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Legality of Exclusive Jurisdiction: Achla Sabharwal vs. A. Saptrishi Films & Ors. on 25 March 2019

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ABSTRACT

Indian Contract Act 1872's idea of exclusive jurisdiction enables contracting parties to confine their legal actions to a single court. To accomplish this, the contract must contain an "Exclusive Jurisdiction" clause.

The standard language for an "exclusive jurisdiction" clause of a contract may read something like this: "The Agreement will be subject to the competence of the courts located at New Delhi."

This provision is frequently added for the parties' convenience and to cut down on legal fees. It gives the parties clarity regarding how to obtain contractual breach remedies. Furthermore, the right to legal remedy or the capacity to enforce rights underlying a contract is completely limited by Section 28 of Indian Contract Act, 1872. However, if Sections 23 & 28 of Indian Contract Act, 1872 are read together with Section 20 in the Civil Procedure Code, which was enacted in 1908, there is room for a partial limitation by limiting the parties' resort to one forum.

Respondents' main defence focused on Clause 12 within the Article of Transfer Agreement which states that "in the event of disagreements arising between the parties hereto concerning with any of the provisions or covenants herein, the Courts in Mumbai only shall have exclusive jurisdiction to hear and try such disputes."

However, it was noted that it must be determined if such an agreement is unambiguous and obvious, and whether it is evident from the agreement itself that the parties intended to submit to the jurisdiction of one court while rejecting the jurisdiction of another.

The case deals in the matters of Exclusive Jurisdiction of the Contracts and the case validates it through the 'law'gical reasonings.

Keywords: *Exclusive Jurisdiction, Contract, Legality.*

I. INTRODUCTION

(A) Factual analysis of the case

According to the facts leading to the filing of the plaint, the producer of the film "BETI No. 1,"

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respondent No. 1, transferred its copyright rights to the appellant via the "Articles of Agreement of Council" effective 16.01.2004. Only the appellant is authorized to carry out any acts related to the aforementioned movie, in accordance with the aforementioned agreement². In accordance with Section 18 of the Copyright Act 1957 (Such assignment may be made to any individual, wholly or in part, by the owner of a current piece or the potential owner of a future work)¹, the appellant asserts that they now have sole ownership of the copyright for the aforementioned movie.

On November 5, 2016, Respondent No. 2/2 Defendant published a notice in "Complete Cinema" alerting people that it had purchased the sole rights to the aforementioned movie from Respondent No. 1. According to the "Articles of Agreement of Council" dated 16.01.2004, the appellant informed the second respondent in a letter dated 08.11.2016 that he is the sole owner of all rights in relation to the subject film and that the second respondent should not acquire or otherwise deal with any rights regarding the subject film.³ Respondent No. 3 claimed in its response that Respondent No. 2 had issued the aforementioned notification dated November 5, 2016, on Respondent No. 3's behalf and the first respondent had transferred its ownership of the aforementioned movie via a deed of assignment dated 02.11.2016.

Conclusively there was a dispute between the parties regarding the exclusive copyright contract. It involves one plaintiff and three respondents.

II. ARGUMENT OF PARTIES

The knowledgeable lawyer for the appellant had claimed that the contested decision was not supported by a correct grasp of the relevant facts and legal principles. He contended that because the contract, dated 16.01.2004, has been followed out and that nothing else needs to have been done under it, clause 12, which restricted jurisdiction to the Mumbai Courts, has become no longer applicable.

He argued that Section 20 of the "CPC" does not grant the right to file a lawsuit for copyright infringement; rather, Section 62 of the Copyrights Act² grants the plaintiff the right to file a lawsuit where he lives or works for pay.

Contrarily, the knowledgeable attorney for the respondents argued that the impugned order is not flawed and that it is founded on an accurate understanding of the relevant facts and legal

² Dubey, S. V. (n.d.). Achla Sabharwal vs A. Saptrishi Films & Ors. *latestlaws.com*. Retrieved October 2, 2023, from <<https://www.latestlaws.com/judgements/delhi-hc/2019/march/2019-latest-caselaw-1655-del>>

³ Dubey, S. V. (n.d.). Achla Sabharwal vs A. Saptrishi Films & Ors. *latestlaws.com*. Retrieved October 2, 2023, from <<https://www.latestlaws.com/judgements/delhi-hc/2019/march/2019-latest-caselaw-1655-del>>

principles.

The main thrust of the respondent's arguments depended upon Clause 12 for the Article of Transfer Agreement between the appellant and respondent no. 1 dated 16.01.2004, which states that "in the case of disputes arising among parties hereto with regard with any of the covenants or clauses herein, the Courts in Mumbai only will be given the jurisdiction to decide and try such disputes."

So the contention was not merely the use of Beti no 1 by the other party but it was also the place or which court will have the jurisdiction over the case.

(A) Questions of fact and Questions of law involved

Section 23 of Indian Contract Act-

*What considerations and objects are lawful, and what not. —The consideration or object of an agreement is lawful, unless— —The consideration or object of an agreement is lawful, unless— " it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.*⁴

Section 23 of ICA is a bone of contention here as limiting the jurisdiction of the contracts can be considered opposed to public policy, defeating the purpose of law and the general good. It is noteworthy that the Act has no definitions for the terms "public policy," "opposed to public policy," or "in contradiction to public policy."

Section 28 of Indian Contract Act-

Agreements in restraint of legal proceedings, void. [Every agreement,

(a) 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 tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict

⁴ Dubey, S. V. (n.d.). Section 23 in the Indian contract act.docx - section 23 in the indian contract act 1872 23. what consideration and objects are lawful and what: Course hero. *Section 23 in The Indian Contract Act.docx - Section 23 in The Indian Contract Act 1872 23. What consideration and objects are lawful and what | Course Hero*. Retrieved October 2, 2023, from <<https://www.coursehero.com/file/52235639/Section-23-in-The-Indian-Contract-Actdocx/>>

*any party from enforcing his rights, is void to that extent.]*⁵

Section 28 is the vital point because According to Section 28, it is illegal to completely restrict access to the legal system or the ability to pursue contractual rights.

The Supreme Court ruled in this case that, per Sections 28 & 23 under the Contract Act, choosing one court over another where two have jurisdiction to hear a dispute would not constitute a constraint on legal action or contradict public policy. In this case the question as to whether the jurisdiction will be exclusive to Mumbai as per clause 15 of the agreement. And whether due to the agreement dated 16.1.2004 the exclusive jurisdiction clause is exhausted or not.

III. JUDGEMENT

The judges made a wide interpretation -

Exclusive jurisdiction clauses fall in between an absolute prohibition and a choice of forum based on convenience. The judges took help from the previous cases and made certain guidelines for the right use of exclusive jurisdiction.

According to the Supreme Court's ruling in *Hakam Singh v. Gammon*, Sections 28 & 23 of the Contract Act do not permit restraint of legal processes or the violation of public policy when two courts have the authority to hear a dispute. However, the parties may not, by agreement, give the court jurisdiction over the issue that it would not otherwise have under the law.

The Supreme Court made it clear in *Swastik Gas* by declaring that the absence of phrases like "alone," "exclusive," or "exclusive jurisdiction" is neither decisive nor does it significantly affect the determination of a court's jurisdiction.

The party opposing the sole jurisdiction clause in *Shridhar Vyapar vs. Gammon India* failed to demonstrate how the contractually chosen forum would be burdensome or oppressive and concluded that the only requirement is that the agreement be clear and unambiguous and that it is obvious from the agreement itself that the parties intended to submit to the jurisdiction of one court while disregarding the jurisdiction of another. The purpose of the parties being subject to the exclusive jurisdiction of Mumbai courts, wherein the Article for Agreement for Transfer was executed, is very clearly implied by Clause 12, which is repeated above in Paragraph 9.

(A) Ratio decidendi

The agreement is clear and unambiguous, and it is obvious from the agreement itself that the

⁵ Dubey, S. V. (n.d.). *Section 28 in the indian contract act, 1872*. Retrieved October 2, 2023, from <<https://indiankanoon.org/doc/1224074/>>

parties intended to submit to the jurisdiction of one court while disregarding the jurisdiction of another.

Once parties have agreed to this, they are not free to choose another jurisdiction because doing so would be against the terms of the agreement.

The contract would be enforceable if the parties agreed to provide one of these court's jurisdiction over any potential disputes between themselves. The parties' agreement here cannot be seen as going against the law. The aforementioned arrangement would not be against the interests of the general public or in violation of Sections 28 and 23 under ICA 1872.

(B) Relevance of the case

Contracts with exclusive jurisdiction clauses waive the parties' right to file a lawsuit in any civil court with jurisdiction over a dispute resulting from the agreement. Instead, the clauses grant only jurisdiction to a few of the appropriate courts. "Expressio unius est exclusio alterius" is a Latin proverb that means "expression of a single is the exclusion of another."

It is essential that a contract include a preset jurisdictional clause to avoid any further disputes when approaching the court.

In accordance with Section 28 of the Indian Contract Act of 1872, "Every agreement, (a) by which any party thereto is absolutely barred from enforcing his rights under or in respect of any contract, by the customary legal proceedings in the customary tribunals, or which limits the time within which he may thus enforce his rights; or (b) which extinguishes the rights of any party thereto, or releases any party thereto from any liability, under or in respect of any contract⁶.

It is not necessary to use words like "only" or "alone" or any other similar expressions to grant a court exclusive jurisdiction; the same result can be achieved by simply expressing one thing while excluding another.

The maxim expression 'unius est exclusio alterius' applies to the construction of jurisdiction clauses like clause 9 in agreements because there is no evidence to the contrary.

An agreement between the parties that the dispute between them shall be tried in one of such Courts was not contrary to Public Policy, and such an agreement did not contravene Section 28

⁶ Dubey, S. V. (2022). Agreements in restraint of legal proceedings – an overview - contracts and commercial law - India. *Agreements In Restraint Of Legal Proceedings – An Overview - Contracts and Commercial Law - India*. Agama Law Associates. Retrieved October 2, 2023, from <<https://www.mondaq.com/india/contracts-and-commercial-law/1213504/agreements-in-restraint-of-legal-proceedings--an-overview>>

of the Contract Act, according to the Code of Civil Procedure.⁷

When such an agreement is obvious and unambiguous, and whether the parties' desire to submit to one court with jurisdiction over the subject while excluding the competence of another is plainly evident from the agreement itself, is a requirement that must be met.⁸

The case still stands relevant because it verifies the exclusive jurisdiction clause and it lays down the means by which parties can make the jurisdiction exclusive to one court. Its vitals are the

- Clear intention of the parties
- Clear defiance of which court
- No coercion and force

Save it from the ambit of Sections 28 and 23 of Indian Contract Act 1872.

IV. CRITICAL ANALYSIS

Though exclusive jurisdiction agreements can generally be enforced as the Court in this instance intends, there are a few exceptions that must be acknowledged. For instance, where there was no attempt to negotiate the clause & there exists an imbalance in the bargaining position, the majority of adhesion agreements contain exclusive jurisdiction clauses. There may also be circumstances where the parties were unable to foresee that starting legal proceedings in the preferred forum would result in significant hardship or inconvenience.

It is not against the law to include a phrase like this; rather, it provides the parties the freedom to mutually agree on a venue where they can simply and economically start legal proceedings.⁵ Keeping the parties' convenience in mind, professionals increasingly advise including the "Exclusive Jurisdiction" clause directly in contracts between parties.

Conclusively there can be an exclusive jurisdiction clause without violating the Indian Contract Law.

⁷ Dubey, S. V. (2015). Exclusive Jurisdictional Clause in commercial contracts. *Academike*. Retrieved October 2, 2023, from <<https://www.lawctopus.com/academike/exclusive-jurisdictional-clause-commercial-contracts/>>

⁸ Dubey, S. V. (n.d.). Achla Sabharwal vs A. Saptrishi Films & Ors. *latestlaws.com*. Retrieved October 2, 2023, from <<https://www.latestlaws.com/judgements/delhi-hc/2019/march/2019-latest-caselaw-1655-del>>

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