

**CASE BRIEF ON ABC LAMINART PVT. LTD. V A.P. AGENCIES**

*Author: Devika Thakur, III year of B.A., LL.B. from OP Jindal Global University*

**Abstract**

The present paper is a case brief on a very famous landmark case law ABC Laminart Pvt Ltd. vs AP Agencies about the jurisdictional aspect stemming from the Civil Procedure Code, 1908. The case involves Acts such as Civil Procedure Code and the Indian Contracts Act. The paper has been divided into four parts where the first part states the Facts of the case, the second part pens down the Issues and the third part deals with the Court's Judgment along with my opinion on the same has been stated in the fourth part of the paper. The crux of the case is stated in one line is – if there's a contract between two parties and the clause of the contract specifically has the exclusive jurisdiction clause attached, regardless if the case had been taken up elsewhere then whether that is valid or not? The case also builds upon the exclusive jurisdiction clause. The civil aspect along with the jurisdictional aspect has been focused more rather than the Contractual aspect of the case. Having said that it doesn't mean that ICA has not been made an appearance. The present case is very useful in determining the place of suing concerning Section 19 and Section 20 of the Civil Procedure Code. It helps us determine that with an existing exclusive jurisdiction clause if the matter has already been taken up elsewhere despite that clause then what is the procedure. It has also been seen that how people often use ABC Laminart and Hakam Singh case exchangeably under the same heading and conclude that two different opinions are underlying on a similar cause but there is a thin line of distinction between the two cases which has often been ignored by all, the same has been stated under the opinion section of the paper.

Keywords- Civil Procedure Code, Indian Contracts Act, Contract, Jurisdiction in Civil Cases, Exclusive Jurisdiction Clause,

**Case: ABC LAMINART PVT. LTD. V A.P. AGENCIES**

**Court: Supreme Court**

**Citation: 1989 2 SCC 163**

### **Facts of the Case**

The appellants in the said case are the manufacturers and suppliers of metallic yarn under the name 'Rupalon Metallic yarn' with their registered office being in Gujarat, falling within the jurisdiction of the civil courts of Kaira. The respondent on the other hand has a registered partnership firm of the same business as well as other allied products in Salem. On 2nd October 1974, both the appellant and the respondent entered into a contract wherein the respondent had to take 500 bobbins of metallic yarn from the appellants at Rs. 35 per bobbin as mentioned in the agreement clause. There was one more clause in the agreement 'clause 11' stating "Any dispute arising out of this sale shall be subject to Kaira jurisdiction". The confirmation of order was then sent to the respondent at his Salems' address along with the general terms and clauses. Disputes arose in default of payment after which the respondent filed a suit of recovery in the court of the subordinate judge at Salem against the appellants for the recovery of the sum of Rs 1,63,240 which was claimed to be the balance of advance along with Rs 2,40,000 for damages. The main dispute here was that there were two courts having jurisdictions and power, but the general clause pointed to Kaira Court having jurisdiction according to clause 11 which was challenged by the other party.

The Trial Court held that it had no jurisdiction to entertain the suit bearing in mind clause 11 of the agreement. Whereas when the case went to the High Court the appeal made by the respondent was allowed and it directed the trial court to take the plaint on the file simultaneously disposing of the other issue on merits. An appeal was then filed before the Supreme Court by special leave.

### **Issues**

- Whether clause 11 within the general clause was a valid form/part of the agreement? And if yes what impacts will it have on the present situation?
- Whether the courts in Kaira would have proper jurisdiction if clause 11 did not exist?
- Whether or not can it be said that clause 11 construed to exclude the jurisdiction of the court at Salem?

- Whether or not the fact that the cause of action arose in Salem led to Salem having valid jurisdiction?

### **Judgment**

The aforementioned issues were dealt with individually by the court on a sequential basis. Where for the first part of the first issue it is a fact that a contract is valid only if both parties agree to it. Through the evidence collected here noted that the Respondent duly acknowledged the receipt of their order along with the terms and conditions when posted to Respondent's address hence making clause 11 the valid part of the agreement. And since the contract is valid the respondent now can't deny its existence. Moving towards the second part of the issue which concerns Section 28 of ICA which states that if any agreement restricts either of the party from enforcing his rights under a contract by the usual legal proceedings is said to be void. Two exceptions have been recognized under the same 1) Contracts where arbitration has to be referred 2) where parties agree to a proper jurisdiction to which disputes in respect of the contract shall be subjected to and not other jurisdiction though proper. The court recognized that the present case falls under the exception and hence it does not violate S28. Now section 23 of ICA states that any contract where the object or the consideration is unlawful contract would be rendered void essentially rephrasing the proverb 'ex dolo malo non-oritur actio'. Since the parties had the power to mutually agree and vest jurisdiction to a particular proper court, the agreement did not exhaust all the jurisdiction and hence it was not violating the public policy part and section 23.

The court then went on to discuss the cause of action in detail defining it as a bundle of facts, which if at all proved, gives a right to relief to the plaintiff against the defendant. Requirements – it must include any act done by the defendant as there can accrue no cause of action without such an act. Though it's not restricted to actual infringements of the right, it includes all material facts which constitute this right in the first place for the plaintiff to obtain a decree. In the current case, the acceptance was communicated in Kiara and as communication of acceptance happened there it gave rise to a cause of action according to the definition above discussed, and hence Kiara courts will have the jurisdiction. Whereas in the breach and damages suit the cause of action arises at the place of the performance of the contract and where the breach occurred. The performance was complete, the appellant had filed a suit for damages, and because the suit wrt breach could also be filed where the

contract should have been performed therefore the court of Salem also had the jurisdiction in the present scenario. This concludes that Kiara and Salem's courts have the jurisdiction.

The bench said, “so long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the court.” It also said that if there are multiple jurisdictions and parties together agree to choose one of them and not the other then it won't count as a total ouster of jurisdiction and also it won't go against the public policy. Whereas if the court otherwise wouldn't have the proper jurisdiction then it goes against the public policy and hence void.

They cited various judgments, *S Manuel Raj & Co. v J.Manila& Co.* where it was said that if there's an inclusion of any such statements as “subject to Madras Jurisdiction” it would imply that the contract meant to exclude the other jurisdiction and hence would give sole jurisdiction to one court only. In *Sri Rajendra Mills* it was held that in circumstances where two courts have the jurisdiction, both parties by an agreement can waive their right and choose any court which has proper jurisdiction regardless of a clause. *Hakam Singh v Gammon India ltd.* ruled that parties cannot confer a court's jurisdiction which it originally does not possess merely by an agreement. *Nanak Chand Shadhurain* held on the lines of these judgments that if there are multiple jurisdictions and parties by way of contract vest jurisdiction to anyone out of them then such an agreement will not go against S.23 and S.28 and hence be valid. **M.P. Thakkar J** in *Snehalkumar Sarabhai* issued a word caution that “Ouster clause could operate as an estoppel to the parties, but it can't tie the hands of the court and denude it of the powers to do justice.”

It was held by the Supreme Court in the current case that making the contract was the cause of action as explained above and hence a suit could be filed at Kiara even otherwise. As the yarn was delivered at Salem the contract was performed there therefore Salem would have a connecting factor to possess jurisdiction. Now if clause 11 excludes one out of the two it cannot be said to be absolutely ousting of a jurisdiction simultaneously not rupturing S23 and S28 of ICA hence valid. The question focused was whether it can be construed to exclude the jurisdiction of Salem. The court held that clause 11 ex facie did not include any exclusionary words like ‘exclusive’, ‘alone’, ‘only’, and the like. So, can we apply ‘*expressio unius est*

*exclusio alterius*’ meaning “explicit mentioning of one is the exclusion of another” in the present case? It held that since the other general clauses and facts of the case also were not indicative of limiting the sole jurisdiction to Kiara the maxim here cannot be applied. Henceforth the court of Salem had valid jurisdiction over the dispute. The Supreme court upheld the judgment of the High Court and dismissed the appeal.

### **Opinion**

The said judgment was very well delivered, and I wholeheartedly resonate with it. It’s appreciative of the judges that after reviewing all possible precedents in a similar topic they could be seen as taking a step ahead and evolving the process of law in an enhanced way whilst protecting S20 of the CPC. Judgment essentially carves out the worth of an exclusive jurisdiction clause and how that works. The arguments presented by the appellants were flawed as the ICA sculpts the exceptions where the case falls. Though there have been arguments after that there are two different precedents over the same subject matter (pointing out to Swastik Ltd. and Hakam Singh) but it is crucial to note that those judgments are concerning the arbitration clause where an individual is free to decide the jurisdiction of a court regardless of any particular jurisdictional limits. Whereas the judgment of this case is purely for the court proceedings which is far different concerning the other two and hence no contradictions should arise.