

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8933 OF 2014

(arising out of S.L.P. (Civil) No. 7589 of 2011)

B.E.SIMOES VON STARABURG NIEDENTHAL
& ANR

Appellant(s)

VERSUS

M/S CHHATTISGARH INVESTMENT LTD.

Respondent(s)

WITH

CIVIL APPEAL NO. 8934 OF 2014

(arising out of S.L.P. (Civil) No. 7836 of 2011)

CIVIL APPEAL NO. 8946 OF 2014

(arising out of S.L.P. (Civil) No. 8011 of 2011)

O R D E R

S.L.P. (Civil) No. 7589 of 2011

Leave granted.

2. Admittedly, a Raising Agreement with regard to mines located in Goa was entered between the parties at Raipur on 09.04.2007. The first appellant operates mines in Goa. Under the Raising Agreement, the respondent is exclusive purchaser of the ore from the mines of the appellants. The disputes having arisen between the parties, the

respondent (hereinafter referred to as "CIL") made an application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, '1996 Act') for interim protection before the Court of District Judge, Raipur. The present appellants (hereinafter referred to as "SIMOES"), who were respondents in the application, raised the objection, by way of an application, about the jurisdiction of the District Judge, Raipur. It was submitted by the SIMOES that the District Judge, Raipur has no jurisdiction for three reasons: (i) the subject mines are located in Goa, (ii) the agreement was also made in Goa, and (iii) the place of residence of respondent No. 2 is Goa. CIL, on the other hand, responded to the SIMOES objection by stating that although the subject mines are situated in Goa, the working of the company is in Raipur, the cause of action also arose in Raipur and, therefore, the District Judge, Raipur also has jurisdiction to try and entertain the matter.

3. The District Judge, Raipur elaborately noted the arguments of the parties, but curiously first observed that it would be possible to decide the

issue of jurisdiction only when SIMOES filed reply to the petition under Section 9 of the 1996 Act and then dismissed the application whereby SIMOES raised the objection of lack of jurisdiction.

4. Aggrieved by the order dated 06.10.2010 passed by the District Judge, Raipur, SIMOES preferred appeal before the Chhattisgarh High Court. The High Court did not interfere with the order of the District Judge, Raipur and observed that the question of jurisdiction could only be decided by the District Judge after the reply was filed to the application under Section 9 of the 1996 Act. The High Court observed that the District Judge shall decide the application under Section 9 and so also the objection regarding territorial jurisdiction afresh within thirty days from the date of the filing of reply and after hearing the parties.

5. We have heard Mr. Rafiq A. Dada, learned senior counsel for the appellants (SIMOES), and Mr. Nikhilesh Krishnan, learned counsel for the respondent (CIL).

6. Clause 13 of the Raising Agreement dated 09.04.2007 reads as under :-

"The Courts at Goa shall have exclusive jurisdiction."

7. It is not disputed by the learned counsel for CIL that Goa courts have jurisdiction, but his submission is that Raipur court also has jurisdiction and since the question of jurisdiction has not been finally decided by the District Judge, Raipur, the District Judge, Raipur must be allowed to decide the question of its own jurisdiction. In support of his arguments, learned counsel for CIL relies upon decisions of this Court in *Michael Golodetz and others Vs. Serajuddin and Co.*¹ and *Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel*².

8. On the other hand, Mr. Rafiq A. Dada, learned senior counsel for SIMOES, submits that the parties have agreed that Goa courts shall have exclusive jurisdiction and, thus, by their agreement the jurisdiction of the Raipur court has been ousted. He submits that in view of the jurisdiction clause

1. AIR 1963 SC 1044

2. [1953] SCR 185

in the agreement, now the Raipur court has no jurisdiction at all. In support of his arguments, learned senior counsel for the appellants, relies upon two judgments of this Court - (one), *Swastik Gases Private Limited Vs. Indian Oil Corporation Limited*³ and (two), *State of West Bengal & Ors. Vs. Associated Contractors* (Civil Appeal No. 6691 of 2005) and other connected matter (Civil Appeal No. 4808 of 2013) decided on 10.09.2014.

9. In *Swastik Gases Private Limited*³, the 3-Judge Bench of this Court had an occasion to consider the issue as to whether in a contract that specifies the jurisdiction of particular courts at a particular place and such courts have jurisdiction to deal with the matter, whether the parties had intended to exclude the other courts? In *Swastik Gases Private Limited*³, in the lead judgment, one of us (R.M. Lodha, J., as he then was) referred to the earlier decisions of this Court in *Hakam Singh Vs. M/s Gammon (India) Ltd.* (1971) 1 SCC 286; *Globe Transport Corporation Vs. Triveni Engineering Works and Another*, (1983) 4 SCC 707; *Angile Insulations*

3. (2013) 9 SCC 32

Vs. Davy Ashmore India Ltd. and Another, (1995) 4 SCC 153; *New Moga Transport Co., through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. and others*, (2004) 4 SCC 677; *Shree Subhlaxmi Fabrics (P) Ltd. Vs. Chand Mal Baradia and Others*, (2005) 10 SCC 704; *Rajasthan State Electricity Board Vs. Universal Petrol Chemicals Limited*, (2009) 3 SCC 107; *Balaji Coke Industry Private Limited Vs. Maa Bhagwati Coke Gujarat Private Limited*, (2009) 9 SCC 403; *A.V.M. Sales Corporation Vs. Anuradha Chemicals Private Limited*, (2012) 2 SCC 315, and culled out the legal position in para 32 of the report as under:-

"32. ... It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties - by having Clause 18 in the agreement - is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of

another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner."

Madan B. Lokur, J., while writing separate judgment, concurred with the above legal position.

10. In a very recent judgment delivered on 10.09.2014 in Civil Appeal No. 6691 of 2005, *State of West Bengal & Ors. Vs. Associated Contractors*, the 3-Judge Bench (speaking through one of us, Rohinton Fali Nariman, J.), noticing the decisions of this Court in *FCI represented by Managing Director & Anr. Vs. A.M. Ahmed & Co. through MD & Anr.*, (2001) 10 SCC 532 (para 6); *Neycer India Ltd. Vs. GNB Ceramics Ltd.*, (2002) 9 SCC 489 (para 3) with reference to Section 31(4) of

the Arbitration Act, 1940 and the decisions of this Court in *Jatinder Nath Vs. Chopra Land Developers Pvt. Ltd.*, (2007) 11 SCC 453 (para 9); *Rajasthan State Electrical Board Vs. Universal Petrol Chemical Limited*, (2009) 3 SCC 107 (paras 33 to 36) and *Swastik Gases (P) Ltd. Vs. Indian Oil Corporation*, 2013 (9) SCC 32 (para 32), held that where the agreement between the parties restricted jurisdiction to only one particular court, that court alone would have jurisdiction as neither Section 31(4) nor Section 42 (of the 1996 Act) contains a non-obstante clause wiping out a contrary agreement between the parties. On the basis of the above decisions, it was further held that applications preferred to courts outside the exclusive court agreed to by parties would also be without jurisdiction.

11. In light of the legal position expounded in *Swastik Gases Private Limited*³ and *Associated Contractors (supra)* and having regard to Clause 13 of the agreement, as noted above, the jurisdiction of the District Judge, Raipur is ousted and, therefore, he cannot be said to have any

jurisdiction in dealing with the matter. The only competent court of jurisdiction is the court at Goa.

12. In what we have discussed above, we do not think that it is necessary to send the matter back to the District Judge, Raipur for determination of the jurisdiction as contended by the learned counsel for the respondent. In our view, relegating the parties to the District Judge, Raipur to determine the question of jurisdiction will be unnecessary and futile exercise.

13. The impugned order is, accordingly, set aside. Civil Appeal is allowed as above with no order as to costs.

S.L.P. (Civil) No. 7836 of 2011 &
S.L.P. (Civil) No. 8011 of 2011

Leave granted.

2. For the reasons stated by us while allowing Civil Appeal No. 8933 of 2014 (arising out of S.L.P. (Civil) No. 7589 of 2011), *B.E.Simoes Von Staraburg Niedenthal & Anr. Vs. M/S Chattisgarh Investment Ltd.*, these Civil Appeals are also allowed and the impugned order is set aside.

3. No costs.

.....CJI.
(R.M. LODHA)

.....J.
(KURIAN JOSEPH)

NEW DELHI;
SEPTEMBER 16, 2014

.....J.
(ROHINTON FALI NARIMAN)

ITEM NO.7

COURT NO.1

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 7589/2011

(Arising out of impugned final judgment and order dated 21/01/2011 in AA No. 02/2011 in CN No. 24-A/2010 passed by the High Court Of Chhattisgarh At Bilaspur)

B.E.SIMOES VON STARABURG NIEDENTHAL&ANR

Petitioner(s)

VERSUS

M/S CHHATTISGARH INVESTMENT LTD.

Respondent(s)

(with interim relief and office report)
[FOR FINAL DISPOSAL]

WITH

SLP(C) No. 7836/2011

(With Interim Relief and Office Report)

SLP(C) No. 8011/2011

(With Interim Relief and Office Report)

Date : 16/09/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. Rafiq A. Dada, Sr. Adv.
Mr. Erach H. Kotwal, Adv.
Mr. Kishan Rawat, Adv.
Ms. F.M. Noronha, Adv.
Ms. Ruchika, Adv.
Ms. Neha Malik, Adv.
Mr. Rajan Narain, Adv.

For Respondent(s) Mr. Nikhilesh Krishnan, Adv.
 Mr. Shashi Bhushan, Adv.
 Mr. Shantanu Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

S.L.P. (Civil) No. 7589 of 2011

Leave granted.

Civil Appeal is allowed in terms of the signed
order.

S.L.P. (Civil) No. 7836 of 2011 &
S.L.P. (Civil) No. 8011 of 2011

Leave granted.

In terms of the signed order, for the reasons stated
while allowing Civil Appeal No. 8933 of 2014 (arising out
of S.L.P. (Civil) No. 7589 of 2011), *B.E.Simoes Von
Staraburg Niedenthal & Anr. Vs. M/S Chattisgarh Investment
Ltd.*, these Civil Appeals are also allowed.

(RAJESH DHAM)
COURT MASTER

(RENU DIWAN)
COURT MASTER

(signed order is placed on the file)