

M/S Swastik Gases P.Ltd vs Indian Oil Corp.Ltd on 3 July, 2013

Equivalent citations: AIRONLINE 2013 SC 365, (2013) 115 CORLA 174, (2013) 2 CLR 280 (SC), (2013) 2 WLC (SC) 406, (2013) 3 ARBILR 161, 2013 (3) KLT SN 117 (SC), (2013) 4 ALL WC 4236, (2013) 4 CAL HN 146, (2013) 4 CURCC 251, (2013) 5 ALLMR 885, (2013) 5 MAD LW 749, (2013) 8 SCALE 433, 2013 (9) SCC 32, (2014) 1 ICC 657, (2014) 1 RECCIVR 52, (2013) 3 KER LT 117

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Bench: R.M. Lodha, Madan B. Lokur, Kurian Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5086 OF 2013

(Arising out of SLP(C) No. 5595 of 2012)

M/s. Swastik Gases P. Ltd.

... Appellant

Vs.

Indian Oil Corp. Ltd.

... Respondent

JUDGMENT

R.M. LODHA, J.

Leave granted.

2. The short question that arises for consideration in this appeal by special leave is, whether, in view of clause 18 of the consignment agency agreement (for short, 'agreement') dated 13.10.2002, the Calcutta High Court has exclusive jurisdiction in respect of the application made by the appellant under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, '1996 Act').

3. The above question arises in this way. The IBP Company Limited, which has now merged with the respondent-Indian Oil Corporation Limited, hereinafter referred to as 'the company', was engaged

in the business of storage, distribution of petroleum products and also manufacturing and marketing of various types of lubricating oils, grease, fluid and coolants. The company was interested to promote and augment its sales of lubricants and other products and was desirous of appointing consignment agents. The appellant, M/s. Swastik Gases Private Limited, mainly deals in storage, distribution of petroleum products including lubricating oils in Rajasthan and its registered office is situated at Jaipur. An agreement was entered into between the appellant and the company on 13.10.2002 whereby the appellant was appointed the company's consignment agent for marketing lubricants at Jaipur (Rajasthan). There is divergent stand of the parties in respect of the place of signing the agreement. The company's case is that the agreement has been signed at Kolkata while the appellant's stand is that it was signed at Jaipur.

4. In or about November, 2003, disputes arose between the parties as huge quantity of stock of lubricants could not be sold by the appellant. The appellant requested the company to either liquidate the stock or take back the stock and make payment thereof to the appellant. The parties met several times but the disputes could not be resolved amicably.

5. On 16.07.2007, the appellant sent a notice to the company claiming a sum of Rs.18,72,332/- under diverse heads with a request to the company to make payment of the above amount failing which it was stated that the appellant would pursue appropriate legal action against the company.

6. Thereafter, on 25.08.2008 another notice was sent by the appellant to the company invoking arbitration clause wherein name of a retired Judge of the High Court was proposed as the appellant's arbitrator. The company was requested to name their arbitrator within thirty days failing which it was stated that the appellant would have no option but to proceed under Section 11 of the 1996 Act.

7. The company did not nominate its arbitrator within thirty days of receipt of the notice dated 25.08.2008 which led to the appellant making an application under Section 11 of the 1996 Act in the Rajasthan High Court for the appointment of arbitrator in respect of the disputes arising out of the above agreement.

8. The company contested the application made by the appellant, inter alia, by raising a plea of lack of territorial jurisdiction of the Rajasthan High Court in the matter. The plea of the company was that the agreement has been made subject to jurisdiction of the courts at Kolkata and, therefore, Rajasthan High Court lacks the territorial jurisdiction in dealing with the application under Section 11.

9. In the course of hearing before the designate Judge, two judgments of this Court, one A.B.C. Laminart[1] and the other Rajasthan State Electricity Board[2] were cited. The designated Judge applied A.B.C. Laminart1 and held that Rajasthan High Court did not have any territorial jurisdiction to entertain the application under Section 11 and dismissed the same while giving liberty to the appellant to file the arbitration application in the Calcutta High Court. It is from this order that the present appeal by special leave has arisen.

10. We have heard Mr. Uday Gupta, learned counsel for the appellant and Mr. Sidharth Luthra, learned Additional Solicitor General for the company. Learned Additional Solicitor General and learned counsel for the appellant have cited many decisions of this Court in support of their respective arguments. Before we refer to these decisions, it is apposite that we refer to the two clauses of the agreement which deal with arbitration and jurisdiction. Clause 17 of the agreement is an arbitration clause which reads as under:

17.0. Arbitration If any dispute or difference(s) of any kind whatsoever shall arise between the parties hereto in connection with or arising out of this Agreement, the parties hereto shall in good faith negotiate with a view to arriving at an amicable resolution and settlement. In the event no settlement is reached within a period of 30 days from the date of arising of the dispute(s)/difference(s), such dispute(s)/difference(s) shall be referred to 2 (two) Arbitrators, appointed one each by the parties and the Arbitrators, so appointed shall be entitled to appoint a third Arbitrator who shall act as a presiding Arbitrator and the proceedings thereof shall be in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof in force. The existence of any dispute(s)/difference(s) or initiation/continuation of arbitration proceedings shall not permit the parties to postpone or delay the performance of or to abstain from performing their obligations pursuant to this Agreement.

11. The jurisdiction clause 18 in the agreement is as follows:

18.0. Jurisdiction The Agreement shall be subject to jurisdiction of the courts at Kolkata.

12. The contention of the learned counsel for the appellant is that even though clause 18 confers jurisdiction to entertain disputes inter se parties at Kolkata, it does not specifically bar jurisdiction of courts at Jaipur where also part of the cause of action has arisen. It is the submission of the learned counsel that except execution of the agreement, which was done at Kolkata, though it was signed at Jaipur, all other necessary bundle of facts forming 'cause of action' have arisen at Jaipur. This is for the reason that: (i) The regional office of the respondent – company is situate at Jaipur; (ii) the agreement was signed at Jaipur;

(iii) the consignment agency functioned from Jaipur; (iv) all stock of lubricants was delivered by the company to the appellant at Jaipur; (v) all sales transactions took place at Jaipur; (vi) the godown, showroom and office of the appellant were all situated in Jaipur; (vii) various meetings were held between the parties at Jaipur; (viii) the company agreed to lift the stock and make payment in lieu thereof at a meeting held at Jaipur and

(ix) the disputes arose at Jaipur. The learned counsel for the appellant would submit that since part of the cause of action has arisen within the jurisdiction of the courts at Jaipur and clause 18 does not expressly oust the jurisdiction of other courts, Rajasthan High Court had territorial jurisdiction to try and entertain the petition under Section 11 of the 1996 Act. He vehemently contended that clause

18 of the agreement cannot be construed as an ouster clause because the words like, 'alone', 'only', 'exclusive' and 'exclusive jurisdiction' have not been used in the clause.

13. On the other hand, the learned Additional Solicitor General for the company stoutly defended the view of the designate Judge that from clause 18 of the agreement, it was apparent that the parties intended to exclude jurisdiction of all courts other than the courts at Kolkata.

14. Hakam Singh[3] 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.

15. In Globe Transport[4] 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. 16. In A.B.C. Laminart¹, 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 Singh³ and in paragraph 21 (pgs. 175-176) of the Report held as under:

".....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." Then, in paragraph 22(pg. 176) of the Report, this Court held as under:

“.....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.....”

17. In R.S.D.V. Finance[5] 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. Laminart¹, this Court in paragraph 9 (pgs. 136-137) of the Report held as under :

“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, Salem.”

18. The question under consideration in *Angile Insulations*[6] 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*¹ 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.

19. Likewise, in *Shriram City*[7], the legal position stated in *Hakam Singh*³ 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 :

“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.”

20. In *Hanil Era Textiles*[8], 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*³ ,

A.B.C. Laminart¹ and Angile Insulations⁶, it was held in paragraph 9 (pg. 676) of the Report as under:

“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.”

21. In New Moga Transport[9], 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 Singh³ and Shriram City⁷, in paragraph 19 (pg. 683) of the Report held as under :

“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.....”

22. The question for consideration in Shree Subhlaxmi Fabrics[10], 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 Singh³, A.B.C. Laminart¹ and Angile Insulations⁶ and then in paragraph 18 (pg. 713) and paragraph 20 (pg. 714) of the Report held as under :

“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.” xxx xxx xxx “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.”

23. In Harshad Chiman Lal Modi^[11], 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.

24. In Rajasthan State Electricity Board², 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 Singh³, A.B.C. Laminart¹ and Hanil Era Textiles⁸, this Court in paragraphs 27 and 28 (pgs. 114-115) of the Report held as under:

“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.” Then, in paragraph 35 (pg. 116) of the Report, the Court held as under:

“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.”

25. In Balaji Coke[12] 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 :

“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.”

26. This Court held in para 30 (pg. 409) of the Report, that 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).

27. The question in *Interglobe Aviation*[13], 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 paragraph 22 (pgs.

476-477) of the Report held as under :

“22. As per the principle laid down in *A.B.C. Laminart* [(1989) 2 SCC 163], 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* [(1989) 2 SCC 163]. The fact that in this case, the place of embarkation happened to be Delhi, would not validate a clause, which is invalid.”

28. In a comparatively recent decision in *A.V.M. Sales*[14], 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.

29. Section 11(12)(b) of the 1996 Act provides that where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an arbitration other than the international commercial arbitration, the reference to 'Chief Justice' in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the Principal Civil Court referred to in Section 2(1)(e) is situate, and where the High Court itself is the court referred to in clause (e) of sub-section (1) of Section 2, to the Chief Justice of that High Court. Clause

(e) of sub-section (1) of Section 2 defines 'Court' which means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

30. 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. 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. 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.

32. The above view finds support from the decisions of this Court in *Hakam Singh*³, *A.B.C. Laminart*¹, *R.S.D.V. Finance*⁵, *Angile Insulations*⁶, *Shriram City*⁷, *Hanil Era Textiles*⁸ and *Balaji Coke*¹².

33. In view of the above, we answer the question in the affirmative and hold that the impugned order does not suffer from any error of law.

34. Civil appeal is, accordingly, dismissed with no order as to costs. The appellant shall be at liberty to pursue its remedy under Section 11 of the 1996 Act in the Calcutta High Court.

.....J. (R.M. Lodha)J. (Kurian Joseph) NEW DELHI JULY 03, 2013.

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M/s Swastik Gases P. Ltd.

... Appellant

Versus

Indian Oil Corporation Ltd.

... Respondent

J U D G M E N T

Madan B. Lokur, J.

1. Leave granted.

2. While I agree with the conclusion arrived at by my learned Brother Justice Lodha, this judgment has been penned down to raise the question – is it really necessary for this Court to repeatedly affirm the legal position ad nauseam? I believe the law on the subject is well settled and it is to nobody's advantage if the same law is affirmed many times over.

3. The clause in the agreement that is sought to be interpreted reads as follows:

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“The agreement shall be subject to jurisdiction of the Courts at Kolkata.”

4. In my opinion, the very existence of the exclusion of jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like “only”, “exclusively”, “alone” and so on are not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement. Therefore, I agree with the conclusion that jurisdiction in the subject matter of the proceedings vested, by agreement, only in the Courts in Kolkata.

5. The facts of the case have been detailed by my learned Brother and it is not necessary to repeat them.

6. Reference has been made to several decisions rendered by this Court and I propose to briefly advert to them.

One set of decisions:

7. There is really no difficulty in interpreting the exclusion clause in the first set of decisions. The clause in these decisions generally uses the word “alone” and, therefore, it is quite obvious that the parties have, by agreement, excluded the jurisdiction of courts - other than those mentioned in the agreement. These decisions, along with the relevant clause, are as follows:

1. Hakam Singh v. Gammon (India) Ltd., (1971) 1 SCC 286:

“Notwithstanding the place where the work under this contract is to be executed, it is mutually understood and agreed by and between the parties hereto that this Contract shall be deemed to have been entered into by the parties concerned in the city of Bombay and the court of law in the city of Bombay alone shall have jurisdiction to adjudicate thereon.” (emphasis given) It was held that only the courts in Bombay and not Varanasi had jurisdiction over the subject matter of dispute.

2. Globe Transport Corpn. v. Triveni Engg. Works, (1983) 4 SCC 707:

“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.” (emphasis given) It was held that only the courts in Jaipur and not Allahabad had jurisdiction over the subject matter of dispute.

3. Angile Insulations v. Davy Ashmore India Ltd., (1995) 4 SCC 153:

“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.” (emphasis given)

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It was held that only the courts in Karnataka and not Dhanbad had jurisdiction over the subject matter of dispute.

4. New Moga Transport Co. v. United India Insurance Co. Ltd., (2004) 4 SCC 677:

“The court at head office city [Udaipur] shall only be the jurisdiction in respect of all claims and matters arising under the consignment at the goods entrusted for transport.” (emphasis given) It was held that only the courts in Udaipur and not Barnala had jurisdiction over the subject matter of dispute.

5. Shree Subhlaxmi Fabrics (P) Ltd. v. Chand Mal Baradia, (2005) 10 SCC 704:

“Dispute under this contract shall be decided by the court of Bombay and no other courts.” (emphasis given) It was held that only the courts in Bombay and not Calcutta had jurisdiction over the subject matter of dispute.

6. Rajasthan State Electricity Board v. Universal Petrol Chemicals Limited, (2009) 3 SCC 107:

“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.” (emphasis given) It was held that only the courts in Jaipur and not Calcutta had jurisdiction over the subject matter of dispute.

7. A.V.M. Sales Corporation v. Anuradha Chemicals Private Limited, (2012) 2 SCC 315:

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“Any dispute arising out of this agreement will be subject to Calcutta jurisdiction only.” (emphasis given) It was held that only the courts in Calcutta and not Vijaywada had jurisdiction over the subject matter of dispute.

8. The exclusion clause in the above cases is explicit and presents no difficulty in understanding or appreciation.

Another set of decisions:

9. In the second set of decisions, the exclusion clause is not specific or explicit in as much as words like “only”, “alone” or “exclusively” and so on have not been used. This has apparently presented some difficulty in appreciation.

10. In *A.B.C. Laminart v. A.P. Agencies*, (1989) 2 SCC 163 the relevant clause read as follows:

“Any dispute arising out of this sale shall be subject to Kaira jurisdiction.”

11. Despite the aforesaid clause, proceedings were initiated by the respondent in Salem (Tamil Nadu). The appellant challenged the jurisdiction of the Court at Salem to entertain the proceedings since the parties had agreed that all disputes shall be subject to the jurisdiction of the Courts in Kaira (Gujarat). The Trial Court upheld the objection but that was set aside in appeal by the Madras High -

Court which held that the Courts in Salem had the jurisdiction to entertain the proceedings.

12. The Civil Appeal filed by the appellant challenging the decision of the Madras High Court was dismissed by this Court thereby affirming the jurisdiction of the Court in Salem notwithstanding the exclusion clause.

13. While doing so, this Court held that when a certain jurisdiction is specified in a contract, an intention to exclude all others from its operation may be inferred; the exclusion clause has to be properly construed and the maxim “*expressio unius est exclusio alterius*” (expression of one is the exclusion of another) may be applied.

14. Looking then to the facts and circumstances of the case, this Court held that the jurisdiction of Courts other than in Kaira were not clearly, unambiguously and explicitly excluded and therefore, the Court at Salem had jurisdiction to entertain the proceedings.

15. In *R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd.*, (1993) 2 SCC 130, the exclusion clause read as follows :

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“Subject to Anand jurisdiction.”

16. Proceedings were initiated by the appellant in the Ordinary Original Civil Jurisdiction of the Bombay High Court. The respondent questioned the jurisdiction of the Bombay High Court in view of the exclusion clause. The learned Single Judge held that the Bombay High Court had jurisdiction to entertain the proceedings. However, the Division Bench of the High Court took the view that the Bombay High Court had no jurisdiction in the matter and accordingly dismissed the proceedings.

17. In appeal, this Court noted in paragraph 9 of the Report that the endorsement “Subject to Anand jurisdiction” had been made unilaterally by the respondent. Accordingly, there was no agreement between the parties to exclude the jurisdiction of the Bombay High Court. Clearly, this decision turned on its own special facts.

18. In *Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd.*, (2004) 4 SCC 671 the exclusion clause read as follows:

“Any legal proceeding arising out of the order shall be subject to the jurisdiction of the courts in Mumbai.”

19. On a dispute having arisen, proceedings were instituted by the respondent in the Courts in Delhi. This was objected to by the - appellant but neither the Additional District Judge, Delhi nor the Delhi High Court accepted the contention of the appellant that the Courts in Delhi had no territorial jurisdiction in the matter.

20. In appeal, this Court referred to *A.B.C. Laminart* and after considering the facts and circumstances of the case inferred that the jurisdiction of all other Courts except the Courts in Mumbai was excluded. This inference was drawn from the fact that the purchase order was placed by the appellant at Mumbai and was accepted by the respondent at Mumbai. The advance payment was made by the respondent at Mumbai and as per the case of the respondent itself the final payment was to be made at Mumbai.

21. In *Balaji Coke Industry Private Limited v. Maa Bhagwati Coke Gujarat Private Limited*, (2009) 9 SCC 403, the exclusion clause read as follows:

“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.”

22. Notwithstanding the aforesaid clause, proceedings were instituted by the respondent against the appellant in Bhavnagar (Gujarat). The petitioner in this Court then moved a Transfer Petition under Article 139-A(2) of the Constitution of India for transfer of the proceedings to Kolkata. While allowing the Transfer Petition, this Court drew an inference, as postulated in *A.B.C. Laminart* that the intention of the parties was to exclude the jurisdiction of Courts other than those in Kolkata.

23. Finally, in *Shriram City Union Finance Corporation Ltd. v. Rama Mishra*, (2002) 9 SCC 613, the exclusion clause read as follows:

“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.”

24. Proceedings were initiated by the respondent in Bhubaneswar (Odisha). An objection was taken by the appellant that the Court in Bhubaneswar had no jurisdiction to entertain the proceedings. However, the objection was not accepted by the Trial Judge, Bhubaneswar. In appeal, the District Judge accepted the contention -

of the appellant that only the Courts in Kolkata had jurisdiction in the matter. In a Civil Revision Petition filed before the Orissa High Court by the respondent, the order passed by the Trial Court was affirmed with the result that it was held that notwithstanding the exclusion clause, the Civil Judge, Bhubaneswar (Odisha) had jurisdiction to entertain the proceedings.

25. In the Civil Appeal filed by the appellant in this Court, it was held that the exclusion clause left no room for doubt that the parties expressly agreed that legal proceedings shall be instituted only in the Courts in Kolkata. It was also held that the parties had agreed that the Courts in Kolkata “alone” would have jurisdiction in the matter and therefore, the Civil Court, Bhubaneswar ought not to have entertained the proceedings. A reading of the exclusion clause shows that it does not use the word “alone” but it was read into the clause by this Court as an inference drawn on the facts of the case, in line with the decision rendered in A.B.C. Laminart and the relief declined in A.B.C. Laminart was granted in this case.

26. It will be seen from the above decisions that except in A.B.C. Laminart where this Court declined to exclude the jurisdiction of the Courts in Salem, in all other similar cases an inference was - drawn (explicitly or implicitly) that the parties intended the implementation of the exclusion clause as it reads notwithstanding the absence of the words “only”, “alone” or “exclusively” and the like. The reason for this is quite obvious. The parties would not have included the ouster clause in their agreement were it not to carry any meaning at all. The very fact that the ouster clause is included in the agreement between the parties conveys their clear intention to exclude the jurisdiction of Courts other than those mentioned in the concerned clause. Conversely, if the parties had intended that all Courts where the cause of action or a 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.

27. It is not necessary to refer to the decisions rendered by this Court in Harshad Chimanlal Modi v. DLF Universal Limited, (2005) 7 SCC 791 and InterGlobe Aviation Limited v. N. Satchidanand, (2011) 7 SCC 463 since they deal with an issue that does not at all arise in this case. In this context it may only be mentioned that the appellant in the present case did not dispute -

that a part of the cause of action arose in Kolkata, as observed by my learned Brother Justice Lodha.

Conclusion:

28. For the reasons mentioned above, I agree with my learned Brother that in the jurisdiction clause of an agreement, the absence of 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 makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute. In the present case, only the Courts in Kolkata had jurisdiction to entertain the disputes between the parties.

29. The Civil Appeal is dismissed, as proposed, leaving the appellant to pursue its remedy in Kolkata.

New Delhi
July 3, 2013

.....J.
(Madan B. Lokur)

[1] A.B.C. Laminart Pvt. Ltd. and Another v. A.P. Agencies, Salem;
(1989) 2 SCC 163

[2] Rajasthan State Electricity Board v. Universal Petrol Chemicals
Limited; (2009) 3 SCC 107

[3] Hakam Singh v. M/s. Gammon (India) Ltd; (1971) 1 SCC 286

[4] Globe Transport Corporation v. Triveni Engineering Works and
Another ; (1983) 4 SCC 707

[5] R.S.D.V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Works Ltd.
;(1993) 2 SCC 130

[6] Angile Insulations v. Davy Ashmore India Ltd. and Another; (1995) 4
SCC 153

[7] Shriram City Union Finance Corporation Limited v. Rama Mishra;
(2002) 9 SCC 613

[8] Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd ; (2004) 4
SCC 671

[9] New Moga Transport Co., through its Proprietor Krishanlal Jhanwar

v. United India Insurance Co. Ltd. and others; (2004) 4 SCC 677 [10] Shree Subhlaxmi Fabrics (P)
Ltd. v. Chand Mal Baradia and Others; (2005) 10 SCC 704 [11] Harshad Chiman Lal Modi v. DLF
Universal Ltd. and Another; (2005) 7 SCC 791 [12] Balaji Coke Industry Private Limited v. Maa
Bhagwati Coke Gujarat Private Limited ; (2009) 9 SCC 403 [13] Interglobe Aviation Limited v. N.
Satchidanand; (2011) 7 SCC 463 [14] A.V.M. Sales Corporation v. Anuradha Chemicals Private

Limited ; (2012) 2 SCC 315
