the territorial jurisdiction. The I.A. was opposed by the Respondent. The trial Court dismissed the I.A., through its order

dated 11-08-2009. Hence, this revision.

3. Sri Y.V. Ravi Prasad, learned Counsel for the Petitioner submits that the tender notice was issued from the office of the Tirumala Tirupati Devasthanams, and its administrative office exists at that place, and there was absolutely no basis for the Respondent to file the suit in a Court at Hyderabad. He contends that the contract was also concluded at Tirupati, and the material was supplied to that place. Learned Counsel submits that the mere fact that the material was supplied from Hyderabad, does not constitute the basis, to file a suit in a Court at that place.

4. Sri R. Raghunandan, learned Counsel for the Respondent, on the other hand submits that, in the order of acceptance, the Petitioner-Devasthanams themselves have mentioned that the disputes shall be subject to Hyderabad jurisdiction, and it is not at all open to them to raise an objection, as to the territorial jurisdiction, when a suit is filed at Hyderabad. He submits that, not only the material was supplied from Hyderabad, but also correspondence has ensued there, and no exception can be taken to the filing of the suit in a Court at Hyderabad.

5. Both the learned Counsel have placed reliance upon certain decided cases.

6. The suit filed by the Respondent was, for recovery of certain amount, under a contract. The existence of the contract is not disputed, but the controversy is only, as to the nature of performance thereof. The Petitioner raised an objection as to the territorial jurisdiction of the Court, in which the suit was filed. According to them, no part of the cause of action has arisen within the limits of the trial Court, at Hyderabad. The plea is referable to Section 20 of Code of Civil Procedure, and it reads, as under:

Section 20: Other suits to be instituted where Defendants reside or cause of action arises. - Subject to the limitations aforesaid, 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 the 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.

Explanation - 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.

7. The selection of the Court at Hyderabad, by the Respondent, does not fit into Clauses (a) and (b) of Section 20 Code of Civil Procedure. The reason is that the Petitioner, who figured as the Defendant in the suit, does not reside, nor its office is located within the territorial jurisdiction of that Court. The only basis for the Respondent to choose the forum was, Clause (c), viz., the cause of action has arisen within the limits of the Court.

8. Admittedly, the tender notification was issued from Tirupati, and the material was supplied to that place. Payments for the supplied material were made by the office at Tirupati. Supply of material under a contract from a place does not constitute whole or part of cause of action. It is only when the contract itself provides that the material must be supplied from a particular place, that the cause of action can be said to have arisen there. In the absence of such a stipulation, the place of origination of the material does not become relevant, to decide the forum, for institution of the proceedings.

9. Reliance is placed by the Respondent upon illustration "(a)", appended to Section 20 Code of Civil Procedure, by the Respondent, in support of its contention. The illustration reads as under:

A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen or in Delhi, where B carries on business.

(emphasis supplied)

10. Under the illustration, the purchaser is an agency at Delhi, and the supplier is from Calcutta. The basis on which the Court at Calcutta is stated to be having jurisdiction is, that the contract itself provided for supply of goods at Calcutta, i.e. East Indian Railway Company. In the absence of such a stipulation, the things would be different, altogether. In the instant case, the supply was to be made at Tirupati. Even if one goes by the principle underlying the illustration, it is only the Court at Tirupati, that would have jurisdiction, being the place at which, the goods were required to be delivered.

11. Strong reliance is placed upon the stipulation, in the correspondence between the parties, to the effect that the disputes would be subject to the jurisdiction of the Courts at Hyderabad. Law in this regard is fairly well-settled. The jurisdiction of the Courts is to be decided by the relevant provisions of law, and not by agreement between the parties. The parties cannot, by their mutual consent, confer jurisdiction on a Court, which otherwise does not have it. Similarly, they cannot take away the jurisdiction of a Court, by their mutual consent. Their freedom to contract is only to agree upon one of the Courts, where, more Courts, than one, have jurisdiction. By doing so, they impliedly close their options, to choose the other alternatives.

12. To illustrate, if a contract between "A" from Hyderabad, on the one hand, with "8" and "C" natives of Visakhapatnam and Cuttak, respectively, on the other hand, for purchase of property at Caltutta; was entered into at Bhubaneswar. "A" can file a suit in the Courts of competent jurisdiction at all the places, referred to above, except the one, at Hyderabad, the place of his residence. The suit can be filed at Visakhapatnam or Cuttak, being the places of residences of Defendants; in the Court of Calcutta, being the place, where the subject-matter of the contract is situated; and at Bhubaneswar, where the contract is concluded. In such cases, there can be agreement between the parties, to choose any one place for institution of proceedings, in which event the option to institute the same in the Courts at other places gets closed. However, even by agreement, the parties cannot choose a place, which does not fit into any of the stipulations of Section 20 Code of Civil Procedure, or other similar provisions.

13. To take assistance of that very illustration. Even if there is a clause in the contract, between "A", and "8", & "C", that the disputes shall be subject to jurisdiction of a Court at Patna, a suit cannot be validly filed in the Court at that place, reason being that, it does not fit into any of the circumstances provided for, u/s 20 Code of Civil Procedure.

14. In A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, the Hon"ble Supreme Court held as under:

Para-16: So long as the parties to a contract do not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the Court. If under the law several Courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. On other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. Would this be the position in the instant case?

15. After referring to the various cases on the issue, Their Lordships observed:

Para-20: When the Court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the ousting 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. Thus, in Salem

Chemical Industries, a registered Firm Vs. Bird and Co. (P) Ltd., Calcutta, where the terms and conditions attached to the quotation contained an arbitration clause provided that: "any order placed against this quotation shall be deemed to be a contract made in Calcutta and any dispute arising therefrom shall be settled by an Arbitrator to be jointly appointed by us" it was held that it merely fixed the situs of the contract at Calcutta and it did not mean to confer an exclusive jurisdiction on the Court at Calcutta, and when a part of the cause of action had arisen at Salem, the Court there had also jurisdiction to entertain the suit u/s 20(c) of the Code of Civil Procedure.

16. Therefore, the clause contained in the correspondence between the parties, providing for adjudication of disputes in the Courts at Hyderabad, would have become valid, if only the Court at that place also had jurisdiction, u/s 20 Code of Civil Procedure. It has already been observed that the place from which, the material is supplied, does not at all become a relevant factor in choosing the forum. Unless the one mentioned in the contract was one of the Courts, in which the suit could otherwise have been instituted, the ouster clause, by itself, does not confer jurisdiction on such Court.

17. Though the trial Court made a reference to the judgment of the Hon'ble Supreme Court, it was read and understood in a different way.

18. For the foregoing reasons, the CPC is allowed, and the order under revision is set aside. The trial Court is directed to return the plaint to the Respondent. Six weeks time, from today, is granted to the Respondent for presenting the suit before the Court, having the territorial jurisdiction to entertain it.

19. There shall be no order as to costs.