Supreme Court of India
A.B.C. Laminart Pvt. Ltd. & Anr vs A.P. Agencies, Salem on 13 March, 1989
Equivalent citations: 1989 AIR 1239, 1989 SCR (2) 1
Author: K Saikia
Bench: Saikia, K.N. (J)

PETITIONER:
A.B.C. LAMINART PVT. LTD. & ANR.

Vs.

RESPONDENT:
A.P. AGENCIES, SALEM

DATE OF JUDGMENT13/03/1989

BENCH:
SAIKIA, K.N. (J)
BENCH:
SAIKIA, K.N. (J)
OZA, G.L. (J)

CITATION:
1989 AIR 1239 1989 SCR (2) 1
1989 SCC (2) 163 JT 1989 (2) 38
1989 SCALE (1)633
CITATOR INFO :
RF 1992 SC1124 (4,9)

ACT:
Sections 23 and 28 Indian Contract Act--Parties to contract agree to submit dispute to the jurisdiction of a particular court--Interpretation of clauses of such co n- tract-Ouster clause II--Interpretation and constructi on of--In particular:
Section 9--Civil Procedure Code-Civil court--Jurisdi c- tion-Ouster of--Interpretation of clauses of contract.
Statutory Interpretation 'Ouster clause '--Construction of .
Words and Phrases 'Ex dolo malo non orit ur actio'--'expressio unus est exclusio alterius'--meaning of .

HEADNOTE:

The first appellant is a manufacturer and supplier of metallic yarn under the name and style "Raplon Mettalic Yarn" having its registered office at Udyognagar, Mohamadabad, Gujarat within the jurisdiction of the civil court at Kaira. The second appellant is the sister concern of the first appellant.

The Respondent is a registered partnership firm doing business in metallic yarn and other allied products at Salem. The first appellant entered into an agreement with the Respondent on 2.10.74 whereunder the appellants were to supply 5000 bobbins of Ruplon Metallic Yarn to the Respondent at the rate of Rs.35 per bobbin as stipulated in the terms of the agreement. Under clause (11) of the agreement it was provided that any dispute arising out of this sale shall be subject to Kaira jurisdiction. Dispute having arisen out of this contract, the Respondent filed a suit against the appellants in the court of Subordinate Judge at Salem for the recovery of Rs.1,63,240 being the balance of the advance in the hands of the appellants and also for a sum of Rs.2,40,000 towards damages. The appellants inter alia took preliminary objection that the Subordinate Judge at Salem had no jurisdiction to entertain the Suit as the parties by express contract had agreed to confer exclusive jurisdiction in regard to ali disputes arising out of the contract on the civil court at Kaira. The trial court upheld the preliminary objection and found that it had, in view of clause (11)

of the contract, no jurisdiction to entertain the' suit. It accordingly returned the plaint for presentation before t he proper court.

The Respondent appealed to the High Court against t he order of the .Subordinate Judge. The High Court allowed t he appeal, set aside the Judgment of the trial court, with a direction to take the plaint on file and dispose of the su it on merits and on other issues.

Hence this appeal by the appellants. Dismissing t he appeal, this Court,

HELD: That an agreement to oust absolutely the jurisdi c- tion of the court will be unlawful and void being again st the public policy, Ex-dolo malo non oritur actio. [6G]

The jurisdiction of the court in the matter of a co n- tract will depend on the situs of the contract, and t he cause of action arising through connecting factors. [7B-C]

So long as the parties to a contract do not oust t he jurisdiction of all the courts which would otherwise ha ve jurisdiction to decide the cause of action under the law, it cannot be said that the parties have by their contra ct ousted the jurisdiction ofthe court. [8G]

Where the parties to a contract agreed to submit t he disputes arising from it to a particular jurisdiction whi ch would otherwise also be a proper jurisdiction under the la w, their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as again st public policy. If on the other hand the jurisdiction th ey agree to submit to would not otherwise be proper, jurisdi c- tion to decide disputes arising out of the contract it mu st be declared void being against public policy. [8H; 9A-B]

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 there-within if the parties to the contract agreed to vest jurisdiction on 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 sections 23 & 28 of the Contract Act. This cannot be under-stood as parties contracting against the Statute. Mercantile Law and Practice permit such agreements. [11B-C]

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Where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. 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' 'exclu-sive', and the like have been used, there may be no diffi-culty. 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. Where certain jurisdiction is specified in the contract, an intention to exclude all others from its opera-tion may in such cases be inferred. It has therefore to be properly construed. [12E-G]

" S. Manuel Raj & Co. v .J. Muni Lal & Co., AIR 19
63
Gujarat 148; Sri Rajendra Mills v. Hal Hassan, AIR 1970 Ca
l.
Had 42;Singh v. M/s. Gammon (India) Ltd., [1971] 3 S
CR
Nanak 314; Chand v. T.T. Elect. Supply Co., AIR 1975 M
ad
103; Naziruddin v. V.A. Annamalai & Ors., [1978] 2, MLJ 25
4;
Snehal Kumar Sarabhai v. E.T. Orgn., AIR 1975 Gujarat 72 a
nd
Salem Chemical Industries v. Bird & Co., AIR 1979 Mad. 1
6,
referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION.: Civil Appeal No. 2682 of From the Judgment and Order dated 4.11.1980 of t he Madras High Court in C.M.A. No. 218 of 1978 Pinaki Mishra, Shishir Sharma and P.H. Parekh for the Appe l-

lants.

S.S. Javeli, B.R. Agarwala and R.B. Hathikhanavala f or the Respondent.

The Judgment of the Court was delivered by K.N. SAIKIA, J. This is an appeal by special leave fr om the judgment and order of the High Court at Madras dated 4 th November, 1980 in C.M.A. No. 218 of 1978 allowing the appe al and setting aside the judgment of the Subordinate Judge at Salem in original suit No 302 of 1975 on the prelimina ry question of jurisdiction.

The first appellant is a manufacturer and supplier of metallic yarn under the name and style 'Rupalon Metall ic Yarn' having its registered office at Udyognagar, Mohamad a-

bad, Gujarat within the jurisdiction of the Civil Court of Kaira. The second appellant is a sister concern of the fir st appellant doing business with it. The respondent is a regi s-

tered partnership firm doing business in metallic yarn a nd other allied products at Salem. The first petitioner entered into an agreement with t he respondent on 2.10.1974 whereunder the appellants were to supply 5000 bobbins of Rupalon Metallic Yarn to the respon d-

ent at the rate of Rs.35 per bobbin as stipulated in diffe r-

ent clauses of the agreement. Clause 11 of the agreeme nt provided as follows:

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

Disputes having arisen out of the contract the responde nt filed a suit, being original suit No. 302 of 1975, again st the appellants in the Court of Subordinate Judge at Sal em for the recovery of a sum of Rs. 1,63,240 claiming to be t he balance of the advance remaining in the hands of the appe l-

lants and also a sum of Rs.2.40,000 towards damages. T he appellants took a number of defences and also took a preli m-

inary objection that the Subordinate Judge at Salem had no jurisdiction to entertain the suit as parties by expre ss contract had agreed to confer exclusive jurisdiction in regard to all disputes arising out of the contract on t he civil Court at Kaira.

The Trial Court, inter alia, framed issue No. 2 as follows :

"Issue No. 2. Has the court no jurisdiction to entertain or try this suit?"

The learned Court treating it as a preliminary issue in i ts judgment dated 18.4.1978 found that it had no jurisdicti on to entertain the suit in view of Clause 11 and according ly it returned the Plaint for presentation in the proper cour t.

The respondent appealed therefrom, in C.M.A. No. 218 of 1978, to the High Court of Madras which by the impugn ed Judgment and Order dated 4.11.1980 allowed the appea l, setting aside the judgment of the Trial Court with a dire c-

tion to take the plaint on file and dispose of the suit on merits on other issues. Hence this appeal.

Mr. Pinaki Misra, the learned counsel for the appe l-

lants, submits that Clause 11 of the agreement having pr o-

vided that any dispute arising out of this sale shall be subject to Kaira jurisdiction, the parties are bound by it and the suit could therefore have been filed only with in Kaira jurisdiction and not at Salem, and as such, the Hi gh Court committed error of law in setting aside the Tri al Court judgment and in directing the Court as Salem to ente r-

tain the suit. Mr. S.S. Javali, the learned counsel for t he respondent, submits that what is being called Clause 11 of the agreement was only one of the general terms and cond i-

tions of the sale and not a clause in the agreement, a nd that even if it was construed as a clause in the agreeme nt itself it was not exclusive so as to take away all jurisdi c-

tions except that of Kaira. The first question to be decided, therefore, is wheth er Clause 11 as aforesaid formed part of.the agreement. M r.

Javali submits that Ext. B-1 is an order of confirmation N o.

68/59 dated 2.10.1974 from the Sales Executive for the fir st appellant to the respondent acknowledging the receipt of their order and registering the same subject to the ter ms and conditions 'overleaf'. The general terms and conditio ns printed overleaf included the aforesaid Clause 11. We a re unable to agree. Admittedly the parties have transacted t he business on inter alia basis of Clause 11. There is, ther e-

fore, no escape from the conclusion that Clause 11 form ed part of the agreement and the parties would be bound by it so long as they would be bound by the contract itself. It is not open to the respondent to deny existence of Clause 1

1. The submission of Mr. Javali has, therefore, to be rejecte d.

The next question is whether Clause 11 is valid, and if so, What would be its effect? As Clause 11 formed part of the agreement it would be valid only if the parties cou ld have validly agreed to it. It is common knowledge that t he law of contract only prescribes certain limiting principl es within which parties are free to make their own contract s.

An agreement enforceable at law is a contract. An agreeme nt which purports to oust the jurisdiction of the Court abs o-

lutely is contrary to public policy and hence void. Each of the citizens has the right to have his legal position dete r-

mined by the ordinary Tribunal except, of course, in a contract (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 disputes in respect of the contract shah be subject. "It has long be en established", say Cheshire and Fifoot, "that a contra ct which purports to destroy the right of one or both of t he parties to submit questions of law to the courts is contra ry to public policy and is void pro tanto". However, arbitr a-

tion is a statutory mode of settlement; and as a matter of commerci al law and practice parties to a contract may agree as to t he jurisdiction to which all or any disputes on or arising o ut of the contract shall be subject. Section 28 of the Indian Contract Act, 1872 provid es that every agreement by which any party thereto is restric t-

ed absolutely from enforcing his fights under or in respe ct of any contract, by the usual legal proceedings in t he ordinary tribunal, or which limits the time within which he may thus enforce his fights, is void to that extent. This is subject to exceptions, namely, (1) contract to refer to arbitration and to abide by its award, (2) as a matter of commercial law and practice to submit disputes on or in respect of the contract to agreed proper jurisdiction a nd not other jurisdictions though proper. The . principle of Private International Law that the parties should be bou nd by the jurisdiction clause to which they have agreed unle ss there is some reason to contrary is being applied to munic i-

pal contracts. In Lee v. Showmen's Guild, [1952] 1 All E. R.

1175 at 1181 Lord Denning said: "Parties cannot by contract oust the ordinary courts fr om their jurisdiction. They can, of course, agree to lea ve questions of law, as well as questions of fact, to t he decision of the domestic tribunal. They can, indeed, ma ke the tribunal the final arbiter on questions of fact, b ut they cannot make it the final arbiter on questions of la w.

They cannot prevent its decisions being examined by t he courts. If parties should seek, by agreement, to take t he law out of the hands of the courts and put it into the han ds of a private tribunal, without any recourse at all to t he courts in cases of error of law, then the agreement is to that extent contrary to public policy and void."

Under section 23 of the Indian Contract Act the consi d-

eration or object of an agreement is lawful, unless it is opposed to public policy. Every agreement of which t he object or consideration is unlawful is void. Hence there c an be no doubt that an agreement to oust absolutely the juri s-

diction of the Court will be unlawful and void being again st the public policy. Ex dolo malo non oritur actio. If ther e-

fore it is found in this case that Clause 11 has absolute ly ousted the jurisdiction of the Court it would be again st public policy. However, such will be the result only if it can be shown that the jurisdiction to which the parties ha ve agreed to submit had nothing to do with the contract. If on the other hand it is found that the jurisdiction agre ed would also be a proper jurisdiction in the matter of the contract it cou ld not be said that it ousted the jurisdiction of the Cour t.

This leads to the question in the facts of this case as to whether Kaira would be proper jurisdiction in the matter of this contract. It would also be relevant to examine if so me other courts than that of Kaira would also have had juri s-

diction in the absence of Clause 11 and whether that wou ld amount to ouster of jurisdiction of those courts and wou ld thereby affect the validity of the clause. The jurisdiction of the Court in matter of a contra ct will depend on the situs of the contract and the cause of action arising through connecting factors. A cause of action means every fact, which, if traverse d, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In oth er words, it is a bundle of facts which taken with the l aw applicable to them gives the plaintiff a fight to reli ef against the defendant. It must include some act done by t he defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actu al infringement of the fight sued on but includes all t he material facts on which it is founded. It does not compri se evidence necessary to prove such facts, but every fa ct necessary for the plaintiff to prove to enable him to obta in a decree. Everything which if not proved would give t he defendant a fight to immediate judgment must be part of t he cause of action. But it has no relation whatever to t he defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by t he

plaintiff.

Under section 20(c) of the Code of Civil Procedu re subject to the limitation stated therebefore, every su it shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in pa rt arises. It may be remembered that earlier section 7 of Act of 1888 added Explanation III as under: "Explanation III--In suits arising out of contract the cau se of action arises within the meaning of this section at a ny of the following places, namely: (1) the place where the contract was made; (2) the place where the contract was to be perform ed or performance thereof completed;

(3) the place where in performance of the contract a ny money to which the suit relates was expressly or implied ly payable."

The above Explanation III has not been omitted b ut nevertheless it may serve a guide. There must be a connec t-

ing factor.

In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of t he contract, and of its breach, so that the suit may be fil ed either at the place where the contract was made or at t he place where it should have been performed and the brea ch occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at t he place where it was made. The determination of the pla ce where the contract was made is part of the Law of Contrac t.

But making of an offer on a particular place does not fo rm cause of action in a suit for damages for breach of co n-

tract. Ordinarily, acceptance of an offer and its intimati on result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was commun i-

cated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have perform ed or its performance completed. If the contract is to be performed at the place where it is made, the suit on t he contract is to be filed there and nowhere else. In suits f or agency actions the cause of action arises at the place whe re the contract of agency was made or the place where actio ns are to be rendered and payment is to be made by the agen t.

Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiati on of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is plead ed as part of the cause of action giving jurisdiction to t he Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears T he above are some of the connecting factors. So long as the parties to a contract do not oust t he jurisdiction of all the Courts which would otherwise ha ve jurisdiction to decide the cause

of action under the law it cannot be said that the parties have by their contra ct ousted the jurisdiction of the Courts. If under the l aw several Courts would have jurisdiction and the parties ha ve 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. In other words, where t he parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which wou ld otherwise also be a proper jurisdiction under the law the ir agreement to the extent they agreed not to submit to oth er jurisdictions cannot be said to be void as against publ ic 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 t he position in the instant case?

In S. Manuel Raj & Co. v. J. Manilal & Co., AIR 19 Guj. 148 where one of the parties to the contract signed an order form printed by the other party containing the wor ds "subject to Madras jurisdiction" and sent the order form to the other party it was held that the party must be assum ed to have agreed that Madras was the place for settlement of the dispute and it was not open to that person who sign ed the order form of the opposite party containing the print ed words to show that printed words were not part of the co n-

tract and that those words in the contract was to exclu de the jurisdiction of other Courts and to keep sole jurisdi c-

tion to one Court. It was observed that the object of prin t-

ing such words as "subject to Madras jurisdiction" in t he contract was to exclude the jurisdiction of other Courts a nd to give sole jurisdiction to one Court and it was in cons o-

nance with the commercial practice in India. Similarly in Sri Rajendra Mills v. Haji Hassan, A.I.R. 1970 Cal. 3 where there was a contract between the plaintiff and defen d-

ant No. 1 under which the parties agreed that all sui ts arising on or out of the contract, would be instituted in the Court at Salem, the Division Bench held that it was tr ue that the suit could have been instituted either at Salem or at Howrah under section 20(c) of the Code of Civil Proc e-

dure, as the cause of action, admittedly arose in part in both the places and it was therefore a case where two Cour ts had concurrent jurisdiction and, in such a case, it was op en to the parties to make a choise restricting the Court in which the suit under or upon the contract could be institu t-

ed. In other words, both the Courts having territori al jurisdiction, the parties by their agreement waived the ir right, to institute any action, as aforesaid except at Salem. It was observed that under those circumstances it w as not open to the plaintiff to object to the order for retu rn of the plaint for presentation to the Court at Salem as t he choice of forum in case of alternative forums lies with t he plaintiff and the plaintiff having debarred or preclud ed itself from going to any other Court except at Salem whi ch would be a proper Court as against the defendants it wou ld not be just to allow the plaintiff at the instance of a ny other party or under cover of its objection to institute t he suit except

in-the Court at Salem.

In Hakam Singh v. M/s. Gammon (India) Ltd., [1971] S.C.R. 3 14 where the appellant agreed to do certain co n-

struction work for the respondent who had its princip al place of business at Bombay on the terms and conditions of a written tender. Clause 12 of the tender provided for arb i-

tration in case of dispute. Clause 13 provided that notwit h-

standing the place where the work under the contract was to be executed the contract shall be deemed to have been e n-

tered into by the parties at Bombay, and the Court in Bomb ay alone shall have jurisdiction to adjudicate upon. On dispu te arising between the parties the appellant submitted a pet i-

tion to the Court at Varanasi for an order under section of the Arbitration Act, 1940 that the agreement be filed a nd an order of reference be made to an arbitrator or arbitr a-

tors appointed by the Court. The respondent contended th at in view of the Clause 13 of the arbitration agreement on ly the Courts at Bombay had jurisdiction. The Trial Court al so held that the entire cause of action had arisen at Varana si and the parties could not by agreement confer jurisdicti on on the Courts at Bombay which they did not otherwise po s-

sess. The High Court in re vision held that the Courts at Bombay had jurisdiction under the general law and hen ce could entertain the petition and that in view of Clause of the arbitration agreement the petition could not be entertained at Varanasi and directed the petition to be returned for presentation to the proper Court. On appe al therefrom one of the questions that fell for considerati on of this Court was whether the Courts at Bombay alone h ad jurisdiction over the dispute.It was held that the Code of Civil Procedure in its entirety applied to proceedings und er the Arbitration Act by virtue of section 41 of that Act. T he jurisdiction of the Court under the Arbitration Act to entertain a proceeding for filing an award was according ly governed by the provisions of the Code of Civil Procedur e.

By the terms of section 20(a) of the Code of Civil Procedu re read with explanation 11 thereto the respondent compa ny which had its principal place of business at Bombay w as liable to be sued at Bombay. 1t was held that it was n ot open to the parties to agreement to confer by their agre e-

ment jurisdiction on a Court which did not possess under t he Code. But where two Courts or more have under the Code of Civil Procedure jurisdiction to try the suit or proceedi ng an agreement between the parties that the dispute betwe en them shall be tried in one of such Courts was not contra ry to public policy and such an agreement did not contrave ne section 28 of the Contract Act. Though this case arose o ut of an arbitration agreement there is no reason why the sa me rule should not apply to other agreements in so far as jurisdiction is concerned. Without referring to this dec i-

sion a Division Bench of the Madras High Court in Nan ak Chand v. T.T. Elect Supply Co., A.I.R. 1975 Madras 103 observed that competency of a Court to try an acti on goes to the root of the matter and when such competency is not found, it has no jurisdiction at all to try the cas e.

But objection based on jurisdiction is a matter which pa r-

ties could waive and it is in this sense if such jurisdi c-

tion is exercised by Courts it does not go to the core of it so as to make the resultant judgment a nullity. Thus it is now a settled principle that where there may be two or mo re competent Courts which can entertain a suit consequent up on a part of the cause of action having arisen therewithin, 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 sections 23 and 28 of the Contract Act. Th is can not be understood as parties contracting against t he Statute. Mercantile Law and Practice permit such agreement s.

In Nazirrudin v. V.A. Annamalai & Ors., [1978] 2 M.L. J.

254 where the question was whether Rule 35 of U.P. Sta te Lottery Rules, 1969 confined the jurisdiction only to Lu c-

know. The Rule said: "35. Legal jurisdiction in all matte rs concerning the State lottery shall be Lucknow." The so le question for consideration therefore was whether the abo ve Rule had the effect of vesting exclusive jurisdiction on ly in the Courts in Lucknow and thereby taking away the juri s-

diction which the subordinate judge court at Veilore cou ld have if it was established that the lottery ticket w as stolen within the jurisdiction of that Court from the fir st respondent. Held, it was well established that the jurisdi c-

tion of a Civil Court can be taken away only by an expre ss provision or by necessary implication and ousting of a jurisdiction of Civil Court should not and ought not be inferred from an ambiguous provision. In that particul ar case it was common case of the parties that Rule 35 did n ot expressly take away the jurisdiction of any other Court, a nd vest the exclusive jurisdiction only in the Courts at Lu c-

know. A note of caution was sounded by M.P. Thakkar, J. as he then was, in Snehal Kumar Sarabhai v. E.T. Orgn., A.I. R.

1975 Guj. 72 observing that the ouster clause could opera te as estoppel against the parties to the contract, but it could not tie the hands of the Court and denude it of t he powers to do justice. Ordinarily, it was observed: t he Courts would respect the agreement between the parties whi ch was borne out of the meeting of their minds out of conside r-

ation of convenience, but the Courts were not obliged to do so in every case; and that a new approach to the questi on deserved to be made where the ouster clause was "calculat ed to operate as an engine of oppression and as a means to defeat the ends of justice." In such a case the free conse nt may be wanting and injustice may be avoided. When the Court has to decide the question of jurisdi c-

tion pursuant to an ouster clause it is necessary to co n-

strue the ousting expression or clause properly. Often t he stipulation is that the contract shall be deemed to ha ve been made at a particular place. This would provide t he connecting factor for jurisdiction to the Courts of th at place in the matter of any dispute on or arising out of th at contract. It would not, however, ipso facto take away juri s-

diction of other Courts. Thus, in Salem Chemical Industri es v. Bird & Co., A.I.R. 1979 Madras 16 where the terms a nd conditions attached to the quotation contained an arbitr a-

tion clause provided that: "any order placed against this quotation shall be deemed to be a contract made in Calcut ta and any dispute arising therefrom shall be settled by an Arbitrator to be jointly appointed by us", it was held th at it merely fixed the situs of the contract at Calcutta and it did not mean to confer an exclusive jurisdiction on t he Court at Calcutta, and when a part of the cause of acti on had arisen at Salem, the Court there had also jurisdicti on to entertain the suit under section 20(c) of the Code of Civil Procedure.

From the foregoing decisions it can be reasonably d e-

duced that where such an ouster clause occurs, it is pert i-

nent to see whether there is ouster of jurisdiction of oth er Courts. When the clause is clear, unambiguous and specif ic accepted notions of contract would bind the parties a nd unless the absence of ad idem can be shown, the other Cour ts should avoid exercising jurisdiction. As regards constru c-

tion 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 cass es the maxim 'expressio unius est exclusio alterius'--expre s-

sion of one is the exclusion of another may be applied. Wh at is an appropriate case shall depend on the facts of t he case. In such a case mention of one thing may imply excl u-

sion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its oper a-

tion may in such cases be inferred. It has therefore to be properly construed.

Coming to clause 11 we already found that this clau se was included in the general terms and conditions of sale a nd the order or confirmation No. 68/59 dated 2.10.1974 with t he general terms and conditions was sent from Udyognaga r, Mohmadabad, Gujarat to the respondent's address at 12 Sur a-

mangalam Road Salem, Tamilnadu. The statement made in t he Special Leave Petition that Udyognagar, Mohamadabad, Gujar at is within the jurisdiction of the Civil Court of Kaira has not been controverted. We have already seen th at making of the contract was a part of the cause of action a nd a suit on a contract therefore could be filed at the pla ce where it was made. Thus Kaira court would even otherwi se have had jurisdiction. The bobbins of metallic yarn we re delivered at the address of the respondent at Salem whic h, therefore, would provide the connecting factor for Court at Salem to have jurisdiction. If out of the two jurisdictio ns one was excluded by Clause 11 it would not absolutely ou st the jurisdiction of the Court and, therefore, would not be void against public policy and would not violate sections and 28 of the Contract Act. The question then is whether it can be construed to have excluded the jurisdiction of t he Court at Salem. In the clause 'any dispute arising out of this sale shall be subject to Kaira jurisdiction' ex fac ie we do not find exclusive words like 'exclusive', 'alone ', 'only' and the like. Can the maxim 'expressio unius e st exclusio alterius' be applied under the facts and circu m-

stances of the case? The order of confirmation is of no assistance. The other general terms and conditions are al so not indicative of exclusion of other jurisdictions. Und er the facts and circumstances of the case we hold that whi le connecting factor with Kaira jurisdiction was ensured by fixing the situs of the contract within Kaira, other juri s-

dictions having connecting factors were not clearly, una m-

biguously and explicitly excluded. That being the positi on it could not be said that the jurisdiction of the Court at Salem which Court otherwise had jurisdiction under l aw through connecting factor of delivery of goods there at w as expressly excluded. We accordingly find no error or infirm i-

ty in the impugned judgment of the High Court. In the result, this appeal fails and is dismissed. W e, however, leave the parties to bear their own costs. Y.L. Appeal dismissed.