

# CALCUTTA HIGH COURT

Sri Rajendra Mills Ltd

Vs.

H.V.M. Hazi Hasan Dada

Civil Revn. No. 3371 of 1964

(P.N. Mookerjee, A.C.J. and Amiya Kumar Mookerji, J.)

07.07.1969

## JUDGMENT

### **P.N. Mookerjee, A.C.J.**

1. This Rule was obtained against an order of the lower appellate Court, holding that the institution of the instant suit at the Howrah Court was proper and the learned trial Judge was in error in directing return of the plaint for its presentation to the Court at Salem.
2. The suit is one wherein the plaintiff-Opposite Party No. 1 claims damages for loss of certain goods against the two defendants-defendant No. 1, the party who supplied the goods and defendant No. 2, the Union of India, representing the two Railways over which the goods in question were carried - there being ultimately misdelivery in the instant case. There is a contract between the plaintiff and defendant No. 1, under which the parties agreed that all suits, arising on or out of the contract, would be instituted in the Court at Salem. It is true that the instant suit could have been instituted either at Salem or at Howrah under Section 20 (c) of the Code of Civil Procedure, as the cause of action, admittedly, arose in part in both the places. It was, therefore, a case, where two Courts had concurrent jurisdiction and, in such a case, it was open to the parties to make a choice, restricting the Court, in which the suit under or upon the contract could be instituted. In other words, both the Courts having territorial jurisdiction, the parties by their agreement, waived their right to institute any action, as aforesaid, except at Salem.
3. The learned trial Judge took the view that, in view of the said contract, the plaintiff could not be allowed to bring the suit at Howrah and, accordingly, the Salem Court could be the only proper Court for entertaining the suit and the plaint should be returned for proper presentation to that Court. The learned Judge in the Court of appeal below has held that, although there was a contract, as aforesaid, between the plaintiff and defendant No. 1, defendant No. 2, not being a party to the same, was not bound by the said contract and therefore, the same should not be

enforced so as to enable the Court to direct return of the plaint for presentation to the Court at Salem. It appears, however, as we have already stated, that the instant suit could have been instituted either at Howrah or at Salem and the plaintiff, by reason of the above contract, had validly waived its right to institute the suit except at Salem. In such circumstances, it is not open to the plaintiff to object to the order for return of the plaint for presentation to the Court at Salem. It is not also open to defendant No. 2 to object to the same course as the choice of forum in case of alternative forums, lies with the plaintiff and the plaintiff having debarred or precluded itself from going to any other Court except the Court at Salem, which would be a proper Court as against defendant No. 2 also, it would not be just to allow the plaintiff, at the instance of any other party or under cover of its objection, to institute the suit except in the Court at Salem. We would, therefore, hold that, in reversing the decision of the learned trial Judge, the lower appellate Court has acted illegally and with material irregularity in the exercise of its jurisdiction and its decision should be reversed and that of the learned trial Judge restored.

4. We, accordingly, make this Rule absolute, set aside the impugned order of the learned District Judge and restore that of the learned Subordinate Judge.

5. There will be no order for costs in this Rule.

6. Let the records go down as quickly as possible.

**Amiya Kumar Mookerjee, J.**

7. I agree.

Rule made absolute.