

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 48 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

ANUP ENGINEERING LTD

Versus

PUNJAB BREWERIES LTD UNITED BREWERIES LTD

Appearance:

1. Appeal from Order No. 48 of 1985
MR SUNIT S SHAH for Petitioner No. 1
MR. P.V. NANAVATI for Respondent No. 1 (Retired)
NOTICE SERVED for Respondent No. 2 (absent)
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CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 28/12/2001

C.A.V.JUDGEMENT

The appellant/original plaintiff has filed this
AO under Order 43, Rule 1 of Code of Civil Procedure

against respondent No.1 Punjab Breweries Ltd. which was ultimately taken over by United Breweries Ltd. Accordingly, it appears that, the AO is amended vide order dt. 10.7.00 in C.A.No. 1914/00. Being aggrieved and dissatisfied with the judgment and decree passed by the Learned Civil Judge, (S.D.), Ahmedabad (Rural) at Narol, in Jurisdiction Civil Suit No. 96 of 1977, dt. 30th July, 1983, the appellant has filed the present Appeal from Order.

2. Earlier, LA Mr. PV Nanavati, was appearing for the respondent No.1, Punjab Breweries Ltd., Respondent No.2 though served, none appeared on behalf of respondent No.2 firm. Thereafter, LA Mr. Nanavati made statement on dt. 28.8.2000 that a Company Application was made for the purpose of merger of Respondent No.1-Punjab Breweries Ltd. with United Breweries Ltd. before the Punjab and Haryana High Court which granted the amalgamation of the companies. The said application was granted and the respondent No.1 company was merged with United Breweries Ltd. Therefore, as the identity has changed, LA Mr. Nanavati, no longer remains advocate for the Punjab Breweries Ltd.

3. The appellant has filed the present AO on the ground that, learned Trial Court has erred in coming to the conclusion that the Court of Ahmedabad (Rural), at Narol, has no jurisdiction to try and entertain the suit. In view of the order of this Hon'ble High Court in C.R.A. No. 1602/80, the issues were framed. The issue No.3, regarding the jurisdiction of this Court was heard as preliminary issue as per the order of this Court, and vide impugned order dt. 30.7.1983, the Trial Court came to a conclusion that, it is held that this Court has no jurisdiction to entertain the suit and the plaint is ordered to be returned to the plaintiff for presentation before the appropriate court. It appears that the evidence was recorded and thereafter, the Trial Court vide order dt. 30.7.83, reached to a conclusion that the Court, at Ludhiana, had jurisdiction to entertain, try and dispose off the suit. As per Clause 25 of Exh. 82, the dispute was to be determined and was to be adjudicated by Court situated in Punjab.

4. According to Mr. Sunit Shah, LA for the appellant, the Managing Director of the appellant, accepted the order at Ahmedabad and therefore, the contract is concluded at Ahmedabad. Therefore, even if it is assumed to be correct that the purchase order was handed over at Ludhiana to the representative of the appellant, there was no concluded contract as Managing

Director, accepted and confirmed the order at Ahmedabad. The Managing Director could have refused to accept the order and in that event there was no contract at all.

5. Therefore, even if the respondent's statement that order was handed over at Ludhiana is accepted, it cannot be said that there was a contract at Ludhiana. As per the said contract freight was to be borne by the respondent. Therefore, transporter acted as the agent of the respondent. The transporter took the delivery at Ahmedabad and not at Ludhiana as contended by the respondent.

6. According to Mr. Sunit Shah, LA for the appellant, it is the contention of the respondent that, the payment was to be paid at Ludhiana. It is submitted that the payment of the outstanding for which the suit has been filed was not to be made at Ludhiana but was to be paid directly to the appellant at Ahmedabad. As per the arrangement, 90% payment was to be made against the despatched documents through bank and 10% on receipt of goods at destination or within one month from the date of despatch of the goods whichever is earlier. Therefore, the suit amount cannot be for the payment to be made through bank but for the payment to be made directly to the appellant. The suit amount also includes the claim for escalation. Therefore, it goes without saying that the suit does not include the payment to be made through the Bank and therefore, that clause cannot be pressed into service to contend that the payment was to be made at Ludhiana.

7. Mr. Sunit Shah, LA for the appellant further submits that, no cause of action has accrued to file the suit at Ludhiana. Hence, despite the clause, of conditions as stated in Exh, 82, the said clause cannot be relied upon. It is a well settled position of law that, parties can mutually agree for the jurisdiction of the Court, provided that, the Court has jurisdiction. Parties cannot agree for the jurisdiction of the Court which otherwise does not have. In other words, by agreement, jurisdiction cannot be conferred upon the Court. The parties can also select the jurisdiction, if two or more courts have jurisdiction. In case of Hakan Singh Vs. Gammon (I) Ltd., reported in AIR 1971, SC 740 the apex court has held as under:-

"It is not open for the parties by agreement to confer by their agreement jurisdiction on a court, which it does not possess under the code. But, where, two courts or more have

under the code of Civil Procedure jurisdiction to try a suit or proceedings 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 Sec. 28 of the Contract Act."

8. In the aforesaid circumstances, the Trial Court ought to have exercised discretion in favour of the appellant in view of the decision as discussed by the Trial Court, it would be unfair to transfer the suit of year 1977 in the year of 2001, to the Court at Ludhiana. Lastly, it was submitted by Mr. Sunit Shah, LA for the appellant that, the conditions, of clause - 25, of Exh. 82, relied upon by the respondent is vague. The said clause refers to the State of Punjab and not Ludhiana City. It also does not say that the jurisdiction of the Court at Ahmedabad is taken away. The word used are "will be referred to" and not "shall be referred to". Therefore, the word "will be referred to" cannot be interpreted to oust the jurisdiction of Court at Ahmedabad, but interpreted to the jurisdiction of the Court situated in Punjab.

9. Under the circumstances, Mr. Sunit Shah, LA for the appellant urged that this appeal be allowed and trial Court's order to the effect that this Court has no jurisdiction to entertain this suit and plaint be returned to the plaintiff to make presentation before the appropriate court be set aside and trial court be ordered to proceed with the suit at the earliest as the matter is of year 1977 and we are at the end of the year 2001.

10. I have gone through the judgment and decree passed by the Learned Trial Court and the authority as discussed in the said judgment and decree. I am of the opinion that the contract was concluded at Ahmedabad and therefore, this Court has jurisdiction to try the suit. Ultimately, the jurisdiction of the court is to be inferred from the averments made in the plaint and not from the written statement by the defendant. Sometimes, it so happens that, looking to the averments made in the plaint, both the courts have jurisdiction and in that circumstances, place where the first suit is filed can be conferred with the jurisdiction and subsequent suit if any filed by the other party, at other place, is required to be stayed till the disposal of the first suit. By agreement, parties to the suit can confer jurisdiction, to one court and not one State as a whole. In this case, jurisdiction is given to Punjab and not to Ludhiana City alone.

11. In view of the aforesaid situation, I am of the

opinion that the interference is required to be made by this Court allowing this appeal by setting aside the order of the trial court dt. 30.7.1983, and further order to see that the suit is disposed of expeditiously by the Trial Court, in accordance with law, after issuance of fresh notice to the respondent/original defendants, at the earliest. Therefore, it is hereby directed that the District Judge, Ahmedabad (Rural) shall place this Spl. Civil Suit No. 96/77 before the appropriate Court with direction to dispose it of as early as possible, preferably before the ensuing summer vacation.

12. Therefore, office is directed to send the writ at the earliest so that, the suit filed in the year 1977, comes to an end at the earliest. Accordingly, this AO shall stand disposed off.

[SHARAD D. DAVE, J]

snt./