

PETITIONER:
A.B.C. LAMINART PVT. LTD. & ANR.

Vs.

RESPONDENT:
A.P. AGENCIES, SALEM

DATE OF JUDGMENT 13/03/1989

BENCH:
SAIKIA, K.N. (J)
BENCH:
SAIKIA, K.N. (J)
OZA, G.L. (J)

CITATION:
1989 AIR 1239 1989 SCR (2) 1
1989 SCC (2) 163 JT 1989 (2) 38
1989 SCALE (1)633
CITATOR INFO :
RF 1992 SC1124 (4,9)

ACT:

Sections 23 & 28---Indian Contract Act--Parties
to
contract agree to submit dispute to the jurisdiction of
a
particular court--Interpretation of clauses of such co
n-
tract-Ouster clause II--Interpretation and constructi
on
of--In particular:
Section 9--Civil Procedure Code-Civil court--Jurisdi
c-
tion-Ouster of--Interpretation of clauses of contract.
Statutory Interpretation 'Ouster clause '--Construction of
. Words and Phrases 'Ex dolo malo non orit
ur actio'--'expressio unus est exclusio alterius'--meaning of
.

HEADNOTE:

The first appellant is a manufacturer and supplier
of
metallic yarn under the name and style "Raplon Metall
ic
Yarn" having its registered office at Udyognagar, Mohamad
a-
bad, Gujarat within the jurisdiction of the civil court
at
Kaira. The second appellant is the sister concern of t
he
first appellant.

The Respondent is a registered partnership firm doi
ng
business in metallic yarn and other allied products
at
Salem. The first appellant entered into an agreement wi
th
the Respondent on 2.10.74 whereunder the appellants were

to supply 5000 bobbins of Ruplon Metallic Yarn to the Respondent at the rate of Rs.35 per bobbin as stipulated in the terms of the agreement. Under clause (11) of the agreement it was provided that any dispute arising out of this sale shall be subject to Kaira jurisdiction. Dispute having arisen out of this contract, the Respondent filed a suit against the appellants in the court of Subordinate Judge at Salem for the recovery of Rs.1,63,240 being the balance of the advance in the hands of the appellants and also for a sum of Rs.2,40,000 towards damages. The appellants inter alia took preliminary objection that the Subordinate Judge at Salem had no jurisdiction to entertain the Suit as the parties by express contract had agreed to confer exclusive jurisdiction in regard to all disputes arising out of the contract on the civil court at Kaira. The trial court upheld the preliminary objection and found that it had, in view of clause (11) of the contract, no jurisdiction to entertain the suit. It accordingly returned the plaint for presentation before the proper court.

The Respondent appealed to the High Court against the order of the Subordinate Judge. The High Court allowed the appeal, set aside the Judgment of the trial court, with a direction to take the plaint on file and dispose of the suit on merits and on other issues.

Hence this appeal by the appellants. Dismissing the appeal, this Court,

HELD: That an agreement to oust absolutely the jurisdiction of the court will be unlawful and void being against the public policy, Ex-dolo malo non oritur actio. [6G]

The jurisdiction of the court in the matter of a contract will depend on the situs of the contract, and the cause of action arising through connecting factors. [7B-C]

So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise ha

ve
it
ct
jurisdiction to decide the cause of action under the law,
cannot be said that the parties have by their contra
ousted the jurisdiction of the court. [8G]

he
ch
w,
to
st
ey
c-
st
Where the parties to a contract agreed to submit t
disputes arising from it to a particular jurisdiction whi
would otherwise also be a proper jurisdiction under the la
their agreement to the extent they agreed not to submit
other jurisdictions cannot be said to be void as again
public policy. If on the other hand the jurisdiction th
agree to submit to would not otherwise be proper, jurisd
tion to decide disputes arising out of the contract it mu
be declared void being against public policy. [8H; 9A-B]

ch
of
he
to
he
r,
by
r-
le
Where there may be two or more competent courts whi
can entertain a suit consequent upon a part of the cause
action having arisen there-within if the parties to t
contract agreed to vest jurisdiction on one such court
try the dispute which might arise as between themselves t
agreement would be valid. If such a contract is clea
unambiguous and explicit and not vague, it is not hit
sections 23 & 28 of the Contract Act. This cannot be unde
stood as parties contracting against the Statute. Mercanti
Law and Practice permit such agreements. [11B-C]

3
to
s.
ed
he
ld
of
u-
i-
he
of
an
Where such an ouster clause occurs, it is pertinent
see whether there is ouster of jurisdiction of other court
When the clause is clear, unambiguous and specific accept
notions of contract would bind the parties and unless t
absence of ad idem can be shown the other courts shou
avoid exercising jurisdiction. As regards construction
the ouster clause, when words like 'alone', 'only' 'excl
sive', and the like have been used, there may be no diff
culty. Even without such words in appropriate cases t
maxim "expressio unius est exclusio alterius"-expression
one is the exclusion of another may be applied. What is

appropriate case shall depend on the facts of the case.

In such a case mention of one thing may imply exclusion of another. Where certain jurisdiction is specified in the contract, an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed. [12E-G]

" S. Manuel Raj & Co. v .J. Muni Lal & Co., AIR 1963 Gujarat 148; Sri Rajendra Mills v. Hal Hassan, AIR 1970 Cal. 342; Hakam Singh v. M/s. Gammon (India) Ltd., [1971] 3 SCR 314; Nanak Chand v. T.T. Elect. Supply Co., AIR 1975 Mad 103; Naziruddin v. V.A. Annamalai & Ors., [1978] 2, MLJ 254; Snehal Kumar Sarabhai v. E.T. Orgn., AIR 1975 Gujarat 72 and Salem Chemical Industries v. Bird & Co., AIR 1979 Mad. 16, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION.: Civil Appeal No. 2682

1982

From the Judgment and Order dated 4.11.1980 of the Madras High Court in C.M.A. No. 218 of 1978 Pinaki Mishra, Shishir Sharma and P.H. Parekh for the Appellants.

S.S. Javeli, B.R. Agarwala and R.B. Hathikhanavala for the Respondent.

The Judgment of the Court was delivered by

K.N. SAIKIA, J. This is an appeal by special leave from the judgment and order of the High Court at Madras dated 4th November, 1980 in C.M.A. No. 218 of 1978 allowing the appeal and setting aside the judgment of the Subordinate Judge at Salem in original suit No 302 of 1975 on the preliminary question of jurisdiction.

4

The first appellant is a manufacturer and supplier of metallic yarn under the name and style 'Rupalon Metallic Yarn' having its registered office at Udyognagar, Mohamadabad, Gujarat within the jurisdiction of the Civil Court at Kaira. The second appellant is a sister concern of the fir

s-
nd
other allied products at Salem.

he
to
d-
r-
nt
provided as follows:

to
nt
st
em
he
l-
he
m-
no
ss
in
he
:
or
ts
on
ly
t.
of
ed
l,
c-
on

"Any dispute arising out of this sale shall be subject to Kaira jurisdiction."

Disputes having arisen out of the contract the respondent filed a suit, being original suit No. 302 of 1975, against the appellants in the Court of Subordinate Judge at Salem for the recovery of a sum of Rs. 1,63,240 claiming to be the balance of the advance remaining in the hands of the appellants and also a sum of Rs.2.40,000 towards damages. The appellants took a number of defences and also took a preliminary objection that the Subordinate Judge at Salem had jurisdiction to entertain the suit as parties by express contract had agreed to confer exclusive jurisdiction regard to all disputes arising out of the contract on the civil Court at Kaira.

The Trial Court, inter alia, framed issue No. 2 as follows

"Issue No. 2. Has the court no jurisdiction to entertain try this suit?"

The learned Court treating it as a preliminary issue in its judgment dated 18.4.1978 found that it had no jurisdiction to entertain the suit in view of Clause 11 and accordingly it returned the Plaint for presentation in the proper court.

The respondent appealed therefrom, in C.M.A. No. 218 of 1978, to the High Court of Madras which by the impugned Judgment and Order dated 4.11.1980 allowed the appeal, setting aside the judgment of the Trial Court with a direction to take the plaint on file and dispose of the suit

merits on other issues. Hence this appeal.

5

Mr. Pinaki Misra, the learned counsel for the appellants, submits that Clause 11 of the agreement having provided that any dispute arising out of this sale shall be subject to Kaira jurisdiction, the parties are bound by it and the suit could therefore have been filed only with in Kaira jurisdiction and not at Salem, and as such, the High Court committed error of law in setting aside the Trial Court judgment and in directing the Court at Salem to entertain the suit. Mr. S.S. Javali, the learned counsel for the respondent, submits that what is being called Clause 11 of the agreement was only one of the general terms and conditions of the sale and not a clause in the agreement, and that even if it was construed as a clause in the agreement itself it was not exclusive so as to take away all jurisdictions except that of Kaira.

The first question to be decided, therefore, is whether Clause 11 as aforesaid formed part of the agreement. Mr. Javali submits that Ext. B-1 is an order of confirmation No. 68/59 dated 2.10.1974 from the Sales Executive for the firm appellant to the respondent acknowledging the receipt of their order and registering the same subject to the terms and conditions 'overleaf'. The general terms and conditions printed overleaf included the aforesaid Clause 11. We are unable to agree. Admittedly the parties have transacted the business on inter alia basis of Clause 11. There is, therefore, no escape from the conclusion that Clause 11 formed part of the agreement and the parties would be bound by it so long as they would be bound by the contract itself. It is not open to the respondent to deny existence of Clause 11. The submission of Mr. Javali has, therefore, to be rejected.

The next question is whether Clause 11 is valid, and if so, What would be its effect? As Clause 11 formed part

the agreement it would be valid only if the parties could have validly agreed to it. It is common knowledge that the law of contract only prescribes certain limiting principles within which parties are free to make their own contracts. An agreement enforceable at law is a contract. An agreement which purports to oust the jurisdiction of the Court absolutely is contrary to public policy and hence void. Each of the citizens has the right to have his legal position determined by the ordinary Tribunal except, of course, in a contract (a) when there is an arbitration clause which is valid and binding under the law, and (b) when parties to a contract agree as to the jurisdiction to which disputes in respect of the contract shall be subject. "It has long been established", say Cheshire and Fifoot, "that a contract which purports to destroy the right of one or both of the parties to submit questions of law to the courts is contrary to public policy and is void pro tanto". However, arbitration is a

6
statutory mode of settlement; and as a matter of commercial law and practice parties to a contract may agree as to the jurisdiction to which all or any disputes on or arising out of the contract shall be subject.
Section 28 of the Indian Contract Act, 1872 provides that every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunal, or which limits the time within which he may thus enforce his rights, is void to that extent. This is subject to exceptions, namely, (1) contract to refer to arbitration and to abide by its award, (2) as a matter of commercial law and practice to submit disputes on or in respect of the contract to agreed proper jurisdiction and not other jurisdictions though proper. The principle

Private International Law that the parties should be bound by the jurisdiction clause to which they have agreed unless there is some reason to contrary is being applied to municipal contracts. In Lee v. Showmen's Guild, [1952] 1 All E.

1175 at 1181 Lord Denning said:

"Parties cannot by contract oust the ordinary courts from their jurisdiction. They can, of course, agree to leave questions of law, as well as questions of fact, to the decision of the domestic tribunal. They can, indeed, make the tribunal the final arbiter on questions of fact, but they cannot make it the final arbiter on questions of law. They cannot prevent its decisions being examined by the courts. If parties should seek, by agreement, to take the law out of the hands of the courts and put it into the hands of a private tribunal, without any recourse at all to the courts in cases of error of law, then the agreement is to that extent contrary to public policy and void."

Under section 23 of the Indian Contract Act the consideration or object of an agreement is lawful, unless it is opposed to public policy. Every agreement of which the object or consideration is unlawful is void. Hence there can be no doubt that an agreement to oust absolutely the jurisdiction of the Court will be unlawful and void being against the public policy. Ex dolo malo non oritur actio. If therefore it is found in this case that Clause 11 has absolutely ousted the jurisdiction of the Court it would be against public policy. However, such will be the result only if it can be shown that the jurisdiction to which the parties have agreed to submit had nothing to do with the contract. If on the other hand it is found that the jurisdiction agreed would also be

7

a proper jurisdiction in the matter of the contract it could not be said that it ousted the jurisdiction of the Court. This leads to the question in the facts of this case as

to whether Kaira would be proper jurisdiction in the matter
of this contract. It would also be relevant to examine if so
me other courts than that of Kaira would also have had juri
s- diction in the absence of Clause 11 and whether that wou
ld amount to ouster of jurisdiction of those courts and wou
ld thereby affect the validity of the clause.

The jurisdiction of the Court in matter of a contra
ct will depend on the situs of the contract and the cause
of action arising through connecting factors.

A cause of action means every fact, which, if traverse
d, it would be necessary for the plaintiff to prove in order
to support his right to a judgment of the Court. In oth
er words, it is a bundle of facts which taken with the l
aw applicable to them gives the plaintiff a fight to reli
ef against the defendant. It must include some act done by t
he defendant since in the absence of such an act no cause
of action can possibly accrue. It is not limited to the actu
al infringement of the right sued on but includes all t
he material facts on which it is founded. It does not compri
se evidence necessary to prove such facts, but every fa
ct necessary for the plaintiff to prove to enable him to obta
in a decree. Everything which if not proved would give t
he defendant a fight to immediate judgment must be part of t
he cause of action. But it has no relation whatever to t
he defence which may be set up by the defendant nor does
it depend upon the character of the relief prayed for by t
he plaintiff.

Under section 20(c) of the Code of Civil Procedu
re subject to the limitation stated therebefore, every su
it shall be instituted in a court within the local limits
of whose jurisdiction the cause of action, wholly or in pa
rt arises. It may be remembered that earlier section 7 of Act
7 of 1888 added Explanation III as under:
"Explanation III--In suits arising out of contract the cau
se

of action arises within the meaning of this section at a
ny
of the following places, namely:

(1) the place where the contract was made;

ed
(2) the place where the contract was to be perform
or performance thereof completed;

8

ny
(3) the place where in performance of the contract a
money to which the suit relates was expressly or implied
ly
payable."

ut
The above Explanation III has not been omitted b
nevertheless it may serve a guide. There must be a connec
t-
ing factor.

of
In the matter of a contract there may arise causes
of action of various kinds. In a suit for damages for breach
of contract the cause of action consists of the making of t
he
contract, and of its breach, so that the suit may be fil
ed
either at the place where the contract was made or at t
he
place where it should have been performed and the brea
ch
occurred. The making of the contract is part of the cause
of
action. A suit on a contract, therefore, can be filed at t
he
place where it was made. The determination of the pla
ce
where the contract was made is part of the Law of Contrac
t.
But making of an offer on a particular place does not fo
rm
cause of action in a suit for damages for breach of co
n-
tract. Ordinarily, acceptance of an offer and its intimati
on
result in a contract and hence a suit can be filed in
a
court within whose jurisdiction the acceptance was commun
i-
cated. The performance of a contract is part of cause
of
action and a suit in respect of the breach can always
be
filed at the place where the contract should have perform
ed
or its performance completed. If the contract is to
be
performed at the place where it is made, the suit on t
he
contract is to be filed there and nowhere else. In suits f
or
agency actions the cause of action arises at the place whe
re
the contract of agency was made or the place where actio
ns
are to be rendered and payment is to be made by the agen

t.
or
on
is
ed
he
to
he
Part of cause of action arises where money is expressly impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.

he
ve
it
ct
aw
ve
to
is
he
ld
ir
er
ic
to
to
be
he
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 cannot be said that the parties have by their contract ousted the jurisdiction of the Courts. If under the law several Courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law the agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. Would this be the position in the instant case?

63
an
ds
to
ed
of
In *S. Manuel Raj & Co. v. J. Manilal & Co.*, AIR 1953 Guj. 148 where one of the parties to the contract signed an order form printed by the other party containing the words "subject to Madras jurisdiction" and sent the order form to the other party it was held that the party must be assumed to have agreed that Madras was the place for settlement

the dispute and it was not open to that person who signed the order form of the opposite party containing the printed words to show that printed words were not part of the contract and that those words in the contract was to exclude the jurisdiction of other Courts and to keep sole jurisdiction to one Court. It was observed that the object of printing such words as "subject to Madras jurisdiction" in the contract was to exclude the jurisdiction of other Courts and to give sole jurisdiction to one Court and it was in consonance with the commercial practice in India. Similarly in *Sri Rajendra Mills v. Haji Hassan*, A.I.R. 1970 Cal. 342 where there was 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, the Division Bench held that it was true that the 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 and 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 the right, to institute any action, as aforesaid except at Salem. It was observed that under those circumstances it was not open to the plaintiff to object to the order for return of the plaint for presentation to the Court at Salem 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 at Salem which would be a proper Court as against the defendants it would not be just to allow the plaintiff at the instance of a

ny
he
other party or under cover of its objection to institute t
suit except in-the Court at Salem.

10

3
n-
al
a
i-
h-
to
n-
ay
te
i-
20
nd
a-
at
ly
so
si
on
s-
at
ce
13
be
be
al
on
ad
of
er

In Hakam Singh v. M/s. Gammon (India) Ltd., [1971]
S.C.R. 3 14 where the appellant agreed to do certain co
struction work for the respondent who had its princip
place of business at Bombay on the terms and conditions of
written tender. Clause 12 of the tender provided for arb
tration in case of dispute. Clause 13 provided that notwit
standing the place where the work under the contract was
be executed the contract shall be deemed to have been e
tered into by the parties at Bombay, and the Court in Bomb
ay alone shall have jurisdiction to adjudicate upon. On dispu
arising between the parties the appellant submitted a pet
tion to the Court at Varanasi for an order under section
of the Arbitration Act, 1940 that the agreement be filed a
an order of reference be made to an arbitrator or arbitr
tors appointed by the Court. The respondent contended th
in view of the Clause 13 of the arbitration agreement on
the Courts at Bombay had jurisdiction. The Trial Court al
held that the entire cause of action had arisen at Varana
and the parties could not by agreement confer jurisdic
on the Courts at Bombay which they did not otherwise po
sess. The High Court in re vision held that the Courts
Bombay had jurisdiction under the general law and hen
could entertain the petition and that in view of Clause
of the arbitration agreement the petition could not
entertained at Varanasi and directed the petition to
returned for presentation to the proper Court. On appe
therefrom one of the questions that fell for considerati
of this Court was whether the Courts at Bombay alone h
jurisdiction over the dispute. It was held that the Code
Civil Procedure in its entirety applied to proceedings und

he
to
ly
e.
re
ny
as
ot
e-
he
of
ng
en
ry
ne
ut
me
as
i-
ak
on
is
e.
r-
c-
it
is
re
on
if
in

the Arbitration Act by virtue of section 41 of that Act. T
jurisdiction of the Court under the Arbitration Act
entertain a proceeding for filing an award was according
governed by the provisions of the Code of Civil Procedur
e. By the terms of section 20(a) of the Code of Civil Procedu
read with explanation 11 thereto the respondent compa
ny which had its principal place of business at Bombay w
as liable to be sued at Bombay. It was held that it was n
ot open to the parties to agreement to confer by their agre
e- ment jurisdiction on a Court which did not possess under t
he Code. But where two Courts or more have under the Code
of Civil Procedure jurisdiction to try the suit or proceedi
ng an agreement between the parties that the dispute betwe
en them shall be tried in one of such Courts was not contra
ry to public policy and such an agreement did not contrave
ne section 28 of the Contract Act. Though this case arose o
ut of an arbitration agreement there is no reason why the sa
me rule should not apply to other agreements in so far
as jurisdiction is concerned. Without referring to this dec
i- sion a Division Bench of the Madras High Court in Nan
ak Chand v. T.T. Elect Supply Co., A.I.R. 1975 Madras
11
103 observed that competency of a Court to try an acti
on goes to the root of the matter and when such competency
is not found, it has no jurisdiction at all to try the cas
e. But objection based on jurisdiction is a matter which pa
r- ties could waive and it is in this sense if such jurisd
c- tion is exercised by Courts it does not go to the core of
it so as to make the resultant judgment a nullity. Thus it
is now a settled principle that where there may be two or mo
re competent Courts which can entertain a suit consequent up
on a part of the cause of action having arisen therewithin,
if the parties to the contract agreed to vest jurisdiction
in one such court to try the dispute which might arise

as
a
it
is
he
s.
J.
te
c-
rs
le
ve
ly
s-
ld
as
st
c-
ss
a
be
ar
ot
nd
c-
as
R.
te
it
he
he
ch
r-

between themselves the agreement would be valid. If such contract is clear, unambiguous and explicit and not vague is not hit by sections 23 and 28 of the Contract Act. This can not be understood as parties contracting against the Statute. Mercantile Law and Practice permit such agreement

In *Nazirrudin v. V.A. Annamalai & Ors.*, [1978] 2 M.L.J. 254 where the question was whether Rule 35 of U.P. State Lottery Rules, 1969 confined the jurisdiction only to Lucknow. The Rule said: "35. Legal jurisdiction in all matters concerning the State lottery shall be Lucknow." The sole question for consideration therefore was whether the above Rule had the effect of vesting exclusive jurisdiction only in the Courts in Lucknow and thereby taking away the jurisdiction which the subordinate judge court at Veilore could have if it was established that the lottery ticket was stolen within the jurisdiction of that Court from the first respondent. Held, it was well established that the jurisdiction of a Civil Court can be taken away only by an express provision or by necessary implication and ousting of jurisdiction of Civil Court should not and ought not be inferred from an ambiguous provision. In that particular case it was common case of the parties that Rule 35 did not expressly take away the jurisdiction of any other Court, and vest the exclusive jurisdiction only in the Courts at Lucknow. A note of caution was sounded by M.P. Thakkar, J. He then was, in *Snehal Kumar Sarabhai v. E.T. Orgn.*, A.I. 1975 Guj. 72 observing that the ouster clause could operate as estoppel against the parties to the contract, but it could not tie the hands of the Court and denude it of its powers to do justice. Ordinarily, it was observed: the Courts would respect the agreement between the parties which was borne out of the meeting of their minds out of consider

ation of convenience, but the Courts were not obliged to do so in every case; and that a new approach to the question deserved to be made where the ouster clause was "calculated to operate as an engine of oppression and as a means to defeat the ends of justice." In such a case the free consent

may be

12

wanting and injustice may be avoided.

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 the contract. It would not, however, ipso facto take away jurisdiction of other Courts. Thus, in *Salem Chemical Industries v. Bird & Co.*, A.I.R. 1979 Madras 16 where the terms and conditions attached to the quotation contained an arbitration clause provided that: "any order placed against this quotation shall be deemed to be a contract made in Calcutta and any dispute arising therefrom shall be settled by an Arbitrator to be jointly appointed by us", it was held that it merely fixed the situs of the contract at Calcutta and did not mean to confer an exclusive jurisdiction on the Court at Calcutta, and when a part of the cause of action had arisen at Salem, the Court there had also jurisdiction to entertain the suit under section 20(c) of the Code of Civil Procedure.

From the foregoing decisions it can be reasonably deduced that where such 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 specifically 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', 'exclusive' and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim 'expressio unius est exclusio alterius'--expression of one is the exclusion of another may be applied. Whether 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.

Coming to clause 11 we already found that this clause was included in the general terms and conditions of sale and the order or confirmation No. 68/59 dated 2.10.1974 with the general terms and conditions was sent from Udyognagar, Mohamadabad, Gujarat to the respondent's address at 12 Surmangalam Road Salem, Tamilnadu. The statement made in the Special Leave Petition that Udyognagar, Mohamadabad, Gujarat is within the jurisdiction of the Civil Court of

13
Kaira has not been controverted. We have already seen that making of the contract was a part of the cause of action and a suit on a contract therefore could be filed at the place where it was made. Thus Kaira court would even otherwise have had jurisdiction. The bobbins of metallic yarn were delivered at the address of the respondent at Salem which therefore, would provide the connecting factor for Court Salem to have jurisdiction. If out of the two jurisdictions one was excluded by Clause 11 it would not absolutely oust the jurisdiction of the Court and, therefore, would not be void against public policy and would not violate sections 23 and 28 of the Contract Act. The question then is whether it can be construed to have excluded the jurisdiction of the

of
ie
,
st
m-
no
so
er
le
by
s-
m-
on
at
aw
as
i-
e,

Court at Salem. In the clause 'any dispute arising out of this sale shall be subject to Kaira jurisdiction' ex facie we do not find exclusive words like 'exclusive', 'alone', 'only' and the like. Can the maxim 'expressio unius est exclusio alterius' be applied under the facts and circumstances of the case? The order of confirmation is of assistance. The other general terms and conditions are all not indicative of exclusion of other jurisdictions. Under the facts and circumstances of the case we hold that while connecting factor with Kaira jurisdiction was ensured by fixing the situs of the contract within Kaira, other jurisdictions having connecting factors were not clearly, unambiguously and explicitly excluded. That being the position it could not be said that the jurisdiction of the Court at Salem which Court otherwise had jurisdiction under law through connecting factor of delivery of goods there at was expressly excluded. We accordingly find no error or infirmity in the impugned judgment of the High Court.

In the result, this appeal fails and is dismissed. We, however, leave the parties to bear their own costs.

Y.L.

Appeal dismissed.

14