

New Moga Transport Company,Through Its ... vs United India Insurance Co. Ltd. And Ors on 23 April, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2154, 2004 (4) SCC 677, 2004 AIR SCW 2379, 2004 (2) LRI 518, 2004 (5) ACE 194, 2004 (5) SCALE 73, (2004) 19 ALLINDCAS 829 (SC), 2004 (98) CUTLT 82, 2004 (19) ALLINDCAS 829, 2004 (3) SLT 240, 2004 (6) SRJ 78, (2004) 3 ALLMR 617 (SC), (2004) 3 CTC 154 (SC), (2004) 3 JCR 63 (SC), (2004) 98 CUT LT 81, 2004 (2) ALL CJ 1553, (2005) 1 PUN LR 61, (2004) 3 RAJ LW 437, (2004) 3 RECCIVR 141, (2004) 5 SCALE 73, (2005) 1 TAC 897, (2004) 3 ANDHLD 143, (2004) 3 SUPREME 400, (2004) 2 WLC(SC)CVL 57, (2004) 56 ALL LR 245, (2004) 3 ALL WC 2230, (2004) 4 CAL HN 141, (2004) 2 CAL LJ 143, (2004) 4 CIVLJ 665, (2005) 1 CURLJ(CCR) 61, (2004) 18 INDLD 22, (2004) 2 CIVILCOURTC 292, (2004) 2 ACC 19, (2004) 121 COMCAS 180, (2004) 4 MAD LW 298, (2004) 2 ACJ 1324, (2004) 5 BOM CR 67

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

CASE NO.:

Appeal (civil) 2645 of 2004

PETITIONER:

New Moga Transport Company,Through its Proprietor Krishanlal Jhanwar

RESPONDENT:

United India Insurance Co. Ltd. And Ors.

DATE OF JUDGMENT: 23/04/2004

BENCH:

DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T (Arising out of SLP(C) No. 11455/2003) ARIJIT PASAYAT, J.

Leave granted.

In this appeal, the only question that is raised is whether the High Court's conclusion that the Civil Court at Barnala had jurisdiction to try the suit filed by respondent No.1-United India Insurance Co. Ltd. (hereinafter referred to as 'Plaintiff No.1') and Malwa Cotton Spinning Mills Ltd. (hereinafter

referred to as 'plaintiff No.2') is correct or not. While the trial Court held that the Barnala Court had jurisdiction, the first Appellate Court held otherwise. Accepting the revision filed under Section 115 of the Code of Civil Procedure, 1908 (in short the 'CPC') the High Court by the impugned judgment held that the trial Court's view was correct.

The dispute arose in the following background.

The plaintiff No.2 had purchased certain articles which were booked in 29 bales. Material was booked with New Moga Transport Co., the present appellant (defendant No.1) for transportation to Barnala. The goods were loaded in truck No. HYN 6973. The consignment reached Barnala at 9.30 a.m. on 23.5.1993 near the factory of plaintiff No.2. On account of a fire which took place allegedly due to electric short-circuiting there was destruction of whole of the materials. Plaintiff No.2 claimed that he had suffered loss and lodged a claim for a sum of Rs.5,10,000/- against the present appellant i.e. defendant No.1. Since nothing was paid and only a non-delivery of goods certificate was issued by the appellant (defendant No.1), respondent No.1 (plaintiff No.1) settled the claim for a sum of Rs.4,63,516/- on the basis of the surveyor's report and the amount was paid to plaintiff No.2 and due receipt was obtained. Plaintiff No.2 on receipt of the amount executed a letter of subrogation-cum-special power of attorney, assigning, abandoning and transferring all the rights in favour of plaintiff no.1 who claims the compensation from defendant No.1. i.e. the present appellant. In the suit a specific plea inter alia was taken by the present appellant that the Court at Barnala had no jurisdiction to deal with the suit. With reference to the consignment note, it was submitted that the Court at Udaipur alone had jurisdiction to deal with the matter. In the consignment note it was indicated that the Court having jurisdiction was the one situated at Udaipur. As noted above, the trial Court did not accept the plea that the Court at Udaipur alone had jurisdiction. But in appeal, the first Appellate Court upset the verdict of the trial Court. By the impugned judgment the High Court restored the judgment of the trial Court and held that the plaintiffs were entitled to relief and Court at Barnala had jurisdiction.

In support of the appeal, learned counsel for the appellant (defendant No.1) submitted that the High Court has clearly over-looked the fact that the parties by an agreement have fixed a particular Court to be the Court that has the jurisdiction to try the suit. Without any plausible reason or basis the High court upset the decision of the first Appellate Court.

Undisputedly, in the consignment note it was stated as follows:

"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. With reference to the aforesaid indication in the consignment note, learned counsel for the appellant stated that there is clear exclusion of the Courts other than the chosen one and, therefore, the suit could not have been entertained at any other place. Unfortunately, the High Court did not appreciate the factual position in its proper perspective holding that the Court at Barnala would have got jurisdiction in the ordinary course. Because of the exclusion clause as embodied in

the consignment note and specific indication in the consignment note that the Udaipur Court alone has jurisdiction the High Court was not justified in its conclusion.

Learned counsel appearing for respondent No.1 (plaintiff No.1) submitted that the consignment note was not clear and what was stated in the consignment note was "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". Though the parties could by agreement restrict the jurisdiction to a Court which along with other Courts had jurisdiction, yet in view of the vague indication of the court relating to jurisdiction the High Court has rightly interfered. It was submitted that basing on such technical pleas there has been considerable delay in proceeding with the matter and the trial Court and the High Court were justified in holding that the court at Barnala had jurisdiction. A very technical plea had been advanced by defendant No.1, (appellant herein) to defeat the purpose of the suit. It is submitted that the consignment note refers to the Head Office without specifying as to where the head office was. In view of the vague indication it cannot be said that the parties by agreement excluded the jurisdiction of one of the Courts. It is, therefore, not possible to know as to whether the Court referred to in Clause 16 in the consignment note refers to any particular Court having jurisdiction or was unconnected with the jurisdiction.

Similar question has been examined by this Court on several occasions.

Section 20 of CPC reads as follows:

"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."

Normally, under clauses (a) to (c) plaintiff had a choice of forum and cannot be compelled to go to the place of residence or business of the defendant and can file a suit at a place where the cause of action arises. If the defendant desires to be protected from being dragged into a litigation at some place merely because the cause of action arises there it can save itself from such a situation by an exclusion clause. The clear intendment of the Explanation, however, is that where the Corporation has a subordinate office in the place where the cause of action arises it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. Clauses (a) and

(b) of Section 20 inter alia refer to a Court within local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a Court within local limits of whose jurisdiction the cause of action wholly or in part arises.

On a plain reading of the Explanation to Section 20 CPC it is clear that Explanation consists of two parts, (i) before the word "or" appearing between the words "office in India" and the word "in respect of" and the other thereafter. The Explanation applies to a defendant which is a Corporation which term would include even a company. The first part of the Explanation applies only to such Corporation which has its sole or principal office at a particular place. In that event, the Court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression "at such place"

appearing in the Explanation and the word "or" which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate office which alone have the jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

Section 20 before the Amendment by CPC in 1976 had two Explanations being Explanation I and II. By Amendment Act, Explanation I was omitted and Explanation II was re-numbered as the present Explanation. Explanation which was omitted reads as follows:

Explanation 1.- Where a person has a permanent dwelling at one place and also temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence."

This Explanation dealt with the case of place of residence of the defendant and provided with regard to a person having a permanent dwelling at one place and also temporary at another place that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary

residence. The language used in Explanation II on the other hand which is the present Explanation was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places the language used in Explanation II would have been identical to that of Explanation I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place.

The above position was noted in *Patel Roadways Ltd., Bombay v. Prasad Trading Company* (1991 (4) SCC 270).

By a long series of decisions it has been held that where two Courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in any one of such Courts is not contrary to public policy and in no way contravenes Section 28 of the Indian Contract Act, 1872. Therefore, if on the facts of a given case more than one Court has jurisdiction, parties by their consent may limit the jurisdiction to one of the two Courts. But by an agreement parties cannot confer jurisdiction to a Court which otherwise does not have jurisdiction to deal with a matter. (See *Hakam Singh v. M/s. Gammon (India) Ltd.* (AIR 1971 SC 740) and *M/s. Shriram City Union Finance Corporation Ltd. v. Rama Mishra* (AIR 2002 SC 2402).

In the aforesaid factual background, the facts of the case at hand have to be looked into.

Had it only been indicated in the consignment note the Court at Head Office city had jurisdiction then in the absence of a precise indication of the place what would have the consequence, we are not presently concerned, more particularly, when the consignment note itself had indicated that Court at Udaipur alone had jurisdiction.

As was observed by this Court in *Shriram's case* (supra) referring to *Hakam Singh's case* (supra) an agreement affecting jurisdiction of Courts is not invalid. It is open to the parties to choose any one of the two competent Courts to decide the disputes. Once the parties bound themselves as such it is not open for them to choose a different jurisdiction.

Above being the factual and legal position, the inevitable conclusion is that the High Court was not justified in upsetting the order of First Appellate Court. It is not a case where the chosen Court did not have jurisdiction. The only question, therefore, related to exclusion of the other Courts.

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 the plaintiff No.1 (respondent No.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. If it is so done, the question of limitation shall not be raised and the suit shall be decided on its own merits in accordance with law. The appeal is allowed. No costs.