

Dr Mukesh Aghi vs Steria Ltd & Ors on 8 March, 2016

Author: V. Kameswar Rao

Bench: V.Kameswar Rao

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of decision: March 08, 2016
+ IA 9780/2014 in CS (OS) 181/2014
+ CS(OS) 181/2014 & IAs 9780/2014, 16810/2015
DR MUKESH AGHI
..... Plaintiff
Through: Mr.Amir Singh Pasrich, Adv.
with Ms.Mohana Malhotra,
Adv.
versus
STERIA LTD & ORS
..... Defendant
Through: Mr.Sanjeev Kumar, Adv.
with Mr. Saleem Hasan
Ansari, Adv. for D3
(applicant)
Mr.Akhil Sibal, Adv. with
Mr.Ativ Patel, Mr.Ankit
Kumar Lal, Adv. wih Ms.
Vanshaya Shukla, Adv.s, for
the applicant/defendant No. 6
CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO
V.KAMESWAR RAO, J.(Oral)

IA 9780/2014 (filed by the applicant-defendant No. 3)

1. By this order, I would decide the application i.e. IA No. 9780/2014 filed by the applicant-defendant No. 3 under Order 7 Rule 10 CPC read with Order 8 Rule 10 read with Section 151 CPC, with a prayer to return the plaint to the plaintiff on the ground that this Court has no territorial jurisdiction to entertain the suit.

2. Some of the relevant facts are, the suit has been filed by the plaintiff impleading the defendant Nos. 1 to 6 with a prayer against defendant Nos. 1 to 5, to award equity shares in defendant No. 5 company to the plaintiff or value equivalent to the appropriate value of equity shares having a face value of Rs. 52,20,000/- per year from 2009 till 2012 on the dates of vesting set out in para 11 of the plaint. In the alternative, he sought a prayer of recovery of Rs. 1,91,40,000/- with interest.

3. Suffice to state, the non-applicant/plaintiff was appointed as Managing Director and Chief Executive Officer (CEO), Asia-Pacific and Global Executive Sales Director of the applicant/defendant No. 3 from 2007 till August 31, 2012 when he resigned from his position as

CEO.

4. The case of the applicant/defendant No. 3 in the application is that this Court has no jurisdiction, whether territorial or otherwise to entertain the suit in view of the fact, that, not only the defendant Nos. 1 to 3 and 5 are situated outside the territorial jurisdiction of the Court, no part of the cause of action has arisen within the territorial jurisdiction of this Court and the contract of employment dated April 4, 2007 contains a jurisdiction clause, which provides for exclusive jurisdiction for Courts at Noida regarding any disputes pertaining to the said agreement.

5. A reply to the application was filed by the non-applicant/plaintiff.

6. It is the contention of Mr. Sanjeev Kumar, learned counsel appearing for the applicant-defendant No. 3 that this Court, while examining an application under Order 7 Rule 10 CPC would only consider the facts as stated in the plaint. He would apart from reiterating the grounds urged in the application, would state, the registered office/head office of the applicant-defendant No. 3 is at Noida, Uttar Pradesh. He states, apart from that, the defendant No. 3 is having its office at Pune and Chennai and not in Delhi. Even the offer of employment letter along with the terms and conditions of documents/Non-Disclosure and Code of Practice Agreement was sent to the non-applicant/plaintiff at Singapore. As per the offer of employment letter, signed copy of the same along with the enclosures were to be delivered at Noida, Uttar Pradesh. It is the case of the applicant- defendant No. 3 that even the Annual General Meetings referred to by the plaintiff were held at Noida, Uttar Pradesh.

7. The non-applicant/plaintiff had initially filed an application under Section 20(b) read with Section 151 CPC seeking leave of this Court to implead defendant Nos. 1, 2, 3 and 5 having their office locations out of Delhi, being fully aware that this Court does not have territorial jurisdiction over the said defendants.

8. The defendant No. 4 is the Chief Executive Officer of the applicant-defendant No. 3 and is a resident of Delhi, who has been made a party in his official capacity and not in his personal capacity. Therefore, the residence of defendant No. 4 in Delhi would be irrelevant. The defendant No. 6 is the recruitment company that had negotiated the employment, contractual terms and offer details on behalf of the defendant No. 3-applicant.

9. Mr. Sanjeev Kumar, learned counsel for the applicant-defendant No. 3 would heavily rely upon the judgments in the cases of L.T.Foods Ltd. Vs. Heritage Foods (India) Ltd. (2014) 210 DLT 721, Saleem Bhai and Ors. Vs. State of Maharashtra and Ors. (2003) 1 SCC 557, Begum Sabiha Sultan Vs. Nawab Mohd. Mansur Ali Khan (2007) 4 SCC 343, Swastik Gases Pvt. Ltd. Vs. Indian Oil Corporation Ltd. (2013) 9 SCC 32, New Moga Transport Co. Vs. United India Insurance Co. Ltd. (2004) 4 SCC 677, Arinits Sales Pvt. Ltd. Vs. Rockwell Plastic Pvt. Ltd. (2008) ILR Delhi 66, Unimers India Ltd. Vs. IFCI Ltd. & Ors. (2012) 129 DRJ 608.

10. On the other hand, Mr. Amir Singh Pasrich, learned counsel appearing for the non-applicant-plaintiff has drawn my attention to para 41 of the plaint relating to the cause of

action. He states that the stipulation in the letter of employment conferring the jurisdiction on the Courts of Noida, 'which provides for the exclusive jurisdiction of the Courts at Noida regarding any dispute pertaining to the said agreement', is disputed and in any event, exclusive jurisdiction clause is invalid. He would state, that there is nothing to suggest that the jurisdiction clause would oust the Delhi Courts jurisdiction as mentioned in the document titled as Non-Disclosure and Code of Practice Agreement. He states, there is no dispute that the defendant No. 6 is the recruitment company that contacted the plaintiff and offered him the position of CEO of defendant No. 3. He states that defendant No. 6 had its offices at Nehru Place, New Delhi at the relevant time when the offer of appointment was signed by the plaintiff in the presence of Navnit Singh, partner of the defendant No. 6. He states, prior to the signing of the contract, negotiations, meetings were held at offices of the defendant No. 6 at Nehru Place, New Delhi and Imperial Hotel, New Delhi. The plaintiff never visited the offices of Xansa (India) Limited at Noida until the date of his joining the organization and all the interviews for the position of CEO were conducted at New Delhi and the offices of the defendant Nos. 1 ad 2 at London. It is his submission that the contract was signed at New Delhi and not signed at Noida, Uttar Pradesh, as alleged by the defendant No. 3 in its written statement. It is his submission that the so called jurisdiction clause is violative of Section 28 of the Indian Contract Act. He also relies upon Section 20 of the Code of Civil Procedure, 1908; in which, clause (c) provides that „every suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises . He states, since the contract of employment was signed at New Delhi, then, this Court has jurisdiction to try and adjudicate the instant suit. He relies upon the following judgments:

(a) Dashrath Rupsingh Rathod vs. State of Maharashtra & Anr. (2014) 9 SCC 129

(b) InterGlobe Aviation Limited vs. N.Satchidanand (2011) 7 SCC 463

(c) ABC Laminart Pvt. Ltd. & Anr. vs. A.P. Agencies Salem (1989) 2 SCC 163

(d) M&B Footwear Pvt. Ltd. vs. Madhuvesh Distributors & Ors. 2013 (137) DRJ 597
Delhi High Court

(e) Vishal Gupta vs. L & T Finance Limited, decided by Delhi High Court on
September 09, 2009

(f) Dura-Line India Pvt. Ltd. vs. M/s Broadband Network Pvt. Ltd. 2004 (111) DLT
736 Delhi High Court

(g) M/s Snehalkumar Sarabhai vs. M/s Economic Transport Organisation & Ors. AIR
1975 Gujarat 72

(h) M/s Store One Retail India Ltd. (Formerly known as India Bulls Retail Services
Ltd. vs. M/s TTK Prestige Ltd., decided by Delhi High Court on January 22, 2014

(i) Ramesh B.Desai & Ors. Vs. Bipin Vadilal Mehta & Ors. (2006) 5 SCC 638

(j) AVN Tubes Ltd. vs. Shishir Mehta (2008) 3 SCC 272

(k) Institute for Inner Studies & Ors. Vs. Charlotte Anderson 2014 (57) PTC 228 (Del)

(l) Suresh Chand Purwar (Karta)vs. Vivek Purwar & Ors. (2014) 58 PTC 413 (Del.)

(m) Anil Kumar Sanghi & Anr. vs. Hari Kishan Sanghi ILR (2010) Supp. (3) Delhi 585

(n) Ansal Buildwell Ltd. vs. North Eastern Indira Gandhi Institute of Health and Medical Science & Ors. 118(2005) DLT 274

(o) Whale Stationery Products Ltd. vs. Kores C.E. Gmbh 205 (2013) DLT 99

11. Having heard the learned counsel for the parties, there is no dispute, when an issue of this nature is raised, it is the plaint and the documents in support of the same need to be seen. The offer of employment was issued to the plaintiff on April 4, 2007 sent to his address at Singapore. The said letter Annexure P-2 (page 21) clearly specifies at page 22, the enclosures included terms and conditions; Non-

Disclosure and Code of Practice Agreement etc. Suffice to state, that the terms and conditions and the Non-Disclosure and Code of Practice Agreement were part of the offer of employment. The Non-Disclosure and Code of Practice Agreement stipulate the jurisdiction clause as under:

"(ii) Even though the company may depute you overseas for outside work, the jurisdiction concerning your present employment, will be Courts at Noida which you undertake not to contest".

12. I note that the plaintiff had agreed to abide by the Non-Disclosure and Code of Practice Agreement, data protection policy and its guidelines and other standard rules and regulations of the company by putting his signatures in respect thereof.

13. Given the aforesaid stipulation, in his contract with the defendant No. 3-applicant, it must be seen whether this Court has a territorial jurisdiction to entertain the suit. Insofar as the plea of Mr. Pasrich that part of cause of action has arisen in Delhi, by stating that recruitment was effected in Delhi by the defendant No. 6; negotiations had taken place in Delhi; Interviews were conducted in Delhi and this would show that part of cause of action has arisen in Delhi, even though, the said aspects have been disputed by defendant No. 3, assuming such, still, in view of the stipulation in the contract, question would arise, whether the parties have agreed to confer jurisdiction on the Courts at Noida. The answer must be yes. If that be so, this Court, would not have any territorial jurisdiction to entertain the petition. The reliance placed by Mr.Pasrich on the judgments of the Supreme Court in the case of A.B.C. Laminart Pvt. Ltd. (supra) wherein, the Supreme Court was concerned with a case dealing with the commercial contract, where relevant clause of the agreement provided that "any dispute arising out of this sale, shall be subject to Kaira (Gujrat) jurisdiction", the

Supreme Court held 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 there was expressly excluded.

14. Even in the case of InterGlobe Aviation Ltd. (supra), the Supreme Court was dealing with a clause which stipulated, „all disputes shall be subject to the jurisdiction of the Courts at Delhi only". The Supreme Court had referred to its judgment in A.B.C. Laminart Pvt. Ltd. (supra). The Supreme Court also held the ouster of jurisdiction of some Courts is permissible so long as the Courts' exclusive jurisdiction is conferred. If a clause has been made to apply only where a part of cause of action has accrued in Delhi, it would have been valid but as the clause provides irrespective of the place of cause of action, only Courts at Delhi would have jurisdiction, the said clause is invalid in law. In other words, a reading of para 22 makes it clear that the Supreme Court was concerned with the stipulation of conferring jurisdiction on the Courts at Delhi only, where, no cause of action has accrued. As it was the case of the appellants before the Supreme Court that the ticket related to travel from Delhi to Hyderabad, the complaint was in regard to the delay at Delhi and therefore, cause of action arose at Delhi, and that contract has provided that the Courts at Delhi will only have the jurisdiction and jurisdiction of other Courts was ousted. The Supreme Court was of the view, the place of embarkation happened to be Delhi is not a cause of action. It was primarily in that context, the Supreme Court, relied upon the ratio of the Supreme Court in A.B.C. Laminart Pvt. Ltd. (supra), wherein, stipulation conferring jurisdiction on a Court not otherwise having jurisdiction would be invalid.

15. In Vishal Gupta (supra), this Court was considering the facts where, the plaintiff was appointed by the defendant by a letter dated June 19, 2006 as Assistant Manager in their Corporate Product Financing Division at New Delhi. The jurisdiction clause stipulated that any dispute between the employee and the company, concerning with or relating to, or arising of his employment, shall be subject to the jurisdiction of Greater Mumbai only. This clause was only examined. In para 24 and 26 of Vishal Gupta (supra), this Court has held as under:

"24. In the considered view of this Court the decisions on the „ouster clause" in the context of a commercial contract have to be held to be distinguishable in their application to a case of a contract of employment. In the employment contract, an employee would not be able to insist that the disputes, if any, are to be referred only to one court and not the other. The employee usually accepts the employment with all the attendant terms and conditions or not at all. In the present case, the letter of employment no doubt states that it is a transferable job. Still, the Plaintiff was to work primarily for the Delhi office of the Defendant. He, in fact, rendered services only in Delhi office. He submitted his resignation at Delhi. For an employee no longer in service to be asked to go to Mumbai for instituting and pursuing litigation would render the remedy expensive and inefficacious for such employee. It would work harshly against him. Moreover, in a situation like the present one where the prayer is essentially for a direction to the Defendant to issue a relieving letter, to direct the

employee to go to a different city only because of the ouster clause seems to be unfair and unjust. Although in commercial contracts, it has been held that such an ouster clause would not be opposed to public policy (see the observations in para 18 of the decision in ABC Laminart), in a contract of employment such a clause could well be held to be opposed to public policy. To repeat, the courts have thus far had no occasion to examine how a strict application of the exclusion clause would work for an employee who is out of service. As regards the comparative hardship, the Defendant has an office in Delhi and there will be no difficulty for it to appear before this Court and defend itself.

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26. For the above reasons, it is held that the ouster clause in the letter of appointment of the Plaintiff cannot preclude this Court from entertaining the present suit. The preliminary objection of the Defendant to the maintainability of this suit on the said ground is hereby overruled."

16. Suffice to state, the said judgment is distinguishable on facts. Unlike the case of Vishal Gupta (supra), there is no dispute in terms of offer of employment. The place of employment in the present case was Noida, Uttar Pradesh and a copy of the terms and conditions, documents Non-Disclosure and Code of Practice Agreement was directed to be sent to the officer of defendant No. 3 at B-39, Sector 1, Noida. It is noted, for those reasons, the Noida Court was conferred the jurisdiction with regard to any dispute. It is not the case of the non-applicant/plaintiff that no cause of action has arisen in Noida. The function as a CEO was at Noida. The claim in the suit related to the employment at Noida. Surely, the ratio of the Supreme Court in the case of A.B.C. Laminart Pvt. Ltd. (supra) would not be applicable to the facts of this case. I agree with the submission made by the learned counsel for the applicant- defendant No. 3, while relying upon the judgment of the Supreme Court in the case of Swastik Gases Pvt. Ltd. (supra), wherein, the Supreme Court was concerned with a question, whether in view of clause 18 of the Consignment Agency Agreement, 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. The Supreme Court referred to its judgment in A.B.C. Laminart Pvt. Ltd. (supra), then, InterGlobe Aviation Limited (supra). In para 32 of Swastik Gases Pvt. Ltd. (supra), the Supreme Court has held as under:

"32. 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."

17. In concurring judgment, His Lordship Madan B. Lokur, J. has, in para 44 and 45, considering the judgment of the Supreme Court in A.B.C. Laminart Pvt. Ltd. (supra) has held as under:

"44. 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.

45. 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. 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. 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".

18. Suffice to state, the Supreme Court in Swastik Gases Pvt. Ltd. (supra) has held that in A.B.C. Laminart Pvt. Ltd. (supra) that the jurisdiction of the Courts other than Kaira are not clearly, unambiguously and expressly excluded and therefore, Courts at Salem had jurisdiction to entertain the proceedings. In para 57, His Lordship has held as under:

"57. 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."

19. On the plea, that such a stipulation is contrary to public policy and violative of Section 28 of the Indian Contract Act, I note for benefit, the following conclusion of the Supreme Court in Swastik Gases Pvt. Ltd. (supra):

"32. 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.

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57. 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".

20. That apart, as is noted from the prayer clause, it is clear that the same has been directed against defendant Nos. 1 to 5 and not against defendant No. 6 which is based in Delhi. If that be so, it is clear that, no relief is sought against defendant No. 6. The other defendant No. 4 who is based in Delhi has been impleaded in his official capacity, his residential address is irrelevant. It must be the office address at Noida, the place where he is exercising his status as a CEO of defendant No. 3.

21. As I have already noted from the jurisdiction clause in the contract letter, it is borne out, that, the intent of the parties was to confer the exclusive jurisdiction of the Courts at Noida. That being so, this Court would not have any territorial jurisdiction. Even though, many other judgments have been relied upon, by the counsel for the parties, I do not think there is any requirement to deal with them as I have referred to and dealt with the judgment of the Supreme Court in Swastik Gases Pvt. Ltd. (supra), being one of the latest judgment, on the issue of jurisdiction, where the Supreme Court dealt with the judgments relied upon by the counsel for the non-applicant/plaintiff. I hold that this Court have no territorial jurisdiction. The application is therefore allowed. The Registry is directed to return the plaint to the plaintiff to enable him to present the plaint before the competent Court at Noida, Gautam Budh Nagar District, Uttar Pradesh within a period of four weeks of the return of the plaint.

22. The application is allowed.

23. No costs.

(V.KAMESWAR RAO) JUDGE MARCH 8, 2016/akb