Prohibiting Suits Under The Contract Act: Analyzing through *Ratnesh Dev Sharma v. Cipla Limited through Managing Director* *[AIR 2013 CHH 71]*

by

Kaustubh Shakkarwar[1]

Brief Statement of Facts:

The appellant, Mr Ratnesh Dev Sharma was employed by the respondent, Cipla Limited as a marketing manager. The appellant was paid salary by the respondent at Mumbai, where a service agreement was signed in between the parties, of which clause 20 provided as follows : "*Any dispute arising out of and/or related to appellant's employment with the Company shall be subject to Mumbai Jurisdiction only*". The appellant filed a Civil Suit (No. 3-B/2009) against the respondent in the Court of District Judge, Ambikapur, Sarguja, regarding a dispute arising out of the service contract, for a sum of Rs. 59,687/- and for mandatory injunction. The District Judge, Ambikapur, Sarguja, after the respondent's preliminary objection, that, no jurisdiction was to be entertained and the suit existed, as it was, by express contract, agreed to by, to confer exclusive jurisdiction in regard to all disputes arising out of the contract would be prescribed to the Civil Court at Mumbai. It was held by the District Judge, Ambikapur, Sarguja, which the plaint was to be returned for presentation in the proper court.

In contention against this order, the appellant filed the aforesaid appeal in the H'ble High Court of Chhattisgarh.

[1] Legal Researcher Based in New Delhi

ISSUES

The issues of contention which arose in this case, were as follows:

A. Whether the trial court had committed an error of law in contention with the jurisdiction of the suit?

B. Whether the Clause 20 on the service agreement renders the agreement void, under section 28 (read with section 23) of the Indian Contract Act, 1872?

C. Whether the cause of action arose, both, in Mumbai and Sarguja, i.e. whether the jurisdiction of the said case strictly lay under the Mumbai jurisdiction or if it was actionable in Sarguja, as well?

These issues are an interlinked nexus pertaining to the place of cause of action, jurisdiction and hence, validity of agreement in impinging the restriction of rights as prescribed by law.

RULES

The sections of the Indian Contracts Act, 1872 (hereafter, ICA, 1872) which were invoked, were, section 23[2] and section 28[3].

Section 23 of the Indian Contract Act deals with the validity of the contract and when a contract is deemed to be void. Any contract whose provisions defeat the ingredients of law, in other words, a contract which challenges the statutes, is deemed to be termed as void.

Section 28 deals with the agreements that impose a restraint on legal proceedings. An agreement, even though mutually agreed upon, deems a contract void, if it restraints, restricts or extinguishes the rights of a party or the ability of enforcing them, by usually, restraining the approach to the court, tribunal or any legal process, would deem the contract void.

[2] Section 23 of the Indian Contracts Act reads,
"What consideration and objects are lawful, and what not:
The consideration or object of an agreement is lawful, unless, —it is forbidden by law; or —is of such a nature that, if permitted, it would defeat the provisions of any law; or —is fraudulent; or —involves or implies, injury to the person or property of another; or —the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void"

[3] Section 28 of the Indian Contracts Act reads,
"Agreements in restraint of legal proceedings, void:
[Every agreement,—
(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
(b) Which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.] "

ANALYSIS

The primary issue pleaded by the appellant's counsel, against the verdict by the trial court, suggested that the clause 20 of the service agreement, though was consensually agreed by the parties, rendered the contract void by sec 28 when read with sec 23, of the ICA,1872. The ICA, 1872 originated because of the uncodified English law principles that existed before the codified statues came into force. It is important to understand the principle behind the enactment (specifically, the section 28). The Bombay High Court in 'The Baroda Spinning and Weaving Co Ltd Vs. The Satyanarayan Marine and Fire Insurance Co ltd', stated the genesis of section 28, which was to enact a stringent yet simple rule, that could invalidate the agreements that absolutely restrict a contracting right, i.e. to resort to the courts or to merely limit the time within which the rights should be enforced. As originally drafted, the section had no specific mention of remedies, though enforcement of a right requires a remedy.[4] Hence it is important to understand the remedy, action and stance taken by the lower court preceding to this judgement.

The lower court had, erroneously adjudicated that the subject was beyond its purview and should be presented in the Mumbai jurisdiction. What essentially clause 20 indicated, as argued by the appellant's counsel, was that as long as it was mutually agreed to, a contract could conclude the statute to be superfluous, in other words, the parties were in the domain to contract against the statue, which beats the purpose of the law.

What clause 20 essentially suggests is that, even though the cause of action arose on in Surguja, it also arose in Mumbai because, firstly, the service agreement, through the payment of salary, occurred in Mumbai and, secondly, it was mutually agreed to do so. The learned counsel from the respondents contended the same, as stated that in A V M Sales Corporation v. Anuradha Chemicals Pvt. Ltd[5] , and further argued that there was no error on account of the trial court.

Though the issue was whether the trial court could reject the plaint and if it could ask the case to be presented in the Mumbai jurisdiction, the case (supra) validated that the trial court was not at fault in doing so.

[4] "Should Section 28 of the Indian Contract Act be amended yet again?" by Vinod joseph; August 2015
[5] [(2012) 2 SCC 315]

The H'ble High Court resolved that the section 28 could be invoked if the jurisdiction agreed upon had nothing to do with the case or the parties, that is, there would be a valid legal restriction only if the jurisdiction stated had nothing to do with the parties. Since, firstly, the service agreement was brought into force in Mumbai and secondly, the salary was paid by the respondent in Mumbai, was evidence enough, to suggest that the said jurisdiction was not out of context and, was in fact, related to the case and parties, hence, the decree sated that section 28, read with section 23, does not deem the clause 20 void and in Toto, the contract is fit and valid.

A similar contention was issued by the H'ble Supreme Court in A B C Laminart Pvt Ltd and othrs vs. A P Agencies Salem (1989)[6], in paragraph 18 that " …. *it is now a settled principle that where there may be two or more competent Courts which can entertain a suit consequent upon a part of the cause of action having arisen there within, if the parties to the contract agreed to vest jurisdiction in 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 and 28 of the Contract Act. This cannot be understood as parties contracting against the statute.* "

Supporting such a judgment the H'Ble Suprme Court in Angile Institutions vs. Davy Ashmore India Ltd. (1995)[7] stated that "….. *that where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therewith, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves, the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague, it is not hit by ss.23 and 28 of the Contract Act. This cannot be understood as parties contacting against the statute* …."

The H'Ble High Court in light of the arguments advanced dismissed the appeal stating "*therefore, where part of cause of action arose at both Mumbai and Ambikapur Court, mutual agreement to exclude the jurisdiction of the Ambikapur Court to entertain the suit was not opposed to public policy and was valid and therefore, the trial Court has not committed any error of law in returning the plaint for its proper presentation. In the result, the appeal fails and is hereby dismissed*."

[6] [AIR 1989 SC 1239]
[7] [AIR 1995 SC 1766]

CONCLUSION

Looking through a historical perspective the judicial interpretation and the decree granted by the court has seemingly being varying. Right from the 'Brojo Nath Shah' case in 1909, developing the scope of precedents through the 'Hirabhai Narotamdas' in 1912, 'G. Rainey' case in 1924 to the 'Kerala Electrical and Allied Engineering Co' case in 1980, the court upheld the clauses of contention in such contract as valid with no liability on the respondent. But, post the 97th Law Commission of India Report, as well as, the 'National Insurance Co Ltd vs S G Nayak and Co. ltd' case in 1997, paved the way for amending the section 28 in 1997, the judiciary has gained a reformative bent, in being more perceptive towards the concerns of the plaintiffs, while approaching the court for providing justice against the clauses that imposes legal restrictions against them. The essential genre of cases dominating the cases filed under section 28 are mainly subject to insurance claims, and hence, any verdict in the realm of section 28, is subject to have a wider implication than just being constricted to the case in hand.

The H'Ble High Court, in the pertaining judgement dismissed the appeal stating that the there was no error of law in the judgement by the Court of District Judge, Ambikapur, Sarguja. Its decision mainly was based on the 'A.B.C. Laminart Pvt Ltd v A P Agencies Salem (1989)', but failed to consider two essential principles.

Firstly, the court fails to mention and take into account the importance of the precedents leading to the aforesaid case of 1989 and at the same time, disregards the precedent it creates by implying the invalidation of this appeal.

Secondly, even though the appeal may be regarding the error of law of the trial court, the broader picture is regarding the positive legal restriction the clause 20 lays down, which may not be explicitly restrictive (in other words expressly negative legal restriction), it does restrain, restrict and handicap the plaintiffs remedy for enforcing his rights. What may not be against the principle of contracting against the statute, does not necessarily explicitly express to be hand in hand within the ambit of the statute.

Hence, though, the The H'Ble High Court is absolutely right in its technicality regarding the 'error of law by the lower court' while dismissing the appeal, it reflects that it doesn't believe to give a second thought about the implications of the decree it might set and the snowball effect, it may cause in the grey area of the ambiguous principle of "contracting against the

statute". It would be wrong to imply that this second thought may not have occurred to the honorable judge, because the judgement is widely based on the issues, contentions and arguments of the counsels of the appellant and respondents, but what this judgement does imply, is the importance of the legal counsel in helping the judge form a judgement ensuring justice, equity and good conscience, as the judgement has a higher impact because of this decree set by them.

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