

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 16.05.2025

Pronounced on:23.05.2025

FAO No.12/2025

**AIRPORT AUTHORITY OF INDIA
AND OTHERS**

...APPELLANT(S)

Through: - Mr. Digvijay Rai, Advocate, with
Mr. Vikas Malik, Ms. Areeba
Ahad & Mr. Hamzah Draboo,
Advocate.

Vs.

**M/S MAHESH SUNNY ENTERPRISES
PRIVATE LIMITED**

...RESPONDENT(S)

Through: - Mr. Anil Bhan, Sr. Advocate,
with Mr. Danish Majid Dar, Ms.
Ahra Syed & Ms. Monisa
Manzoor, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellants have challenged orders dated 05.12.2024 and 05.03.2025, passed by the learned Additional District Judge, Budgam, (hereinafter referred to as "the trial court") in a suit filed by the respondent (hereinafter referred to as "the plaintiff") against them. Vide order dated 05.12.2024, the learned trial court has passed an exparte interim injunction in favour of the plaintiff against the appellants (hereinafter referred to as "the defendants") whereby communication bearing reference No.CL-11034/3/2023/259 dated 13.11.2024

has been kept in abeyance. By virtue of the aforesaid communication, the plaintiff has been disqualified from empanelment in the tenders relating to vehicle parking management services at Airport Authority of India Airports and from participation in the tenders floated by defendants. Vide impugned order dated 05.03.2025, the learned trial court has deferred decision on the application filed by the defendants under Order 7 Rule 10 of CPC till the application of the plaintiff under Order 6 Rule 11 CPC is decided.

2) It appears that the plaintiff has filed a suit seeking a declaration that the debarment orders dated 08.08.2023 and 20.10.2023 passed against M/S Saptagiri Restaurants Private Limited are illegal, arbitrary, non-est and not applicable to the plaintiff. A further declaration that communication dated 13.11.2024 is illegal, arbitrary and void, has also been sought by the plaintiff, besides seeking a permanent injunction restraining the defendants from debarring or disqualifying the plaintiff from participating in the tenders floated by them.

3) It seems that on presentation of the suit, impugned order dated 05.12.2024 came to be passed by the learned trial court in exparte, whereby the learned trial court kept the communication dated 13.11.2024, by virtue of which

the plaintiff was disqualified from empanelment in the tenders relating to vehicle parking management services at AAI Airports and also from participation in the tenders floated by the defendants, in abeyance.

4) It seems that on 12.12.2024, the defendants put in their appearance before the learned trial court and filed an application under Order 39 Rule 4 CPC seeking vacation of *ex parte ad-interim* order dated 05.12.2024. In the application filed under Order 39 Rule 4 CPC, the defendants raised a preliminary objection to the maintainability of the suit on the ground that the learned trial court lacked jurisdiction to entertain and try the suit. It was contended by the defendants that as per clause 4.15.1 contained in Request for Empanelment (RFE), only the courts at Delhi have jurisdiction to try and determine the disputes arising between the parties. The defendants also filed an application under Order 7 Rule 10 CPC praying for return of the plaint to the plaintiff for its presentation before the court having jurisdiction.

5) After filing of the aforesaid applications by the defendants, the plaintiff filed an application under Order 6 Rule 17 of CPC seeking amendment of the plaint so as to include challenge to clause 4.15.1 of RFE. The plaintiff

also filed objections to both the aforesaid applications filed by the defendants.

6) Vide order dated 05.03.2025, the learned trial court framed an opinion that before deciding application filed by the defendants under Order 7 Rule 10 CPC, application of the plaintiff under Order 6 Rule 17 CPC is required to be decided. The trial court further ordered the extension of interim dated 05.12.2024.

7) The defendants have challenged the impugned orders on the ground that the same have been passed by the learned trial court in ignorance of clause 4.15.1 of RFE, which exclusively confers jurisdiction to the court situated at Delhi. It has been contended that the plaintiff has obtained ex parte interim order dated 05.12.2024 by concealment of clause 4.15.1 of RFE and, as such, on this ground alone, the said order is liable to be vacated. It has been further contended that the impugned order dated 05.12.2024 passed by the trial court is without jurisdiction and, as such, the same is liable to be set aside.

8) The respondent/plaintiff has raised a preliminary objection to the maintainability of this appeal by contending that the impugned order passed by the learned trial court is subject to objections of other side and it would not be appropriate for this Court to entertain the

appeal against the said order without there being final adjudication on the application under Order 39 Rule 1 and 2 CPC filed by the plaintiff. It has been contended that the application of the plaintiff seeking amendment of the plaint has to be decided in the first instance and it is only thereafter that the learned trial court can proceed to decide the application under Order 39 Rule 1 and 2 CPC. It is being urged that this Court can direct the trial court to decide the application under Order 39 Rule 1 and 2 CPC within a specified time instead of entertaining the present appeal.

9) I have heard learned counsel for the parties and perused record of the case.

10) Although learned counsels have addressed arguments on the merits of the cases of the rival parties, yet for the purposes of decision of this appeal, the same may not be necessary at this stage.

11) The question that is required to be determined in the first instance is as to whether an ex parte interim order passed in terms of Order 39 Rule 1 and 2 of CPC is appealable in nature and if so, whether proper course for this Court would be to remand the case to the trial court with a direction to decide the application under Order 39

Rule 1 and 2 of CPC on its merits after hearing the parties, instead of entertaining the present appeal.

12) As per the provisions contained in Order 43 Rule 1(r) of the CPC, an order passed under Rule 1 and 2 of Order 39 is appealable in nature. Thus, an order passed by a civil court on an application under Order 39 Rule 1 and 2 of CPC, whether it is *exparte* or whether the same has been passed after hearing the parties, is appealable in nature in terms of Order 43 Rule 1(r) of CPC. Generally the courts are loath to entertain an appeal against an *exparte ad-interim* order passed in terms of Order 39 Rule 1 and 2 of CPC and the parties are more often than not asked to approach the trial court and get the application under Order 39 Rule 1 and 2 of CPC decided on its merits before coming to the appellate court. But there is no absolute bar to entertain an appeal against an *exparte interim* order passed in terms of Order 39 Rule 1 and 2 of CPC. In deserving and appropriate cases, it is open to the appellate court to entertain and decide an appeal even against an *exparte interim* order passed under Order 39 Rule 1 and 2 of CPC.

13) The issue, as to in what circumstance an appeal against an *exparte interim* order can be entertained, came up for consideration before the Supreme Court in the case

of **A. Vankatasubbiah Naidu vs. S. Chellappan and others**, (2000) 7 SCC 695. Para 21 of the said judgment is relevant to the context and the same is reproduced as under:

21. It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2-A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party which does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3-A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3-A. In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule.

14) From the analysis of aforesaid observations of the Supreme Court, it is clear that in a case where mandate of Order 39 Rule 3-A of CPC is flouted, the aggrieved party is entitled to file an appeal notwithstanding the pendency of

the application for grant or vacation of a temporary injunction, against the order remaining in force. It is also clear that the appellate court is obliged to entertain the appeal in such cases.

15) Adverting to the facts of the present case, the learned trial court passed the ex parte interim injunction on 05.12.2024. Reply to the application of the plaintiff for grant of interim injunction along with the application under Order 39 Rule 4 with an application under Order 7 Rule 10 of CPC, came to be filed by the defendants on 12.12.2024. The case was taken up by the learned trial court on 14.12.2024, 26.12.2024, 31.12.2025, 11.02.2025 and 18.02.2025. On 11.02.2025, the plaintiff filed an application under Order 6 Rule 17 of CPC before the trial court and on 05.03.2025, the learned trial court deferred decision on the application of the defendants under Order 7 Rule 10 of CPC.

16) From the aforesaid sequence of events, it is clear that the learned trial court has not decided the application of the plaintiff Order 39 Rule 1 and 2 of CPC within one month from the date on which the ex parte interim injunction dated 05.12.2024 was passed. The defendants had appeared before the learned trial court on 12.12.2024 itself and moved an application under Order 39 Rule 4 of

CPC but the learned trial court kept on adjourning the case from time to time until 11.02.2025 when the plaintiff filed an application under Order 6 Rule 11 of CPC before the said court. Even thereafter the learned trial court deferred hearing on the application for vacation of interim injunction, thereby flouting the provisions contained in Order 39 Rule 3-A of CPC. Thus, in the light of the law laid down by the Supreme court in **A. Venkatasubbiah Naidu's** case (supra), this Court is obligated to entertain the present appeal.

17) There is yet another reason for entertaining the present appeal. The appellants have raised a jurisdictional issue by contending that the learned trial court did not have jurisdiction to pass the interim order as the suit could not have been filed by the plaintiff before the said court. Therefore, if it is found that the interim injunction passed by the learned trial court is without jurisdiction, then such an order can be interfered with by this Court in appeal even without remanding the case to the trial court for decision of application Order 39 Rule 1 and 2 of CPC on merits.

18) That takes us to the core issue as to whether the learned trial court had the jurisdiction to entertain the suit

in the face of covenants of clause 4.15.1 of RFE, which reads as under:

“4.15.1 The empanelment Process shall be governed by and construed in accordance with the laws of India and only the Courts at Delhi shall have jurisdiction over all disputes arising under, pursuant to and/or in connection with this Process.”

19) From a perusal of the aforesaid clause, it is clear that as per covenants of RFE, which is a document on the basis of which tenders were invited for vehicle parking management services and in response of which the plaintiff had submitted his bid, there was a restriction on the jurisdiction. The question whether such a clause can be incorporated in an agreement between the parties came up for consideration before the Supreme Court in the case of **A. B. C. Laminart Pvt. Ltd. and another vs. A. P. Agencies, Salem**, (1989) 2 SCC 163. It would be apt to refer the observations made by the Supreme Court in para 21 of the said judgment, which reads as under:

21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like “alone”, “only”, “exclusive” and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim “expressio unius est exclusio alterius” — expression of one is the exclusion of another — may be applied. What is

an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed.

20) Again, in the case of **Swastik Gases Private Limited vs. Indian Oil Corporation Limited**, (2013) 9 SCC 32, the Supreme Court, after noticing the provisions contained in Section 20 of the CPC, which relates to jurisdiction of courts for the purpose of institution of suits, took note of the facts of the said case and observed as under:

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.

21) Recently, the Supreme Court in the case of **Rakesh Kumar Verma vs. HDFC Bank Ltd.** 2025 SCC OnLine SC 752, after noticing the ratio laid down on the aforesaid issue in its previous decisions, concluded as under:

29. *First, Section 28 of the Contract Act does not bar exclusive jurisdiction clauses. What has been barred is the absolute restriction of any party from approaching a legal forum. The right to legal adjudication cannot be taken away from any party through contract but can be relegated to a set of Courts for the ease of the parties. In the present dispute, the clause does not take away the right of the employee to pursue a legal claim but only restricts the employee to pursue those claims before the courts in Mumbai alone.*

30. *Secondly, the Court must already have jurisdiction to entertain such a legal claim. This limb pertains to the fact that a contract cannot confer jurisdiction on a court that did not have such a jurisdiction in the first place. The*

explanation to Section 20 of the CPC is essential to decide this issue. In the instant case, considering that the decision to employ Rakesh and Deepti were taken in Mumbai, the appointment letter in favour of Rakesh was issued from Mumbai, the employment agreement was dispatched from Mumbai, the decision to terminate the services of Rakesh and Deepti were taken in Mumbai and the letters of termination were dispatched from Mumbai, we are convinced that the courts in Mumbai do have jurisdiction.

22) From the foregoing analysis of the legal position, it is clear that the parties to a contract are free to restrict determination of their disputes before a particular court provided the said court has jurisdiction in the first place. The parties can also agree to get their rights adjudicated by a particular court and exclude the jurisdiction of other courts. However, the parties cannot confer jurisdiction on a court which otherwise does not have jurisdiction to adjudicate the disputes between them, meaning thereby restriction of forum is permissible under law but conferment of jurisdiction on a court, which otherwise does not have jurisdiction, is not permissible in law. It is also clear that there cannot be any absolute restriction on any party from approaching a legal forum because the same would be violative of Section 28 of the Contract Act.

23) In the present case, it is clear that in terms of clause 4.15.1, jurisdiction has been restricted to the Courts at

Delhi. The expression “only courts at Delhi shall have jurisdiction” used in clause 4.15.1 of RFE makes it clear that the jurisdiction to adjudicate disputes has been restricted to courts at Delhi and, as such, no other court would have jurisdiction to adjudicate such disputes. It is not in dispute that the Courts at Delhi otherwise do have jurisdiction to adjudicate the disputes arising in the suit which is subject matter of the present appeal, inasmuch as the principal office of the defendant No.1 is situated at New Delhi and defendant No.2 also has its office at New Delhi. Therefore, in terms of Section 20(a) of the CPC, the Courts at Delhi otherwise have territorial jurisdiction to entertain the suit in respect of the subject matter of the dispute between the parties, though the Courts at Budgam may also be having jurisdiction to entertain the suit between the parties. Once in terms of clause 4.15.1 of RFE, jurisdiction of the courts other than the courts located at Delhi has been excluded, the jurisdiction of the courts at Budgam is taken away. The same, as per the legal position discussed hereinbefore, is permissible in law.

24) In the face of what has been discussed hereinabove, *prima facie*, it appears that the learned trial court did not have jurisdiction to entertain the suit filed by the plaintiff

against the defendants in view of the exclusionary clause. Once it is shown that a particular court does not have territorial jurisdiction to adjudicate a particular case, its order granting interim injunction becomes without jurisdiction and not sustainable in law.

25) At the time when interim injunction was passed by the learned trial court, the exclusionary clause of RFE was not under challenge before the said court. It is only after the defendants filed their applications under Order 39 Rule 4 and Order 7 Rule 10 of the CPC, that the plaintiff became wiser and it filed an application for amendment of the plaint so as to include challenge to the said exclusionary clause. The amendment is yet to be allowed and the exclusionary clause has not been kept in abeyance by the learned trial court. Therefore, even as on date the impugned order passed by the learned trial court is without jurisdiction. The question whether amendment sought by the plaintiff can be allowed has to be decided by the trial on its own merits. This Court would not like to make any comment about the merits of the said application, lest it may prejudice the case of the parties but one thing is clear that as on date, the order of interim injunction passed by the learned trial court on 05.12.2024

appears to be without jurisdiction and, as such, is not sustainable in law.

26) In view of what has been discussed above, the appeal is allowed and the impugned order dated 05.12.2024 is set aside, leaving it open to the learned trial court to pass a fresh order on the application under Order 39 Rule 1 and 2 of CPC filed by the plaintiff after deciding its application for amendment of the plaint.

27) A copy of this judgment be sent to the learned trial court for information and compliance.

(Sanjay Dhar)
Judge

Srinagar,
23.05.2025
“Bhat Altaf”

Whether the **judgment** is reportable: YES