The Rajasthan Golden Transport Co. P. Ltd. Vs. the United India Fire and General Insurance Co. Ltd. and anr.

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Court : Gujarat

Decided On : Oct-05-1979

Reported in : AIR1980Guj184; (1979)2GLR283

Judge : G.T. Nanavati, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 20; Indian Contract Act, 1872 - Sections 28 and 69

Appeal No. : Civil Revn. Appln. Nos. 821 and 822 of 1978

Appellant : The Rajasthan Golden Transport Co. P. Ltd.

Respondent : The United India Fire and General Insurance Co. Ltd. and anr.

Advocate for Def. : M.V. Chokshy, Adv.

Advocate for Pet/Ap. : R.N. Shah, Adv.

Judgement :

ORDER

1. The petitioner in both these revision applications is the Rajasthan Golden Transport Company Private Limited. Two suits being Regular Civil Suits Nos. 1265 and 1266 of 1973 were filed by the opponents against the petitioner in the Small Cause Court at Ahmedabad. Both these suits were decreed by the learned trial Judge. The petitioner had thereupon filed New Trial Applications Nos. 50 and 51 of 1976 before the Appellate Bench of Small Cause Court at Ahmedabad. They were rejected. Hence these revision applications.

2. Both the aforesaid suits were consolidated by the learned trial Judge and they were disposed of by a - common judgment. Similarly, both the New Trial Applications before the appellate Bench of Small, Cause Court were heard together and were disposed of by a common judgment. As the points which arise in these civil revision applications are common, I also propose to dispose of both of them by a common judgment.

3. Briefly stated the facts are like this. Opponent No. 2 Piramal Jwalaprasad & Brothers is a dealer in cloth at Ahmedabad. On or about 14-3-1970, it wanted to send two bales of cotton piece goods to Sahranpur. It, therefore, approached the petitioner on 14-3-1970 and delivered the said two bales to it for the purpose of carrying the same by a motor lorry to Sahranpur. The petitioner accepted the same and prepared

two separate consignment notes, one in respect of each bale. The said goods were consigned to self and, therefore, in both the consignment notes, name of consignee was shown as 'self'. Both the consignment notes were prepared in triplicate and one copy of each was given to the consignor. According to the consignor, the said bales were not delivered consignor or the consignee at the place of - destination, nor were they returned to the consignor. It, therefore, after waiting for a reasonable time, lodged a claim with the petitioner for Rs. 1,029/- by a notice dated 7-5-1970 in respect of the goods consigned under consignment note No. 40751 and for Rs. 1,257/_ by a notice dated 7-5-1070 in respect of the goods consigned under consignment note No. 40750. The petitioner did not comply with the said notices. As both the consignments were sent at owner's risk, the consignor has got them insured with opponent No. 1 insurance company. The consignor, therefore, called upon the insurance company to make payment for the loss of the said goods. The insurance company made the payment; and thereupon the consignor issued letters of subrogation in favour of the insurance company. Thereafter, both the insurance company as plaintiff No. 1 and the consignor as plaintiff No. 2 filed the aforesaid two suits against the petitioner.

4. The petitioner contested both the suits. It, inter alia, contended that in view of the specific agreement between it and the consignor, only the Court at Delhi will have jurisdiction to try the suits; and, therefore, the Small Cause Court at Ahmedabad had no jurisdiction to try them. It was also contended that the claim of the plaintiffs was barred by limitation. A contention was also raised in the written statement that the insurance company had no right to file these suits.

5. In support of their claim, the opponents, plaintiffs led oral evidence before the trial Court. But the petitioner-defendant did not lead any oral evidence in either of the two suits. The trial Court held that the Court at Delhi will have no jurisdiction to try the suits, as no part of cause of action had arisen within the jurisdiction of the said Court. Therefore, even if the parties had agreed that the Court at Delhi will have jurisdiction to try and hear these suits, it will have no such jurisdiction as the parties even by agreeing cannot confer on a Court jurisdiction which it does not possess. It further held that it had jurisdiction to try these suits as the cause of action had arisen within the jurisdiction. The trial Court relying upon the two deeds of subrogation Exhibits 32 and 39 came to the conclusion that the insurance company had a right to file these suits. On the point of limitation ' it held that the defendant had failed to establish how these suits were not within time. In view of the aforesaid findings, the trial Court decreed both the suits.

6. The petitioner being aggrieved by the aforesaid judgments and decrees of the 'trial Court, filed New Trial Applications Nos. 50 and 51 of 1976 before the Appellate Bench of Small Cause Court at Ahmedabad, under Section 38 of the Presidency Small Cause Courts Act, 1882. Only three points were urged be fore that Court. The first points was relating to jurisdiction; the second was regarding limitation and the third was with regard to the quantum of the amount for which decree was passed in each of the two suits. No point regarding competence or right of Opponent No. 1 insurance company to file the suits was raised before the Appellate Bench. The Appellate Bench agreed with the finding of the trial Court that no part of cause of action can be said to have arisen within the jurisdiction of Delhi, Court; and, therefore, merely because the head office of the petitioner is situated at Delhi, Delhi Court will have no jurisdiction to try these suits. It further held that in any case, jurisdiction of the Courts at Ahmedabad cannot be taken away by such an agreement. The Appellate Bench also

confirmed the findings of the trial Court on the points of limitation and the amount of compensation payable to the opponents. It, therefore, rejected both the New Trial Applications.

7. Mr. R. N. Shah, the learned advocate for the petitioner ' has contended that the findings recorded by both the Courts below on the point of jurisdiction are bad in law. Mr. Shah has submitted that both the Courts below were in error in holding that the Courts at Delhi had no jurisdiction to try these suits as no part of cause of action had arisen within the jurisdiction of the said Courts. According to him, the head office of the petitioner having been situated at New Delhi, the Court at Delhi will have jurisdiction to try these suits in view of the provisions contained in Section 20(a) of the Code of Civil Procedure. He has further contended that if more than one Court have jurisdiction to try any case, then it is open to the parties to agree that only one out of those Courts shall try their case; and in such a case, the other Courts will have no jurisdiction to try the same. He fairly conceded that but for the agreement between the parties i.e. the petitioner and the consignor in this case, the Small Cause Court at Ahmedabad would have jurisdiction to try, these suits. However, in view of the specific agreement between the consignor and the transport company that 'the Court in Delhi city alone shall have jurisdiction in respect of all claims and matters arising under the consignment or of the goods entrusted for transport only the Court at Delhi will have jurisdiction to try these suits, to the exclusion of all other Courts having jurisdiction over the matter. For this purpose, he has relied upon the two consignment notes at Exhs. 28 and 34. These consignment notes were issued by the petitioner to the consignor at the time when it accepted the goods from the consignor for the purpose of carrying them -to Sahranpur. Both the consignment notes are in printed forms; and only the details as to the names of the consignor and the consignee, place of destination, description of the consignment etc. are filled in by the transport company. On the front side of the said consignment notes following clauses are printed at the bottom:

'(1) Goods booked at owner's risk. The company will not be liable for uninsured and illegal goods.

(2) The company shall not be responsible for any wrong declaration whatsoever.

(3) I/we consignor/consignors here by declare that booking terms and conditions printed overleaf shall be binding on me/us.

(4) Duplicate bilty shall only be valid when countersigned by the Manager. Signature of Sender Signature of the or Agent Goods Clerk '

Then on the backside of the said consignment note, terms and conditions on which the consignment is agreed to be carried are printed. The relevant term and condition for our purpose is as under:

'The Court in Delhi city alone shall have jurisdiction in respect of all claims and matters arising under the consignment or of the goods entrusted for transport.'

On the top of these terms and conditions, one JwalaPrasad & Tulsiyan. Has put his signature as the partner of Piramal Jwalaprasad & Brothers. He has also put his signature at the bottom of the said terms and conditions again in the same capacity. He has signed at both the aforesaid places in English. Relying upon the agreement

evidenced by condition Na 3 on the front side of the consignment note and the two signatures placed by the partner of consignor on the back side of the said note, Mr. Shah has contended that the consignor had agreed to all the terms and conditions which are printed on the back side of the said consignment notes; and it is not open to it to contend that it had not agreed to any term or condition whereby it required to file the suits against the petitioner company only in the competent Court at Delhi. With respect to the signatures on the back side of the said consignment notes, Mr. M. V. Chokshy, the learned advocate for opponent No. 1-consignor has explained that the signature on top of the terms and conditions was put on the next day of preparation of the consignment notes and it was so done for the purpose of facilitating delivery of the goods at the place of destination and not in token of having agreed to the term and conditions printed below it. As regards the signature at the bottom, Mr. Chokshy explained that the said signature appears below an endorsement made in favour of Bank of Baroda. The said signature is, therefore, obviously put for the purpose of the endorsement made in favour of the Bank and not in token of the consignor having agreed to the terms and conditions printed above the said signature. In my opinion, Mr. Chokshy is right when he says that none of the two signatures is put by the partner of the consignor in token of the firm having agreed to the terms and conditions printed on the reverse of the said consignment notes. Not only this explanation is supported by the evidence on record, but this position was not disputed in the Courts below. It is also significant to note that on the front side of the consignment notes, at the bottom, there is a space kept blank for signature of sender or his agent to indicate acceptance of terms and conditions printed overleaf. But no signature of the consignor or his agent appears at that place in either of the two consignment notes it cannot, therefore, be said that the consignor had specifically agreed to the terms and conditions printed on the back side of the said consignment notes. Mr. Shah has also argued that the consignors are expected to have read those term and conditions; and they would be bound by the said term and conditions irrespective of the fact whether they have signed below the consignment notes or not, because their attention would be drawn as a result of what has been stated at the bottom of the front side of the consignment notes. Mr. Shah has further contended that since the consignor must be assumed to have agreed to the terms and conditions printed overleaf, the said consignment notes, only the Court at Delhi will have jurisdiction to entertain these suits, and necessarily, jurisdiction of other Courts will be barred in support of this submission, Mr. Shah has relied upon a decision of the Supreme Court in Hakarn Singh v. Gammon (India) Ltd., AIR 1971 SC 740. In that case Hakam Singh had agreed, A to do certain construction work for M/s. Gammon (India) Ltd. on certain terms and conditions which were reduced into writing, in the form of the written tender. Clauses 12 and 13 of the tender were:

'12. In the event of any dispute arising out of this sub-contract, the parties hereto agree that the matter shall be referred to arbitration by two Arbitrators under the Arbitration Act of 1940 and such amendments thereto as may be enacted thereafter.

13. Notwithstanding the places 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.'

Thereafter some dispute arose between the parties; and ultimately Hakam Singh filed a petition in the Court ' of Sub ordinate Judge at Varanasi for an order under Section

20 of the Indian Arbitration Act, that the agreement be filed and an order of reference be made to an Arbitrator or Arbitrators appointed by the Court to settle the dispute between the parties in respect of the construction works done by him. A contention was raised on behalf of M/s. Gammon (India) Ltd. that the Civil Courts in Bombay alone had jurisdiction to entertain the petition. That contention was negatived by the learned trial Judge. The matter was then carried in revision to the High Court of Allahabad which set aside the order passed by the learned Subordinate Judge and declared that only the Courts at Bombay had jurisdiction to entertain the petition. Agaifist that order of the Allahabad High Court, Hakam Singh had preferred an appeal to the Supreme Court. The Supreme Court after referring to clause 13 of the written tender observed as under:

'By clause 13 of the agreement it was expressly, stipulated between the parties that the contract shall be deemed to hav6 been entered into by the parties concerned in the City of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the Courts at Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court, which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act.'

This decision, however, does not support the contention of Mr. Shah that such an agreement between the parties operates as an absolute bar to the jurisdiction of other Courts. It only lays down that such an agreement cannot be said to be void, being in restraint of legal proceedings and thus contravening Section 28 of the Contract Act. Such an agreement is valid and will ordinarily be binding on the parties thereto. But that is very different from saying that it would bar the jurisdiction of other Courts. Mr. Shah has also relied upon two decisions of the Madras High Court in Nanak Chand v. T. T. Elec. Supply Co., AIR 1975 Mad 103 and 'Salem Chemical Industries V. Bird & Co. AIR 1979 Mad 16. In those decisions also, what has been laid down is that if the parties contract to vest jurisdiction in one of the Courts only out of many having jurisdiction to try a dispute, such a contract would not be hit by Section 28 of the Contract Act. There fore, these decisions also do not help the petitioner.

8. Reliance was then placed upon a decision of the Bombay High Court in Ghatge & Patil (Transport) Ltd. v. Madhusudan Ramkumar, AIR 1977 Bom 299. In that case the facts were similar to the facts of the instant case. That decision clearly supports the contention of Mr. Shah that the Court at Delhi alone will have jurisdiction to try the suit arising out of a dispute between the consignor and the petitioner, in view of the specific agreement to that effect. In that case, a contention was in terms raised that even if by the terms of a contract, the parties had agreed to choose a particular forum, it does not mean that other Courts otherwise competent to entertain a suit cannot entertain and try it or in other words the jurisdiction of such Courts is thereby ousted. This contention was negatived by the Bombay High Court as is evident from the following observations made by it.

'.....There would, therefore, be an inevitable implication that the consignor knew full well when he signed this For warding Note that this contract was subject to the jurisdiction of the Court at Kolhapur and knowing this full well tie entered into this contract. In our view, therefore, having regard to the terms of the contract, the

parties by their Agreement had agreed that any dispute arising out of this contract would be decided by the Court of Kolhapur.

In this view of the matter, it is obvious that the Small Cause Court at Poona had no jurisdiction to entertain the suit: and, therefore, it ought to have returned the plaint to the plaintiff for presentation to the proper Court'.

Thus, this decision of the Bombay High Court supports the contention of Mr. Shah that in view of the contract between the parties only the Court in Delhi will have jurisdiction to try these suits and the Small Cause Court at Ahmedabad had no jurisdiction to entertain the same.

9. As against that, Mr. V. M. Chokshy, the learned advocate for the consignor has relied upon a decision of this Court in Rai & Sons P. Ltd. v. M/s. Trikamji Kanji, (1975) 16 Guj LR 31. The contention which has been raised by Mr. Shah before me was in terms raised be, fore J. B. Mehta, J. in that case. The attention of the Court was also invited in that case to the decision of the Supreme Court in Hakarn Singh's case (AIR 1971 SC 740) (supra). This - Court following the decision of the Supreme Court held that such an agreement between the parties of selecting one of the two competent Courts under the Civil Procedure Code is not contrary to public policy and does not violate Section 28 of the Contract Act w it does not oust the jurisdiction of the Civil Court. After, considering various decisions which were cited before him. Mehta. J. has observed:

'.....the settled legal position is entirely to the effect that such a con tract, by which the parties selected one of the two competent forums, does not amount to ouster of the jurisdiction of the ordinary Court. Therefore, such a contractual stipulation, in favour of which the Court would have prima facie a great leaning for upholding the solemnity of the contract so as to bind the parties to their own bargains, could never operate as an absolute bar to the jurisdiction of the competent Court. Therefore,, the competent court would always have a discretion to resolve this question by taking into consideration this stipulation as only one of the factors, which would be given great weight as the parties had selected a particular forum, but ultimately the question would have to be decided not by treating the stipulation as if there was an absolute bar to the existence of the jurisdiction but as one of the factors to be considered for exercise of the jurisdiction on sound judicial principles.'

I am in respectful agreement with the view expressed by Mehta, J. in the aforesaid decision and hold that the jurisdiction of the Small Cause Court at Ahmedabad to entertain these suits is not affected in any manner by the con tract between 'the petitioner and opponent No, 2 firm. As has been pointed out by M. P. Thakkar, J. In M/s. Snehal kumar Sarabhai v. K T. Organisation, AIR 1975 Guj 72, such a. stipulation in a contract can be ignored by the excluded Court if it is considered to be oppressive having regard to the surrounding circumstances and the stakes involved. In the instant cases the goods were delivered to the petitioner at Ahmedabad; all the witnesses who can depose about the formation of the contract and the terms and conditions thereof are residents of Ahmedabad; and the stakes involved in both the suits are comparatively small. If in these circumstances, the opponents plaintiffs are directed to file the suits in the Court at Delhi, it would work great inconvenience and hardship upon them. Considering all these circumstances, it would not be just and expedient to direct the opponents-plaintiffs to file the suits in the Court at Delhi.. I am, there fore, of the opinion that in view of thefacts and circumstance of the case,

the Small Cause Court at Ahmedabad had correctly exercised its Jurisdiction in entertaining these suits.

10. The next contention raised by Mr. Shah is regarding the right of the opponent No. 1 insurance company to file the suits. As has been pointed out earlier, no such point was taken before the Appellate Bench of Small Cause Court. Even apart from that, there is no substance in the point raised 'by Mr. Shah. As the petitioner had not complied with the notice of claim made by opponent No. 2 firm,. the insurance Company was required to make payment I to it. Opponent No. 2 firm had then passed two deeds of subrogation in favour of the insurance company. Thus, the insurance company got all the rights of opponent No. 2 firm to take action- against the petitioner.

11. The last contention raised by, Mr. Shah was regarding limitation. However, Mr. Shah was unable to point out how these suits filed by the opponents were barred by time. As has been pointed out earlier, both the Courts have held that the suits were filed within time. Therefore, this contention of Mr. Shah also fails.

12. Thus, all the contentions raised by Mr. Shah are rejected; and both the revision applications are dismissed. Rule in each of the revision applications is discharged with costs

13. Petitions dismissed