

Nariman Films Vs. Dilip R. Mehta and anr.

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Court : Delhi

Decided On : Oct-21-2005

Reported in : 124(2005)DLT506; 2005(31)PTC571(Del)

Judge : Sanjay Kishan Kaul, J.

Acts : [Copyright Act, 1957](#) - Sections 14, 17, 55, 62 and 62(2); Arbitration Act, 1940; Contract Act - Sections 8; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 20 - Order 7, Rule 11

Appeal No. : IA 7219/2005 in CS (OS) 1194/2005

Appellant : Nariman Films

Respondent : Dilip R. Mehta and anr.

Advocate for Def. : Jayant Bhushan, Sr. Adv. and ; Sanjeev Kapoor, Adv.

Advocate for Pet/Ap. : Pravin Anand and; Nikhil Krishnamurthy, Adv

Disposition : Application allowed

Judgement :

Sanjay Kishan Kaul, J.

1. The plaintiff has filed a suit for permanent injunction for restraining the defendants from infringement of the copyright under Section 55 of the [Copyright](#)

[Act, 1957](#) (hereinafter to be referred to as, 'the said Act') and for damages, accounts, delivery-up, etc.

2. The plaintiff and its predecessors are stated to be engaged in the business of film production and are producers inter alias of the film titled 'DON'. The plaintiff claims to be the author and owner of the copyright in the cinematographic film, sound recordings and the tracks. On 30.09.1975, a standard form contract was signed between the plaintiff and defendant No. 2. Defendant No. 2 is stated to have had a monopoly at the relevant stage of time in the business and had apparently entered into similar standard contracts with different parties.

3. The plaintiff states that rights were given under the agreement by the plaintiff to the defendants for a period of 25 years from expiry of the date of the contract, which was initially for a period of 4 years. The period is stated to have expired in September, 2004 and despite that the defendant is alleged to have continued to utilise the rights conferred under the agreement beyond the terms of the agreement. The further allegation is that certain rights not conferred under the agreement or which could not even be envisaged at the time of entering into the agreement are also being enjoyed by the defendant infringing the copyright of the plaintiff.

4. The defendants have contested the suit on merits including on the issue of the period of the agreement. However, insofar as the present application is concerned, the same has been filed under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter to be referred to as, 'the said Code'). The said rule is as under :-

'11. Rejection of plaint. - The plaint shall be rejected in the following cases :-.

(d) where the suit appears from the statement in the plaint to be barred by any law;.

5. The aforesaid plea is based on a forum selection clause contained in the agreement between the parties being clause 19, which is as under :-

'19. This Agreement (which shall operate throughout the world) is accepted in Calcutta and all matters, claims and disputes arising in respect of the terms and conditions thereof shall be settled and paid by the parties in Calcutta and any legal proceedings in respect of any matters, claims or disputes shall be instituted in the High Court of Calcutta in West Bengal which shall be the Court of Jurisdiction.'

6. It is the submission of the defendants / applicants that it is only the Calcutta High Court which would have territorial jurisdiction to determine the dispute between the parties. This plea is based on the fact that parties can take recourse to select on of an exclusive forum as long as that forum is not totally without jurisdiction. It is, thus, the submission that the registered office of defendant No. 2 being within the territorial jurisdiction of the Calcutta High Court and the agreement having been signed at Calcutta, Calcutta High Court would at least be one of the courts, which could have jurisdiction and, thus, in view of the parties having selected the forum, it is not open to the plaintiff to approach the courts at Delhi for redressal of their grievances.

7. The arguments had been advanced by learned counsel for the parties within the compass of the aforesaid issue.

8. It may be noticed that Section 62 of the said Act deals with the issue of jurisdiction and is as under :-

'62. Jurisdiction of court over matters arising under this Chapter. -

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), a district court having jurisdiction' shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business

or personally works for gain.'

9. The submission of learned senior counsel for the defendants, however, is that despite the provisions of sub-section (2) of Section 62 of the said Act, whereby the suit can be filed within the local limits of whose jurisdiction the person instituting the suit carries on business, the selection of the exclusive forum would result in conferring jurisdiction only on the Calcutta High Court.

10. Learned senior counsel has referred to various judgment of the Supreme Court to advance the proposition. Learned senior counsel referred to the case of Hakam Singh v. Gammon (India) Ltd., : [1971]3SCR314 where while dealing with the issue of jurisdiction of the courts in respect of the proceedings of filing of the award under the Arbitration Act, 1940, it was held that where two courts would have jurisdiction and the agreement is that the dispute should be tried only by one of them, the court mentioned in the agreement would have jurisdiction. This principle was once again enunciated in A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem, : [1989]2SCR1a , where it was held that an agreement excluding court's jurisdiction was void but where more than one court has jurisdiction and there is an agreement to submit to one of them to the exclusion of the others, the court on which it is agreed to confer jurisdiction would decide the matter. To the same effect is judgment of the Supreme Court in Angile Insulations v. Davy Ashmore India Ltd. and Anr., : [1995]3SCR443 .

11. The most crucial decision relied upon is the recent decision of the Apex Court in Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd., : AIR 2004 SC2432 . The Apex Court considered the issue arising from the use of words in an ouster clause restricting the place of suing to one of the courts having jurisdiction. At times, words such as 'alone', 'only' and 'exclusive' are used in the ouster clause which makes such a clause unambiguous and specific. However, where the ouster clause is not clear and unambiguous, the intention of the parties has to be seen on the maxim 'expressio unius est exclusio alterius'. The aforesaid judgments of the Supreme Court were discussed and it was observed as under :-

'7. The effect of clause 17 of the purchase order which mentions - any legal proceedings arising out of the order shall be subject to the jurisdiction of the courts

in Mumbai, has to be examined in the aforesaid background. Under clauses (a) and (b) of Section 20, the place of residence of the defendant or where he carries on business or works for gain is determinative of the local limits of jurisdiction of the court in which the suit is to be instituted. Clause (c) of Section 20 provides that the suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part, accrues. As shown above, in the present case, a part of cause of action had accrued in both the places viz. Delhi and Bombay. In *Haam Singh v. Gammon (India) Ltd.*, (1971) 2 SCC 286, it was held that it is not open to the parties 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 a 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. It was also held that such an agreement does not contravene Section 8 of the Contract Act.

8. The same question was examined in considerable detail in *A.B.C. Laminart (P) Ltd. v. A.P. Agencies*, : [1989]2SCR1a and it was held as under :-

'When the court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the ousting expression or clause properly. Often the stipulation is that the contract shall be deemed to have been made at a particular place. This would provide the connecting factor for jurisdiction to the courts of that place in the matter of any dispute on or arising out of that contract. It would not, however, ipso facto take away jurisdiction of other courts. Where 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', 'executive' and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim 'express o unius est exclusio alterius' expression of one is that 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. When certain jurisdiction is specified in a contract an

intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed.'8.1 This view has been reiterated in *Angile Insulations v. Davy Ashmore India Ltd.*, : [1995]3SCR443 .

9. Clause 17 says - any legal proceedings arising out of the order shall be subject to the jurisdiction of the courts in Mumbai. This clause is no doubt not qualified by the words like 'alone', 'only' or 'exclusively'. therefore, what is to be seen is whether in the facts and circumstances of the present case, it can be inferred that the jurisdiction of all other courts except courts in Mumbai is excluded. Having regard to the fact that the order was placed by the defendant at Bombay, the said order was accepted by the branch office of the plaintiff at Bombay, the advance payment was made by the defendant at Bombay, and as per the plaintiff's case the final payment was to be made at Bombay, there was a clear intention to confine the jurisdiction of the courts in Bombay to the exclusion of all other courts. The Court of Additional District Judge, Delhi had, therefore, no territorial jurisdiction to try the suit.'

12. Learned senior counsel has, thus, emphasized that even when the ouster clause does not use the specific words, in appropriate cases on the maxim referred to aforesaid, the expression of one is the exclusion of another. Naturally in such case, the clause itself is to be seen.

13. Learned counsel for the plaintiff, on the other hand, has sought to emphasize that this question of territorial jurisdiction was a mixed question of law and fact relating to the duration of the agreement and the rights arising there from and could be decided only on trial of the suit. In this behalf, learned counsel has relied upon two judgments of learned Single Judges of this Court in *Delhi Development Authority v. Behari Parshad*, 1994 (42) DRJ 192 and *Anjini Devi and Ors. v. V.S.T. Industries Ltd.*, : 63(1996)DLT394 .

14. Learned counsel further sought to emphasize that the plaintiff had granted only some of the rights to defendant No. 2. In this behalf, learned counsel referred to the provisions of Section 14 of the said Act and emphasized the fact that out of 20 rights as enumerated under the sub-clauses of Section 14, at best some of the rights had been granted to defendant No. 2. It was emphasized that the author is

the first owner in view of the provisions of Section 17 of the said Act and that the suit cannot be bifurcated into some cause for which there would be no bar of territorial jurisdiction on this Court while in respect of some others, there may be conferment of exclusive jurisdiction on the Calcutta Courts.

15. Learned counsel further strongly relied on the fact that the rights granted to defendant No. 2 at best were over in September, 2004 and, thus, the agreement had come to an end at that period of time. It was, thus, submitted that the defendant could not rely upon the ouster clause in the agreement. It is also further submitted that if at all, there was some ambiguity in the ouster clause, the principles of contra referendum would apply as the contract signed was a standard form contract given by defendant No. 2 for signatures of the plaintiff and similar other persons.

16. Learned counsel also sought to emphasize that the rights, which were being violated by the defendant and in respect of which relief was sought in the present suit, were not derived from the contract, but from the said Act by reason of the plaintiff being the author and, thus, by legal fiction, the first owner. It was lastly emphasized that the ouster clause should be unambiguous and in the absence of use of expressions such as 'only' or 'alone', there could not be ouster of jurisdiction.

17. In view of the judgments cited, in my considered view, there can be no doubt about the proposition that where more than one court has jurisdiction in the subject matter, the parties can confer exclusive jurisdiction on any one court having jurisdiction and oust the jurisdiction of the other courts. There is not even a dispute about this proposition. This principle would not be diluted by reason of the provisions of sub-section (2) of Section 62 of the said Act which only gives the right to the plaintiff to sue on the basis of his residence or carrying business contrary to the provisions of Section 20 of the Code whereby jurisdiction should be based on the residence or the business of the defendant or cause of action.

18. Exclusive jurisdiction can, thus, be conferred even in such eventuality. Thus, if the plaintiff carries work and business at Delhi and further, there is infringement at Delhi, the fact that the defendants are based in Calcutta would imply that both the

courts would have jurisdiction. The contract was also entered into at Calcutta. Thus, exclusive jurisdiction can be conferred on any one court and it is stated to have been conferred on the Calcutta High Court in terms of clause 19 of the agreement.

19. I am unable to accept the contention of learned counsel for the plaintiff that this is a mixed question of law and fact which would require trial. Only clause 19 has to be perused to consider whether any such ouster of jurisdiction has been made. There is serious dispute between the parties whether the plaintiff granted all envisaged rights under the said Act to the defendant or only some of the rights were granted. This would require a reading and interpretation of the agreement between the parties and would be a question of merit. However, this is not material for purposes of determination of the effect of the ouster clause.

20. If the contention of learned counsel for the plaintiff was to be accepted that by reason of the tenure of the agreement coming to an end, the ouster clause would have no effect, it would imply that only during the currency of the agreement and a breach thereof, would the ouster clause continue to operate. I am unable to accept this proposition for the reason that the purpose of exclusive jurisdiction being conferred on the court is for that court to decide whether there is any violation or breach of the agreement or not. This is more so where the defendant is disputing that the agreement has come to an end. No doubt, learned counsel for the plaintiff relied upon certain orders passed by learned Single Judges of the Calcutta High Court giving some view on such similar agreements, but that again would be a matter to be considered on merits of the controversy. As to whether any rights conferred on the defendant under the agreement between the parties have come to an end; whether the defendant is continuing to utilise those rights infringing the copyright of the plaintiff; whether the defendant is enjoying rights beyond what was envisaged under the contract, are all aspects which would require an interpretation of the contract entered into between the parties. If the contract is not to be looked into, how could it be interpreted whether any rights flowing from the contract or otherwise have been violated? This would result in a Catch-22 situation and it is not open to the plaintiff to plead that since the plaintiff's allegation is that the rights are not conferred under the contract and the plaintiff has certain rights under the

said Act de hors the contract, the contract is not to be looked into. The contract will have to be gone into for the said purpose and it is for that purpose that ouster clause has been included in the contract.

21. The only question, thus, which is to be considered is whether there is such a ouster made by reason of the particular clause in question. A reading of clause 19 of the agreement entered into between the parties makes it clear that the agreement was accepted at Calcutta and it is clearly stipulated that all matters, claims and disputes arising in respect of the terms and conditions thereof 'shall' be settled by the parties at Calcutta. It is further provided that any legal proceedings in respect of the matters, claims or disputes 'shall' be instituted at the High Court of Calcutta. In my considered view, the wordings of the clause are unambiguous. Even if the words 'only', 'alone', 'exclusively' etc. have not been utilised, in view of the principle laid down in Hanil Era Textiles Ltd.'s case (supra) and the other judgments of the Apex Court discussed therein and referred to above, the maxim 'expressio unius est exclusio alterius' would be applicable. There cannot be a doubt that Calcutta Court will at least be one of the Courts which would have territorial jurisdiction in the matter. Thus, even if both Delhi and Calcutta have jurisdiction, the fact that the parties have agreed to confer jurisdiction on the Calcutta High Court exclusively would suffice to oust the territorial jurisdiction of this Court. Thus, the observations made in A.B.C. Laminart Pvt. Ltd.'s case (supra) to the effect when certain jurisdiction is specified in a contract and intention to exclude all others from its operation way in such case be inferred would squarely apply in the present case. In fact, in M/s. Angile Insulations's case (supra), the ouster clause was not qualified by words 'only', 'alone', 'exclusively' etc., but it was observed that an inference can be draw that jurisdiction of all other courts except the specified court would be excluded.

22. I am, thus, of the considered view that the parties have agreed to confer exclusive jurisdiction on the Calcutta Court in terms of clause 19 to the ouster of other courts' territorial jurisdiction and, thus, the plaint is liable to be returned to be presented to the competent court.

23. The application is accordingly allowed.

