

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. OF 2024
(Arising out of SLP (C) No. 10246 of 2019)

**ALPHA RESIDENTS WELFARE ASSOCIATION
(REGD.) KARNAL & ORS.**

... APPELLANTS

VERSUS

**ALPHA CORP. DEVELOPMENT
PVT. LIMITED & ORS.**

... RESPONDENTS

O R D E R

Leave granted.

2. Arising out of the rejection of the plaint by allowing the application filed by the defendants-respondents under Order VII Rule 11 of the Code of Civil Procedure (in short, the “CPC”) maintaining an objection of jurisdiction of court in terms of Clause 23 of the Plot Buyers’ Agreement, the present appeal has been filed.

3. The appellants filed a suit¹ in the Court of Civil Judge (Junior

1 C.S. No. 2489 of 2016

Division), Karnal ("Trial Court") seeking declaration, rendition of accounts, mandatory and permanent injunction with respect to the Community Centre of Alpha International City, Sector 28-29, Karnal situated within a residential area, seeking declaration that the Community Center cannot be leased out to third party for commercial purpose by the defendants with other ancillary reliefs before the Trial Court.

4. The defendants moved an application under Order VII, Rule 11 of CPC, *inter-alia*, raising an objection that in terms of Clause 23 of the agreement dated 24.02.2009 the Courts at New Delhi alone shall have jurisdiction in the matters arising out of, touching and/or concerning the agreement regardless of the place of execution. On filing reply by the appellants, the application was rejected by that Court vide order dated 31.01.2017. The defendants preferred Civil Revision No. 1105 of 2017 which was allowed in part and vide order dated 15.02.2017. The High Court remitted the matter to Trial Court for deciding the application afresh.

5. Learned Trial Court considered the submissions afresh, again rejected the application, vide order dated 19.04.2017 *inter-alia*, on the

pretext that territorial jurisdiction of the Court cannot be ousted in lieu of the clause in agreement, in particular, when the subject matter is the immoveable property situated in Karnal and the cause to sue arose there. The Trial Court observed that Karnal Court does have jurisdiction to maintain the suit.

6. Being dissatisfied, the defendants preferred Civil Revision bearing Nos. 3122 of 2017 and 3705 of 2017 which were decided by the common impugned order dated 27.11.2018 allowing the application and directed to reject the plaint setting aside the order of the Trial Court. The present appeal is against the said judgment preferred by the plaintiffs/appellants.

7. Learned appellants' counsel Ms. Anjali Sharma, contends that in a suit for declaration, rendition of accounts and mandatory and permanent injunction of an immoveable property situated in Sector 28-29, Karnal, jurisdiction lies with the Courts at Karnal. As per Section 16(d) of the CPC, suit for determination of any other right or interest in the immoveable property ought to be entertained by the Court where the immoveable property is situated irrespective of the clause in the agreement. She further submitted that the jurisdiction of the Civil Court for declaration of the rights between the parties to the

immoveable property cannot be taken away by virtue of an agreement from the Court at Karnal to Delhi, in particular, when the immoveable property or part thereof is not situated in Delhi. For buttressing the contention, reliance has been placed on a judgment of this Court in the case of **Harshad Chiman Lal Modi Vs. DLF Universal Ltd. & Anr.** [(2005) 7 SCC 791]. It is argued that in the impugned judgment, Court relied upon the case of **Swastik Gases Private Limited Vs. Indian Oil Corporation Limited** [(2013) 9 SCC 32], but the said case does not deal with the case of an immoveable property and is based on an agreement regarding business transaction. It is urged that where the Court does not have jurisdiction to deal with the subject matter, by virtue of a clause in an agreement, conferment of the jurisdiction to such Court in a suit related to immoveable property is not permissible.

8. Per contra, learned counsel for the respondents made the submissions and supported the findings recorded by the High Court in the impugned order. He placed reliance heavily on the judgment relied by the High Court in the case of **Swastik Gases** (supra) to submit that once by an agreement dated 24.02.2009, signed by the parties, jurisdiction has been conferred to the courts at Delhi alone, the

Courts at Karnal, where the suit has been filed has no jurisdiction to entertain the same. The parties' intent in including this clause in the agreement was clear, that only the Courts at Delhi would have jurisdiction, excluding those of Karnal Court. By consenting to this clause, the plaintiffs effectively excluded the jurisdiction of other Courts. Given this understanding, the plaintiffs cannot be permitted to file the suit at Karnal. The High Court has rightly allowed the application filed by the respondents and rejected the plaint.

9. Having heard learned counsel for the parties and on perusal of the record, in particular the averments of the plaint by which, it is apparent that the present suit relates to the immovable property situated in Sector 28-29, Karnal in the State of Haryana. The appellants have filed a suit seeking declaration, rendition of accounts, mandatory and permanent injunction in the nature that no third party right for commercial purpose can be given by the respondents in a property, which is meant for use of residents of the township. The respondents, on the basis of Clause 23 of the agreement claimed jurisdiction of the Courts at New Delhi alone. The said clause is relevant and reproduced as under:

“23. Jurisdiction:

The Courts at New Delhi alone shall have the jurisdiction in all matters arising out of touching and/or concerning this Agreement regardless of the place of execution of this Agreement which is deemed to be at New Delhi.”

10. The said issue of jurisdiction is contested in terms of provisions of CPC. Part 1 of CPC deals with “**Suits in General**” by which it is clear that a suit in which right to property is involved is a suit of civil nature and the Civil Court shall have the jurisdiction to take cognizance of it until barred expressly or impliedly. Section 15 onwards indicates the place to sue. On perusal, it is clear that such suit ought to be filed in the Court of lowest grade, competent to try it and as per Section 16, the suit be instituted at a place where the subject matter is situate. Looking to the nature of the present suit, it falls within Section 16(d) of CPC, whereby it is clear that subject to the pecuniary or other limitations prescribed by any law, suits for determination of any other right to or interest in immovable property shall be instituted in the Court within the local limits of whose jurisdiction, the property is situate. Further, Section 17 makes it clear that where the suit is to obtain relief in respect of immovable property situated within the jurisdiction of different Courts, in that event, the

suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate. Therefore, it is clear that in a suit related to immovable property, the jurisdiction of the Court would be at the place where the property or part thereof is situate. Otherwise, in other cases, as per Section 20 of CPC, the suit may be instituted where the defendant resides or cause of action arose subject to the provisions of Sections 15 to 19 of CPC. A similar issue of interpretation of jurisdiction of Courts in terms of Section 16 CPC was brought for consideration in the judgment of **Harshad Chiman Lal Modi** (supra). While interpreting the issue of competence and jurisdiction of the civil court, this Court has observed as thus:

“15. Now, Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of courts. They regulate forum for institution of suits. They deal with the matters of domestic concern and provide for the multitude of suits which can be brought in different courts. Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. The proviso to Section 16

declares that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts are uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.

16. Section 16 thus recognizes a well-established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. The proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on a well-known maxim "equity acts in personam", recognised by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim

was based was that the courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam i.e. by arrest of the defendant or by attachment of his property.

17. *In Ewing v. Ewing [(1883) 9 AC 34 : 53 LJ Ch 435 (HL)]*
Lord Selborne observed:

"The Courts of Equity in England are, and always have been, courts of conscience operating in personam and not in rem; and in the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts in trusts as to subjects which were not either locally or ratione domicilli within their jurisdiction. They have done so, as to lands, in Scotland, in Ireland, in the colonies, in foreign countries."

18. *The proviso is thus an exception to the main part of the section which in our considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant."*

11. Reverting to the arguments of respondents relying upon the judgment of **Swastik Gases** (supra), the issue involved therein did not involve an immovable property. The parties were engaged in the business of storage, manufacturing and marketing of various types of

lubricants. They entered into an agreement for selling and marketing lubricants. As per Clause 18 thereof, the agreement was to be subject to jurisdiction of Courts at Kolkata. The dispute arose between parties when large quantity of lubricant could not be sold. Accordingly, an application under Section 11 of Arbitration and Conciliation Act, 1996 was moved before Rajasthan High Court which was objected for lack of territorial jurisdiction in view of Clause 18. The matter reached this Court, which in appeal observed as thus:

“29. *When it comes to the question of territorial jurisdiction relating to the application under Section 11, besides the above legislative provisions, Section 20 of the Code is relevant. Section 20 of the Code states that subject to the limitations provided in Sections 15 to 19, every suit shall be instituted in a court within the local limits of whose jurisdiction:*

- (a) the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or*
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid,*

acquiesce in such institution; or

(c) the cause of action, wholly or in part arises.

30. *The Explanation appended to Section 20 clarifies that a corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.*

31. *In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, the Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of Clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of Clause 18 of the agreement, the jurisdiction of the Chief Justice of the Rajasthan High Court has been excluded?*

32. *For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. 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.”*

12. Now coming to the facts of the present case, undisputedly the suit has been filed before the Civil Judge (Jr. Division), Karnal seeking declaration, rendition, mandatory and permanent injunction with respect to the Community Centre of Alpha International City, Sector 28-29, Karnal. The said property is situated in Karnal. Therefore, the courts at Karnal, in whose local limits, the property is situate, would have the jurisdiction. Clause 23 of the Agreement, executed and signed by the parties, and by their consent, the jurisdiction is

conferred on the courts at New Delhi. However, this clause would not override the jurisdiction conferred statutorily to the Courts, who may try and pass an order with respect to the property in question. It may not be out of place to put an example that in case an agreement has been entered between the parties not with respect to the immovable property, but for business transactions or otherwise, in that situation, where the immovable property is not involved, subject to the limitations prescribed under the law, by virtue of an agreement, the parties may decide regarding place of sue and conferment of jurisdiction to the Court. It may be one of the places where a part of cause of action arose. Again, with caveat that the parties by agreement cannot confer jurisdiction on a Court, which otherwise it does not have. But in a case of immovable property, by virtue of the agreement, the jurisdiction cannot be taken away from the place where the property or part thereof is situate, as specified in Sections 16 and 17 of CPC. In other words, it is not open to the parties to confer jurisdiction on a Civil Court by agreement which it does not possess under the Code of Civil Procedure.

13. In view of the discussion made hereinabove, the High Court

committed error in allowing the application under Order VII Rule 11 CPC and rejected the plaint by the impugned judgment. As such, we set-aside the same and reject the application holding that the suit is maintainable at Civil Court, Karnal and it be decided on its own merits in accordance with law.

14. The Civil Appeal is accordingly disposed of with no order as to costs.

.....,J.
[J.K. MAHESHWARI]

.....,J.
[RAJESH BINDAL]

New Delhi;
December 12, 2024.

ITEM NO.15

COURT NO.7

SECTION IV-B

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). 10246/2019
[Arising out of impugned final judgment and order dated 27-11-2018
in CR No. 3122/2017 passed by the High Court of Punjab & Haryana at
Chandigarh]

ALPHA RESIDENTS WELFARE ASSOCIATION
(REGD.) KARNAL & ORS.

Petitioner(s)

VERSUS

ALPHA CORP. DEVELOPMENT PVT. LIMITED & ORS.

Respondent(s)

Date : 12-12-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE RAJESH BINDAL

For Petitioner(s) Ms. Anjali Sharma, Adv.
 Mr. Deepak Bashta, Adv.
 Ms. Shagun Matta, AOR

For Respondent(s) Mr. Surjendu Sankar Das, AOR
 Mr. Alok Jain, Adv.
 Ms. Annie Mittal, Adv.
 Ms. Aarushi Singh, Adv.

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

1. Leave granted.
2. The appeal is disposed of in terms of the signed reportable order.
3. Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS
(Signed reportable order is placed on the file)

(NAND KISHOR)
COURT MASTER