SUPREME COURT OF INDIA

Shriram City Union Finance Corpn. Ltd.

Vs.

Rama Mishra

C.A.No.6492 of 2000

(Ajay Prakash Misra and Mrs. Ruma Pal, JJ.)

16.11.2000

ORDER

1. Leave granted.

2. Heard learned counsel for the parties.

3. The present appeal is directed against the order of the High Court of Orissa at Cuttack dated 16th July, 1999. Under which the High Court set aside the order passed by the District Judge and allowed the revision and confirmed the order passed by the lower Court with the modification that the respondent shall pay a sum of Rs.1,50,000/- at a time instead of Rs. 1,00,000/-. The number of grounds have been raised challenging the order of the High Court but for the purpose of disposal of the present appeal, learned counsel for the appellant has confined it to the question, whether on the facts and circumstances of the case it is the Court of Calcutta or the Court of Orissa which has the jurisdiction to decide the issues raised. In order to appreciate this we are hereby giving certain essential facts. Respondent obtained a bus on lease dated 14th August, 1977. The period of lease being 36 months on payment of monthly lease rental in 35 months. The said lease period came to an

end on the 14th August, 2000. It is not in dispute that the respondent defaulted in making the payment of the instalments and in spite of demand the payment has not been made. As per Cl. 33 of the said agreement, the matter was referred to the sole arbitrator,an advocate of Calcutta for deciding the dispute. In spite of notice none appeared for the respondent. The appellant made an application under S. 9 of the Arbitration Act, 1966 before the City Civil Court, Calcutta for appointment of Receiver for taking over the possession of the suit vehicle who was appointed. Subsequently, the arbitrator passed an award in favour of the appellant which is not in dispute consequently the Receiver took over the possession of the said vehicle on 19th December, 1998.

4. Thereafter respondent filed suit for injunction in the Court of Civil Judge (junior division) Bhubaneshwar challenging the order that the repossession of the vehicle was illegal and hence for a direction to redeliver the same to the respondent and for fixing rescheduling of the payment due as against the respondent. The appellant filed objection in this case, the first being that in terms of Cl. 33 of the lease agreement an arbitrator was appointed, he initiated the proceedings and since in spite of notice to the respondent he did not appear which finally culminated into an award with the appointment of Receiver. This order has become final hence the present suit should be dismissed on the ground of res judicata as it was between the same parties. Secondly, the question of jurisdiction was also raised as in view of a specific clause under the said agreement that only the Court at Calcutta will have jurisdiction to try and dispute arising out of this conflict.

5. The Civil Judge Bhubaneshwar through its order dated 21st January, 1999 allowed the respondent's application for repayment of outstanding instalment to the appellant within a month and pay the subsequent instalment regularly as per the terms and conditions of the agreement and also directed for the release of the said vehicle after the outstanding dues are paid. As against this order of the trial Court the appellant preferred an appeal and the District Judge through its order dated 11th March, 1999, allowed the appeal of the appellant by setting aside the trial Court judgment. Aggrieved by this, respondent preferred civil revision before the High Court which was allowed, confirming the order passed by the trial Court. It is this order which is the subject-matter of appeal before us for consideration.

6. Two points which are up for our consideration is, first, regarding the arrears and its payment by the respondent, and the other regarding the jurisdiction of the Court namely, whether in view of the aforesaid specific clause under lease agreement, the Court of Bhubaneshwar or the Court at Calcutta would have jurisdiction to try the issues between the parties. So far the first point is concerned when the matter was listed earlier learned counsel for the respondent felt there was possibility of some settlement for which he took time. According to the instructions received by him, the term which is offered was acceptable to the appellant which was, if the respondent pays rupees five lacs in one instalment, the appellant will not pursue the matter in respect of any further claim over and above that. When the case is taken up today learned counsel for the respondent submits that his client is agreeable to pay the amount of Rs. 5,00,000/- within two months which is acceptable to the appellant. In view of this it would be futile for us to enter into the first question raised.

7. This leads us to the second question, which counsel for the appellant submits with vehemence to be considered as this issue is being raised time and again and unless this is settled, the parties will continue to litigate for long in the various Courts. So we took up the second point for consideration. We heard the counsel for the parties in this regard. The submission for the appellant is strongly based on Cl. 34 of the aforesaid agreement which is quoted herein :-

"34. Subject to the provisions of Cl. 32 above it is expressly agreed by and between the parties herein above that any suit, application and or any other legal proceeding with regard to any matter, claims, differences and for disputes arising out of this agreement shall be filed and for referred to the Courts in Calcutta for the purpose of jurisdiction."

8. Clause 34 leaves no room of doubt that the parties expressly agreed between themselves that any suit, application or any other legal proceedings with regard to any matter, claim, differences and dispute arising out of this claim shall only be filed in the Courts in Calcutta.

9. In the present case the impugned order of the High Court and the order passed by the appellate Court arises out of the order passed by the Civil Judge, Bhubaneshwar. We have to keep in mind there is difference between inherent lack of jurisdiction of any Court on account of some statute and the other where parties through agreement bind themselves to have their dispute decided by any one of the Court having jurisdiction. Thus the question is not whether the Orissa Courts have the jurisdiction to decide respondent's suit but whether the respondent could have invoked the jurisdiction of that Court in view of the aforesaid Cl. 34. A party is bound either by provision of the Constitution, statutory provisions or any rule or under terms of any contract which is not against the public policy. It is open for a party for his convenience to fix the jurisdiction of any competent Court to have their dispute adjudicated by that Court alone. In other words if one or more Court has the jurisdiction to try any suit, it is open for the parties to choose any one of the two competent Courts to decide their disputes. In case parties under their own agreement expressly agrees that their dispute shall be tried by only one of them then the party can only file the suit in that Court alone to which they have so agreed. In the present case as we have said through Cl. 34 of the agreement, the parties have bound themselves that any matter arising between them under the said contract, it is the Courts in Calcutta alone which will have jurisdiction. Once parties bound themselves as such it is not open for them to choose a different jurisdiction as in the present case by filing the suit at Bhubaneshwar. Such a suit would be in violation of the said agreement.

10. For the said reasons we have no hesitation to hold that the suit filed by respondent in the Civil Court at Bhubaneshwar would not be valid, in view of the said agreement.

11. In Hakam Singh v. M/s. Gammon (India) Ltd., 1971 (3) SCR 314, this Court held :- AIR 1971 SC 740, paras 3 and 6

"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 S. 28 of the Contract Act."

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Since an application for filing an award in respect of a dispute arising out of the terms of the agreement could be filed in the Courts in the City of Bombay, both because of the term of Cl. 13 of the agreement and because of the respondents had their Head Office where they carry on business at Bombay, the agreement between the parties that the Courts in Bombay alone shall have jurisdiction to try the proceedings relating to arbitration was binding between them."

12. Hence we hold this second question in favour of the appellant that in view of Cl. 34 of the agreement it is the courts at Calcutta alone would be competent Court to adjudicate the dispute between the parties and hence finding to the contrary given by the Courts below is hereby set aside.

13. For the aforesaid reason the present appeal is allowed. The judgment and order dated 16th July, 1999 passed by the High Court is set aside. We hold that in case respondent pay Rs. 5,00,000/- by demand draft either to the appellant directly or to its Bhuvaneshwar office or to the said Receiver within a period of two months from today, any proceedings for recovery of amount under dispute shall stand satisfied and concluded and no proceedings shall be taken by the appellant in this regard.

14. With the aforesaid observation the present appeal is allowed. Costs on the parties.

Appeal allowed.