

M/S. ANGLE INSULATIONS
v.
M/S. DAVY ASHMORE INDIA LTD. AND ANR.

APRIL 18, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Code of Civil Procedure, 1908 : Sections 16 to 20—Jurisdiction—Intention of parties explicit in contract—Not hit by Ss.23, 28 of Contract Act—Not amounting to contracting against statute—Such agreements between parties permitted by mercantile law and practice.

Contract Act, 1872: Sections 23, 28—Jurisdiction—Intention of parties to a contract made explicit in the agreement—Not hit by Ss.23, 28—Permitted by Mercantile law and practice.

Appellant filed a case against Respondent in the Court of Sub-Judge, Dhanbad for recovery of certain amounts due from first respondent on the basis of a contract executed by it. The respondent raised objection as regards jurisdiction of the Court placing reliance on clause (21) of the contract which stated that the contract was subject to the jurisdiction of Bangalore High Court. The trial Court returned the plaint for presentation to the proper Court. Appellant preferred a Revision which was dismissed by the High Court. Hence this appeal.

The appellant contended that since part of the cause of action arose in Dhanbad as per S.20 CPC jurisdiction vests with the Sub-Judge, Dhanbad.

Dismissing the appeal, this Court

HELD : 1.1. Normally that court also would have jurisdiction where the cause of action, wholly or in part, arises. But it will be subject to the terms of the contract between the parties. In the instant case, a reading of the relevant clause would clearly indicate that the work order issued by the appellant would be subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka. Any legal proceeding will, therefore, be instituted in a Court of competent jurisdiction within the jurisdiction of High Court of Bangalore only. [445-F, H, 446-A]

A 1.2. 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 therewith, 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 ss.23 and 28 of the Contract Act.

B This cannot be understood as parties contracting against the statute. Mercantile law and practice permit such agreements. [446-C, D]

C 1.3. Clause(21) of the contract is unambiguous and explicit and the parties having agreed to vest the jurisdiction of the Court situated within the territorial limit of High Court of Karnataka, the Court of Subordinate Judge, Dhanbad in Bihar State has no jurisdiction to entertain the suit laid by the appellant. Therefore, the High Court was right in upholding the order of the Trial Court returning the plaint for presentation to the proper Court. [446-F]

D *A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies Salem*, [1989] 2 SCC 163, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5185 of 1995.

E From the Judgment and Order dated 17.8.87 of the Patna High Court in C.R.No. 20 of 1984(R).

S.N. Mishra, D.P. Mukherjee and Sanjay Kumar Ghose for the Appellant.

F P.R. Seetharaman, Adv. (NP) for the Respondents.

The following Order of the Court was delivered :

Leave granted.

G The appellant had initiated action in the Court of Subordinate Judge, Dhanbad for recovery of certain amounts said to be due from the first respondent. The appellant filed the case on a contract executed by the first respondent. On filing the suit for recovery of the amounts, the respondents raised the objection as regards the jurisdiction of the Court and placed

H reliance on Clause (21) of the contract. The trial Court returned the plaint

for presentation to the proper court by its order dated September 1, 1983. Thereon, the appellant carried the matter in revision to the High Court. The High Court in the impugned order made in C.R.No. 20/84 dated August 17, 1987 upheld the view of the trial Court and dismissed the revision. Thus, this appeal by special leave.

The principal contention raised by the appellant is that s.20 of CPC provides that where cause of action had arisen partly within territorial jurisdiction of one court or partly in another court, it would be open to the parties to avail of the remedy at the court where part of the cause of action had arisen. In support thereof, he contended that the contract was entered into and executed within the jurisdiction of the Court of the subordinate Judge, Dhanbad. Therefore, by operation of the Explanation to s.20, it must be deemed that the cause of action had arisen within the local limits of the jurisdiction of the Court of Subordinate Judge, Dhanbad.

Normally, the plea of jurisdiction of the Court is to be considered in accordance with ss.16 to 20 of CPC. Section 20 provides that subject to some limitations, 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 carried on business, or personally works for gain; or any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides or carried 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 works for gain.

So, normally that Court also would have jurisdiction where the cause of action, wholly or in part, arises, but it will be subject to the terms of the contract between the parties. In this case, Clause (21) reads thus:

"This work order is issued subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka. Any legal proceeding will, therefore, fall within the jurisdiction of the above Court only."

A reading of this clause would clearly indicate that the work order issued by the appellant will be subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka. Any legal proceeding will,

A therefore, be instituted in a Court of competent jurisdiction within the jurisdiction of High Court of Bangalore only. The controversy has been considered by this Court in *A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem*, [1989] 2 SCC 163. Considering the entire case law on the topic, this Court held that the citizen has the right to have his legal position determined by the ordinary Tribunal except, of course, subject to contract

B (a) when there is an arbitration clause which is valid and binding under the law, and (b) when parties to a contract agree as to the jurisdiction to which dispute in respect of the contract shall be subject. This is clear from s.28 of the Contract Act. But an agreement to oust absolutely the jurisdiction of the Court will be unlawful and void being against the public policy

C under s.23 of the Contract Act. We do not find any such in validity of Clause (21) of the Contract pleaded in this case. On the other hand, this Court laid 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 therewith, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves,

D the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague, it is not hit by ss.23 and 28 of the Contract Act. This cannot be understood as parties contracting against the statute. Mercantile law and practice permit such agreements.

E In this view of the law and in view of the fact that the agreement under which Clause (21) was incorporated as one such clause, the parties are bound by the contract. The contract had not been pleaded to be void and being opposed to s.23 of the Contract Act. As seen, Clause (21) is unambiguous and explicit and that, therefore, the parties having agreed to vest the jurisdiction of the Court situated within the territorial limit of High

F Court of Karnataka, the Court of subordinate Judge, Dhanbad in Bihar State has no jurisdiction to entertain the suit laid by the appellant. Therefore, the High Court was right in upholding the order of the Trial Court returning the plaint for presentation to the proper Court.

G The appeal is accordingly dismissed. No costs.

G.N.

Appeal dismissed.