

# GUJARAT HIGH COURT

Snehalkumar Sarabhai

Vs.

E.T. Organisation

Civil Revn. Appln. No. 846 of 1973

(M.P. Thakkar, J.)

18.03.1974

## ORDER

**M.P. Thakkar, J.**

1. Not infrequently the Courts slam the door of the temple of justice in the face of a pilgrim (who has admittedly been wronged) at the behest of the proved wrongdoer solely on the ground that he has knocked at a different door. So often the Court considers itself to be helpless and turns away the hapless pilgrim under a mistaken assumption that entry is barred from the said door. The present case illustrates the point. Having recorded a clear finding that opponent No. 1 (original defendant No. 1), a Public Carrier, had failed to deliver a consignment of goods worth Rs. 1,207.92 to the petitioner plaintiff without any just cause and on merits was liable to reimburse him for the loss, the trial Court (at Ahmadabad) has refused to pass a decree granting relief solely on the ground that there was a printed clause at the back of the transport receipt obliging the consignor to institute a suit in the Calcutta Court only.

2. x x x x x x

3. While parties can lawfully enter into an agreement to restrict a dispute to a particular Court having jurisdiction, that stipulation though valid cannot take away the jurisdiction of the Court which admittedly has jurisdiction. The ouster clause can operate as estoppel against the parties to the contract. It cannot tie the hands of the Court and denude it of the power to do justice. It is no doubt true that ordinarily Courts would respect the agreement between the parties which is born out of the meeting of their minds and out of considerations of convenience. But the Courts are not obliged to do so in every case. In a case like the present where the claim is of Rs. 1,207.92 to oblige the plaintiff to go to Calcutta merely for the pleasure of respecting the stipulation embedded in the contract between the parties is to deny justice. A new approach to this question deserves to be made for the ouster clause is calculated to operate as an engine of oppression and

as a means to defeat the ends of justice for in a case like the present it would be oppressive to drive the plaintiff all the way to Calcutta to recover a small sum of Rs. 1,208/- The costs of travelling and litigation will far exceed the stakes involved, and even a rightful claimant would be obliged to abandon his claim rather than incur greater expenditure than the sum involved in order to seek redress. In this back-drop the question assumes importance whether the stipulation to confine the jurisdiction in one of the Courts robs the excluded Court of its power to try the suit. Now such a stipulation may be legal and binding to parties. That, however, does not mean that it divests the Court of its jurisdiction. The plaintiff cannot insist that a Court other than the stipulated Court should try the suit. But the Court on its part is not bound by the stipulation. The stipulation can be ignored by the excluded Court which otherwise possesses jurisdiction if it is considered to be oppressive having regard to the surrounding circumstances including the stakes involved. More particularly so when the defendant firm has its office and is doing business within the local limits of the Court and it would be unjust to enforce the stipulation against the plaintiff whilst it would not cause any real prejudice to the other side. In such cases the Court will doubtless refuse to respect the contractual commitments made by the contesting parties. In such circumstances the Court should ignore the ouster clause and should exercise its jurisdiction. The lower Court was, therefore, in error in denying a decree to the petitioner plaintiff on the ground that the Court had no jurisdiction).

4. x x x x x x

5. (The Revision is allowed, the decree passed by the trial Court is set aside. There will be a decree in favor of the petitioner-plaintiff for Rs. 1,372-92 ps, with costs and interest at six per cent, from the date of the institution of the suit. Having regard to the facts and circumstances of the case, parties will bear their own costs throughout. Rule is made absolute to the aforesaid extent).

Revision allowed.