

(2014) 01 CAL CK 0070

Calcutta High Court

Case No: G.A. No. 2543 of 2013 and C.S. No. 130 of 1985

Hindustan Construction and
Commercial Corporation

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Jan. 10, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 49 Rule 3, Order 7 Rule 10

Citation: AIR 2014 Cal 138

Hon'ble Judges: Debangsu Basak, J

Bench: Single Bench

Advocate: Jayanto Banerjee, for the Appellant; Partho Sarathi Bose Mr. Saptarsi Roy, for the Respondent

Final Decision: Disposed Off

Judgement

Debangsu Basak, J.

Defendant issued a tender for supply of tie bars. The plaintiff participated in such tender. The plaintiff became successful in such tender and was awarded a contract. Disputes and differences arose between the parties with regard to such contract. The contract between the parties contained an arbitration agreement. Disputes between the parties were referred to arbitration. The plaintiff challenged the appointment of the arbitrator before this Hon^{ble} Court. Such challenge was dismissed by a judgment and order dated June 2, 1983 on the ground that the Hon^{ble} Court lacked territorial jurisdiction. The sole arbitrator entertained into reference and an award was published on June 16, 1984. The award held that the plaintiff was not entitled to any sum whatsoever from the defendant. Such award was made a rule of the Court by the Additional Judge, Civil Court, Secunderabad on November 21, 1984. No application for setting aside the award was made. No appeal was preferred against the decree dated November 21, 1984. The plaintiff, thereafter, approached this Hon^{ble} Court and filed the instant suit seeking

declaration and a money decree for Rs. 9,37,670.91. The same contract between the parties which culminated into the decree dated November 21, 1984 was the basis of instant suit. In the instant suit the defendant filed written statement and took the point of lack of jurisdiction of this Hon^{ble} Court on the basis of Clause 2703 of the tender conditions.

2. The suit was pending before this Hon^{ble} Court since 1985. The defendant made the present application in August, 2013 and sought for an order for return of the plaint for presentation to the learned Court having jurisdiction to hear the suit.

3. Mr. Partho Sarathi Bose learned Senior Advocate appeared on behalf of the defendant. He submitted that the parties agreed to a chosen forum. The chosen forum otherwise had jurisdiction to try entertain and determine the instant suit. He submitted that the plaintiff admitted that both the Courts at Secunderabad as well as this Hon^{ble} Court had the jurisdiction to try entertain and determine the instant suit. By reason of the forum selection clause the plaint ought to be returned to the plaintiff for the purpose of same being filed before the Hon^{ble} Court having jurisdiction.

4. He relied on [Hakam Sing Vs. Gammon \(India\) Ltd.](#), and [Hanil Era Textiles Ltd. Vs. Puromatic Filters \(P\) Ltd.](#), for the proposition that once a party chose a forum which otherwise had jurisdiction the parties must be held to their bargain.

5. He also relied on the judgment and order dated June 2, 1983 passed by this Hon^{ble} Court in the application for revocation of the authority of the arbitrator and his removal in support of his contention that this Hon^{ble} Court did not have jurisdiction of try to entertain and determine the instant suit.

6. Mr. Bose also drew the attention of the Court to the averments at paragraph 1 of the application where it was stated that the tender of the plaintiff was accepted at Secunderabad. He placed paragraph 9 of the affidavit-in-opposition and contended that such factum was not denied by the plaintiff. He, therefore, contended that in terms of Clause 2703 of the tender conditions Secunderabad Court was the only Court which, being the Court where the acceptance of tender was issued, would have jurisdiction to decide any dispute arising out of or in respect of the contract.

7. Mr. Jayanto Banerjee learned Counsel appeared for the plaintiff and submitted that the present application was not maintainable as Order VII Rule 10 of the Code of Civil Procedure, 1908 was not applicable to a Chartered High Court. He also submitted that the suit was at an advance stage and that the same contention was raised by the defendant in their written statement. Therefore, according to him, a triable issue was raised which was required to be decided.

8. He submitted that the purchase order was issued from the office of the defendant within the jurisdiction of this Hon^{ble} court and as such the Hon^{ble} Court would have jurisdiction to try and determine the instant suit.

9. The issue of jurisdiction of this Hon^{ble} Court to try and determine the suit, therefore, falls for consideration in this application.

10. The plaint, written statement, and the tender conditions were relied upon on this issue. The tender conditions are not denied. The issue, therefore, could be taken up for consideration.

11. It was averred at paragraph 16 of the plaint that the present claim of the plaintiff was independent of any decree. The claim of the plaintiff arises out of the same contract in respect of which the parties went to arbitration. The tender conditions of the contract in Clause 2703 thereof specifies as follows:--

Jurisdiction of Courts: This Court is the place from where the acceptance of tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the contract.

12. The plaintiff stated in paragraph 16 of the plaint that both the Court at Secunderabad as well as this Hon^{ble} Court would have jurisdiction to entertain and try this suit. The plaintiff chose this Hon^{ble} Court as a part of the cause of action of the suit arose within the jurisdiction of this Hon^{ble} Court.

13. Hakam Singh (Supra) and Hanil Era Textiles Ltd. (Supra) held that where two or more courts would have jurisdiction under the Code of Civil Procedure, 1908 to try a suit or proceeding it was open to the parties to agree to one of such Courts. Such agreement was held not to be against public policy.

14. The forum selection clause was required to be strictly construed. It was to be seen from the ouster clause whether the jurisdictions of the other Courts were ousted or not. When the ouster clause was clear unambiguous and specific then such clause would oust the jurisdiction of other Courts. The ouster clause was valid. It was not even remotely urged by the plaintiff that the clause was not applicable.

15. The ouster clause in this case required a suit to be filed in the Court which would have jurisdiction over the office of the defendant from where the acceptance of the tender was issued. The use of the word "shall alone have jurisdiction" in the ouster clause ousts the jurisdiction of other Courts on construing the ouster clause in this suit. It leads no manner of doubt that the parties had agreed that the Court from where the acceptance of tender was issued would alone have jurisdiction to decide any dispute arising out of or in respect of the contract.

16. The acceptance of tender was issued from an office of the defendant lying and situate within the jurisdiction of the Secunderabad Court. Such finding was returned by the Hon^{ble} Court in its judgment and order dated June 12, 1983 between the same parties. The cause of action of the instant suit revolved around the same contract which was the subject matter of the judgment and order dated June 2, 1983. The parties, obviously, would be the same. Such judgment and order, therefore, was binding on the parties.

17. The ouster clause was clear, unambiguous and specific. It ousted the jurisdiction of other Courts in favour of the Court from where the acceptance of tender was issued.

18. The suit was filed without obtaining leave under Clause 12 of the Letters Patent, 1865. Mr. Banerjee for the defendant contended that provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908 would not apply to a Chartered High Court in the exercise of its ordinary original civil jurisdiction in view of Order XLIX Rule 3 of the Code of Civil Procedure, 1908. Such provisions of the Code would not vest any jurisdiction on this Hon^{ble} Court when it did not have in the first place. The forum selection clause ousted the jurisdiction of this Hon^{ble} Court. The parties would be required to be held to their bargain. Non applicability of Order VII Rule 10 to a Chartered High Court would not vest this Hon^{ble} Court to try and determine the suit when the parties by agreement had ousted the jurisdiction of this Hon^{ble} Court.

19. The plaintiff applied for return of the plaint. Order VII Rule 10 of the CPC did not apply to a Chartered High Court. I have already held that in view of the ouster clause this Hon^{ble} Court did not have the jurisdiction to entertain and try the suit. No useful purpose would be served by dismissing the application of the defendant only on the ground that Order VII Rule 10 was not applicable to Chartered High Court.

20. G.A. No. 2543 of 2013 is disposed of by holding that this Hon^{ble} Court has no jurisdiction to try and determine the suit. There will be no order as to costs.

21. C.S. No. 130 of 1985 is disposed of accordingly. All interim orders passed in the suit are vacated. Certified website copies of this order, if applied for, be urgently supplied to the parties subject to compliance with all requisite formalities.