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*Analysing developments impacting business*

### EXCLUSIVE JURISDICTION CLAUSES AND WRIT JURISDICTION: SUPREME COURT ANSWERS

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#### INTRODUCTION

Issues surrounding exclusive jurisdiction clauses have come up before Courts, time and again. Common questions that often arise in context of exclusive jurisdiction clauses include *inter alia* those pertaining to (i) the validity of such a clause in light of Section 28 of the Indian Contract Act 1872 (Contract Act), (ii) the effect of such a clause on the writ jurisdiction of a High Court and (iii) the extent of the exclusivity of such exclusive jurisdiction clauses?

The Supreme Court of India in *Maharashtra Chess Association v Union of India and Others* in Civil Appeal No. 5654 of 2019 (Maharashtra Chess Association) was dealing with the issue of whether a private agreement which confers exclusive jurisdiction to the Courts at Chennai can oust the writ jurisdiction of the Bombay High Court under Article 226 of the Constitution of India 1950 (Constitution).

This newsletter analyses the decision of the division bench of the Supreme Court in *Maharashtra Chess Association* and makes an attempt to answer some common issues that arise in the context of an exclusive jurisdiction clause.

#### RELEVANT CLAUSE

Clause 21 of the constitution and bye laws of All India Chess Federation (Clause 21) contained an exclusive jurisdiction clause worded in the following manner:

##### **"21. Legal Course**

- (i) *The Federation shall sue and or be sued only in the name of the Hon. Secretary of the Federation.*
- (ii) *Any Suits / Legal actions against the Federation shall be instituted only in the Courts at Chennai, where the Registered Office of All India Chess Federation is situated or at the place where the Secretariat of the All India Chess Federation is functioning."*

#### BACKGROUND

The Bombay High Court held that Clause 21 ousted the jurisdiction of all other courts except the Courts at Chennai. The observations of the Bombay High Court are captured below.

*".....In the facts of the present case when there is existence of Clause 21 which we have adverted to herein above, in our*

*view, the jurisdiction of the other Courts except the Courts at Chennai in respect of any Suits / Legal action which are brought against Respondent No. 2 are ousted...."*

## ANALYSIS OF REASONING OF THE SUPREME COURT

### 1. Contours of an exclusive jurisdiction clause and Section 28 of the Contract Act

Section 28 of the Contract Act declares that agreements in restraint of legal proceedings are void. Restraint of legal proceedings under Section 28 of the Contract Act has been denoted to mean and include absolute restraint from enforcing rights under or in respect of any contract for a party or which limits the time within which a party may enforce its rights.

Given the restriction imposed by Section 28 of the Contract Act, parties cannot contractually exclude the jurisdiction of all courts.

The Supreme Court speaking through Chandrachud J. stated that Clause 21 does not oust the jurisdiction of all Courts and therefore such a clause is not hit by section 28 of the Contract Act. It was observed that, *"where parties to a contract confer jurisdiction on one amongst multiple courts having proper jurisdiction, to the exclusion of all other courts, the parties cannot be said to have ousted the jurisdiction of all courts."*

In this regard the observation of the Supreme Court in *ABC Laminart (P) Limited v A.P. Agencies, Salem*, (1989) 2 SCC 163 (ABC Laminart) are quite pertinent and still continues to remain the law of the land. The court surmised in ABC Laminart that, *"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 their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy."*

### 2. Writ Jurisdiction of High Courts

Article 226 of the Constitution empowers a High Court to issue writs for enforcement of fundamental rights under Part III of the Constitution or for any other purpose.

The Supreme Court observed that no limitation can be placed on the powers of the High Court regarding exercise of its writ jurisdiction. In this context, the Supreme Court quoted a paragraph from its earlier decision in *Uttar Pradesh State Sugar Corporation Limited v Kamal Swaroop Tondon* (2008) 2 SCC 41 as follows.

*"35.....It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court "to reach injustice wherever it is found."*

The Supreme Court reiterated the following principles with respect to exercise of writ jurisdiction by High Courts:

- Decision of a High Court to exercise or not exercise the writ jurisdiction is fundamentally discretionary;
- Limitations placed on a High Court's decision to refuse to exercise its writ jurisdiction are self-imposed; and
- Writ jurisdiction of a High Court cannot be completely excluded by a statute.

### 3. Does an alternate remedy bar the exercise of writ jurisdiction by a High Court?

The Supreme Court stated that an alternate remedy does not create an automatic bar on exercise of writ jurisdiction by the High Court and the High Court can very well exercise writ jurisdiction even when there is alternate remedy available to a party since the exercise of writ jurisdiction is fundamentally discretionary.

The observations of the Court in this regard are as follows:

*"The existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court's writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action under its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case."*

#### FINDING OF THE SUPREME COURT

The Supreme Court held that the sole and absolute reliance by the Bombay High Court on Clause 21 to oust its own jurisdiction is not appropriate. It stated that it is not open to a High Court to abdicate this responsibility merely due to the existence of a privately negotiated agreement.

In view of the above, the Supreme Court allowed the appeal and set aside the impugned judgment of the Bombay High Court and restored the matter to the file of the High Court for being considered afresh.

#### COMMENT

Notably the Supreme Court in an earlier decision in *Union of India v Tantia Construction Private Limited*, 2011 (4) SCALE 745, had held that an alternate remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and even without exhausting alternate remedy, a writ petition would be maintainable. In this regard, the Court had held that notwithstanding the provisions of the arbitration clause, the High Court was fully within its right to entertain a writ petition.

This decision again reaffirms the principle that the writ jurisdiction of a High Court cannot be automatically ousted by an exclusive jurisdiction clause agreed between the parties. Nonetheless, the court can exercise its discretion on the facts and circumstances of the case to entertain or not entertain a particular writ petition as the remedy is entirely discretionary and fetters, if any, to such exercise can only be imposed by the court itself and not by a statute or an agreement.

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