

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR-5492-2010

Reserved on: 10.12.2024

Pronounced on: 20.12.2024

ICICI BANK LTD.

.....Petitioner

Versus

M/S ORIENT CLOTHING CO. PVT. LTD. AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. D.S. Patwalia, Senior Advocate with
Mr. Sehar Navjeet Singh, Advocate
for the petitioner.

Ms. Monika Thakur, Advocate
for respondent No.1.

SURESHWAR THAKUR, J.

1. The present reference becomes generated from the order pronounced by the learned Single Bench of this Court, on 04.10.2010 upon CR-5492-2010, wherein, the learned Single Bench of this Court has passed the following order:-

“Whether the agreement to submit to the jurisdiction of one Court impliedly ousts the jurisdiction of all other Courts?”

2. Consequently, under the orders of the Hon'ble Chief Justice, the instant Larger Bench has been constituted.

3. The counsels appearing today before this Court have been heard at length.

4. A specific clause 13(b), is borne in the ISDA Agreement, as became executed between the parties concerned, the said clause becomes extracted hereinafter.

“Clause 13(b) With respect to any suit, action or proceeding relating to this agreement (“proceedings”) and party irrevocably:

(i) submits to the jurisdiction of the High Court of Mumbai in India; and

(ii) waives any objection which it may have at any time to the laying of the venue of any proceedings brought in any such court and waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such party.

Nothing in this agreement precludes Party B from bringing proceedings in any other court, tribunal or appropriate forum in India, nor will bringing of proceedings in any one or more jurisdictions preclude the bringing of proceedings in any other jurisdiction.”

5. In the (supra) extracted clause, there is ad idem conferment of competent adjudicatory jurisdiction, by the contracting parties vis-a-vis the High Court of Mumbai. Moreover, thereby the contracting parties, have evidently abandoned and waived their rights, to raise any objection, which they may subsequently have, in respect of the (supra) ad idem contractually agreed competent adjudicatory venue. Therefore, excepting the above ad idem contractually agreed competent adjudicatory venue, the contracting parties have thereby waived and abandoned their rights to raise the apposite disputes, as may arise, from the makings of the apposite breaches, thus before any other forum.

6. Reiteratedly (supra) clause also consensually bestows exclusive competent adjudicatory jurisdiction in respect of disputes as

may emerge amongst them, and, as may arise from breaches if any being made by one or the other party vis-a-vis any of the contractual covenants, which occur in the executed contract amongst them.

7. The assigning of validity qua conferment of consensual jurisdiction, through (supra) clause borne in the ISDA agreement, vis-a-vis the High Court at Mumbai, thus for adjudicating any dispute as may emerge amongst them, but however obviously is to become made, subject to the apposite cause of action in whole or in part arising within the apposite consensually chosen adjudicatory jurisdictional venue.

8. The (supra) conferment of consensual jurisdiction through (supra) borne clause vis-a-vis the High Court at Mumbai, thus rather has been validated by the Hon'ble Apex in a judgment rendered in **Hakam Singh V. Gammon India Ltd. 1971(1) SCC 286**. The relevant paragraph of the said judgment becomes extracted hereinafter.

“Disputes arose between the parties and the appellant submitted a petition to the Court of the Subordinate Judge at Varanasi for an order under s. 20 of the Indian Arbitration Act 10 of 1940 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. The respondent contended that the Civil Courts in Bombay alone had because of the terms contained in cl. 13 jurisdiction to entertain the petition. The Trial Judge rejected that contention observing that the condition in cl. 13 that "the contract shall be deemed to have been entered into-by the parties concerned in the city of Bombay has no meaning unless the contract is actually entered into in the city of Bombay", and that there was no evidence to establish that it was entered into in the city of Bombay. The Trial Judge concluded that the entire cause of

action had arisen at Varanasi and the parties could not by agreement confer jurisdiction on the Courts at Bombay, which they did not otherwise possess.”

9. Now since a similar expositions of law, also occurs in the relevant paragraph(s) as carried in another judgment, as made by Hon’ble Apex Court in case titled as **Swastik Gases Private Limited V. Indian Oil Corporation Ltd.** reported in **(2013) 9 SCC 32**, relevant paragraph whereof becomes extracted hereinafter. Resultantly, therebys too, there is validation qua the conferment of consensual adjudicatory jurisdiction, as made under a covenant existing in a contract executed between the concerned, but yet as stated (supra), the said conferred consensual adjudicatory jurisdiction, would also require that in terms of the relevant provisions of the CPC, the whole or the part of the cause of action, thus also evidently arises, rather within the jurisdictional domains of the consensually agreed, thus the (supra), adjudicatory competent jurisdictional venue/forum. The said limitation to the considered mind of this Court would not detract from the corresponding thereto principles, as become carried in Section 20 of the CPC, provisions whereof becomes extracted hereinafter.

“31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under [Section 11](#). Having regard to [Section 11\(12\)\(b\)](#) and [Section 2\(e\)](#) of the 1996 Act read with [Section 20\(c\)](#) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has

jurisdiction in the matter. The question is, whether parties by virtue of clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of clause 18 of the agreement, the jurisdiction of Chief Justice of the Rajasthan High Court has been excluded. 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.”

Provisions of Section 20 of the CPC

“20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations

aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.”

10. The said expositions of law, also occur in the relevant paragraphs as carried in another judgment, as made by Hon’ble Apex Court in **Angile Insulations V. Davy Ashmore India Ltd. And another (1995) 4 SCC 153**, paragraph whereof becomes extracted hereinafter.

“In this view of the law and in view of the fact that the agreement under which Clause (21) was incorporated as one such clause, the parties are bound by the contract. The contract had not been pleaded to be void and being opposed to [s.23](#) of the Contract Act. As seen, Clause (21) is unambiguous and explicit and that, therefore, the parties having agreed to vest the jurisdiction of the Court situated within the territorial limit of High Court of Karnataka, the Court of subordinate Judge, Dhanbad in Bihar State has no jurisdiction to entertain the suit laid by the appellant. There-fore, the High Court was right in upholding the order of the Trial Court returning the plaint for presentation to the proper Court.”

11. In the instant case, there is no wrangle nor there exists any evidence on record to suggest, that the contract executed amongst the

contracting parties, thus with the (supra) covenant therein, whereby consensual adjudicatory competent jurisdiction becomes conferred upon the High Court at Mumbai, thus being void on the premise, that the same is opposed to Section 23 of the Indian Contract Act, nor but obviously there is any evidence qua the (supra) nor thereby the (supra) covenant, as, carried in a contract drawn between the parties, but can be declared to be void. Therefore, within the domain of the (supra) expositions of law, as carried in the (supra) judgments, this Court declares that the (supra) contractual covenant, thus has ably conferred an ad idem competent adjudicatory jurisdiction, vis-a-vis, the apposite disputes, qua the High Court of Mumbai. As such, the said clause was required to be revered by both the contracting parties, than any derogation therefroms being made, excepting the present petitioner qua whom there is a beneficial proviso thereunders. The reason for so declaring will be furnished hereinafter.

12. Now, in the (supra) context, as relates to the arousal of the whole or a part of cause of action, thus within the territorial zone of the (supra) declared adjudicatory venue, it is discernible from the records, that as a matter of fact a part of the cause of action, did arise within the territorial domains of the High Court at Mumbai. If so, since also on applying the expostulations of law (supra), this Court completely validates the conferment of an ad idem competent adjudicatory jurisdiction vis-a-vis the Courts at Mumbai, especially when the said conferment, is through a valid covenant, becoming carried in a validly executed contract between the contracting parties. As such, the said clause is to be strictly construed besides requires completest effectivity being endowed theretos, whereby the respondent was not entitled to

prima facie invoke the jurisdiction of the Civil Courts located at Gurgaon.

13. Reiteratedly, the respondent entity, when through entering into a valid contract with the present petitioner, wherein, the (supra) clause exists, thus thereby has acquiesced to the validity of the said clause, thereby concomitantly it did become estopped from negating the ad idem covenant (supra), as becomes incorporated, in a validly executed contract inter se the respondent and the present petitioner. Emphatically besides reiteratedly, also when there is prima facie no proof, that the said contract was void nor also when there is any proof that neither the whole or a part of the cause, did not arise within the territorial domain of the High Court at Mumbai, whereby alone there may an inter se be conflict with the provisions as carried in Section 20 of the CPC, rather with the covenant (supra). Resultantly, thereby too, the fullest effectivity has to be assigned to the said covenant.

14. Now, the exception to the said consensual conferment of adjudicatory jurisdiction vis-a-vis High Court at Mumbai, also becomes embodied in a proviso occurring thereunder. However, the beneficial effect of the apposite exception to the apposite covenant, but naturally on its plain reading, thus obviously is to be bestowed only vis-a-vis the present petitioner and not qua the respondent.

15. The reason for so stating, is that, the said exception is applicable only to party 'B', party whereof, is the present petitioner, thereby it is not applicable to party 'A', party whereof is the present respondent. If so, the prior thereto covenant existing in the validly executed contract, was thus with the utmost effectivity applicable to the present respondent, whereby the present respondent was estopped to

institute any breached contractual claim, thus against the present petitioner rather before the Courts located at Gurgaon. Significantly also since therebys the said ad idem covenant existing in a valid contract drawn amongst the parties, thus would become transgressed. Conspicuously also when the validity of the said ad idem covenant as, carried in a valid contract, thus for reasons (supra) becomes well banked upon the (supra) expositions of law as made in the verdicts (supra), pronounced by the Hon'ble Apex Court, whereupon the said ad idem covenant but requires that the fullest effectivity be assigned theretos.

16. In aftermath, after declaring the (supra) covenant to be valid, this Court accordingly answers the reference (supra) and subsequently orders that the present civil revision petition be listed before the Roster Bench concerned.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

20.12.2024
Ithlesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No