2025 INSC 473

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2282/2025

RAKESH KUMAR VERMA ... APPELLANT

VS.

HDFC BANK LTD. ... RESPONDENT

WITH

CIVIL APPEAL NO. 2286/2025

HDFC BANK ... APPELLANT

VS.

DEEPTI BHATIA ... RESPONDENT

J U D G M E N T

DIPANKAR DATTA, J.

THE CHALLENGE

1. In the lead appeal[1], Rakesh has called in question the judgment and order of the High Court of Judicature at Patna[2] dated 25th January, 2022, allowing a civil revisional application[3] filed by HDFC Bank.

[1] Civil Appeal No. 2282/2025
[2] Patna High Court, hereafter
[3] Civil Revision No. 23 of 2020

2. In the connected appeal[4], HDFC Bank has taken exception to the judgment and order of the High Court of Delhi[5] dated 12th November, 2011, dismissing its civil revisional application[6].

THE FACTS

3. The lead appeal rests on a simple set of facts, which are as follows:

I. *Vide* letter dated 24th July, 2002, HDFC Bank appointed Rakesh on the post of Executive, Transaction Banking Group (Operation), in the Wholesale Banking Operations. Pursuant thereto, Rakesh joined his service at Wholesale Banking Operations at Exhibition Road, Patna.

II. The appointment letter of Rakesh had an exclusive jurisdiction clause, reading as under:

> "The terms and conditions set out in this letter of appointment constitute service conditions applicable to your employment in the Bank and with regard to any dispute thereof, the Bombay Courts will have exclusive jurisdiction."

III. Service of Rakesh was terminated on 28th August, 2016 due to allegations of fraud and misconduct.

IV. Aggrieved thereby, Rakesh instituted a civil suit[7] in the court of the Sub-Judge-1, Patna, seeking the following relief:

> *"a) Declaration that termination letter dated 28.06.2016 being annexure – C hereto is illegal, arbitrary, unreasonable, unwarranted, unconstitutional, mala fide, bad in law as well as without jurisdiction, violative of … illegible … on facts, principles of natural justice and the same may be adjudged null and void and cancelled.*
> *b) Ad-interim injunction restraining the defendants from giving any effect to the termination letter dated 28.06.2016 and further*

[4] Civil Appeal No. 2286/2025
[5] Delhi High Court, hereafter
[6] Civil Revision Petition No. 79/2021
[7] Title Suit No. 212 of 2017

directing the defendants to forthwith reinstate the plaintiff in service with all consequential benefits.
c) Direction to the defendants to reinstate forthwith the plaintiff in service with all consequential benefits including the arrears of salary with 18% interest per annum."

V. On receipt of summons, HDFC Bank filed a petition under Order VII, Rule 11 of the Code of Civil Procedure, 1908[8] for rejection of the plaint on the ground that it is the courts in Mumbai which have jurisdiction and not the court where the suit was instituted.

VI. The petition filed by HDFC Bank came to be dismissed by the trial court, *vide* order dated 14th December, 2018.

VII. Dissatisfied with the dismissal of the said petition, HDFC Bank filed the revisional application before the Patna High Court, which has since succeeded.

4. The connected appeal too rests on similar set of facts, which are as follows:

I. Deepti was appointed as "Clerk" in Lord Krishna Bank, which was merged with HDFC Bank in 2009. *Vide* Employment Agreement dated 23rd March, 2009, Deepti was appointed as an officer in the Retail Banking Branch at Janak Puri, Delhi. This agreement also included a similar exclusive jurisdiction clause as the one in the case of Rakesh. In terms thereof, any dispute between the parties leading to legal action had to be thrashed out in the competent court in Mumbai.

[8] CPC

II. Service of Deepti was terminated on 31st May, 2017, also due to allegations of fraud and misconduct.

III. Aggrieved thereby, Deepti instituted a civil suit[9] in the court of the Senior Civil Judge, Rohini Courts, Delhi, seeking inter alia the following relief:

> *"a) Declare the termination letter dated 31.05.2017 as null and void since the same is illegal and quash the same;*
> *b) Direct the Defendant to reinstate the Plaintiff in service with all consequential benefits including back wages and continuity of services."*

IV. HDFC Bank filed its written statement stating that the cause of action arose wholly in Mumbai and the courts in Delhi have no jurisdiction.

V. The trial court, *vide* order dated 17th April, 2021, answered the preliminary issue as to whether it had jurisdiction to try the suit and held that the exclusive jurisdiction clause did not fully oust the jurisdiction of the courts in Delhi.

VI. Dissatisfied with the order of the trial court, HDFC Bank filed the civil revisional application before the Delhi High Court which, as noted above, stands dismissed.

THE IMPUGNED JUDGMENTS

5. The impugned judgment in the lead appeal, after condoning the delay in filing of the civil revisional application, allowed the same on the ground that courts in Patna do not have the jurisdiction in light of the exclusive jurisdiction clause and that such a clause would operate in matters of

[9] Civil Suit No. 1164 of 2017

termination of service too. Relying on the decision of the Supreme Court in ***Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.***[10], the Patna High Court observed that while the general principle is that the suit could be instituted at any place where a substantial part of the cause of action arises, however, when a clause such as the one in the instant case exists, the jurisdiction will lie with the court at the place which has been expressly agreed to by and between the parties, i.e., the courts in Bombay in the instant case.

6. The impugned judgment and order in the connected appeal dismissed the civil revisional application on the ground that Deepti was residing in Delhi, was working in Rohini, Delhi and the termination letter was served upon her in Delhi and that the exclusive jurisdiction clause in the employment agreement did not oust the jurisdiction of the courts in Delhi. The learned Judge relied on the decision of a coordinate Bench of the Delhi High Court in ***Vishal Gupta v. L & T Finance***[11] while declining to grant relief to HDFC Bank in exercise of revisional jurisdiction.

THE QUESTION

7. The pure question of law arising for decision on these appeals is, whether the civil suits could have been instituted in courts in Patna and Delhi by Rakesh and Deepti, respectively, in view of the specific clause(s) in the appointment letter/employment agreement that the courts in Mumbai would have exclusive jurisdiction to decide disputes by and between the contracting parties?

---

[10] (2013) 9 SCC 32
[11] 2009 SCC OnLine Delhi 2806

ANALYSIS AND REASONS

8. Before we proceed to appreciate the rival claims, it would be appropriate to notice the applicable legal regime.

9. Section 28 of the Indian Contract Act, 1872[12] ordains:

> **28. 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 any party from enforcing his rights, is void to the extent.
> …"

10. It is also important to refer to Section 20 of the CPC which is reproduced hereunder:

> **20. Other suits to be instituted where defendants reside or cause of action arises. —** Subject to the limitations aforesaid, 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 the 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 works for gain, as aforesaid, acquiesce in such institution; or
> (c) The cause of action, wholly or in part, arises.
> Explanation. —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.

11. This is the umpteenth time that this Court has been called upon to deal with a clause in contracts restricting adjudication of disputes exclusively to the jurisdiction of a court of a party's choice, not disagreed by the

[12] Contract Act

other party[13]. In fact, the principles pertaining to institution of suits and the jurisdiction of the courts in a case where the parties have by agreement, conferred jurisdiction on courts at a particular place, have been laid down by this Court in numerous cases which are entirely consistent and have not required a relook. A perusal of a couple of these decisions may not be inapt for a proper decision on these appeals.

12. This Court in ***Hakam Singh v. Gammon (India) Ltd.***[14] held that:

> **4.** The Code of Civil Procedure in its entirety applies to proceedings under the Arbitration Act. The jurisdiction of the courts under the Arbitration Act to entertain a proceeding for filing an award is accordingly governed by the provisions of the Code of Civil Procedure. By clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the city of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the courts at Bombay. <u>It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act.</u>
>
> (emphasis supplied)

13. A decade later, another coordinate Bench had the occasion to deal with a similar exclusive jurisdiction clause in ***Globe Transport Corpn. v. Triveni Engg. Works***[15]. One sentence in paragraph 3 captures the essence of the law, reading as follows:

> **3.** It is now settled law that it is not competent to the parties by agreement to invest a court with jurisdiction which it does not otherwise possess but if there are more than one forums where a suit can be filed, it is open to the parties to select a particular forum and exclude the other

[13] exclusive jurisdiction clause
[14] (1971) 1 SCC 286
[15] (1983) 4 SCC 707

forums in regard to claims which one party may have against the other under a contract. …

14. A few years later came the decision in ***A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem***[16]. This Court held that:

> **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.

15. In ***Swastik Gases (P) Ltd.*** (supra), a three-judge Bench of this Court succinctly articulated the purport of an exclusive jurisdiction clause in any contract in the following words:

> **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

[16] (1989) 2 SCC 163

> 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.
>
> (emphasis supplied)

16. There are multiple other decisions of this Court upholding similar exclusive jurisdiction clauses. The decisions in ***Patel Roadways Ltd. v. Prasad Trading Co.***[17], ***Angile Insulations v. Davy Ashmore India Ltd.***[18], ***New Moga Transport Co. v. United India Insurance Co. Ltd.***[19], ***Shree Subhlaxmi Fabrics (P) Ltd. v. Chand Mal Baradia***[20], ***Rajasthan SEB v. Universal Petrol Chemicals Ltd.***[21] and ***A.V.M. Sales Corpn. v. Anuradha Chemicals (P) Ltd.***[22] are some of them providing ample guidance in this behalf.

17. The issue as to how an exclusive jurisdiction clause has to be read and understood is, thus, no longer res-integra.

18. A bare perusal of the above decisions leads to the conclusion that for an exclusive jurisdiction clause to be valid, it should be (a) in consonance with Section 28 of the Contract Act, i.e., it should not absolutely restrict any party from initiating legal proceedings pertaining to the contract, (b) the Court that has been given exclusive jurisdiction must be competent to have such jurisdiction in the first place, i.e., a Court not having jurisdiction as per the statutory regime cannot be bestowed jurisdiction by means of a contract and, finally, (c) the parties must either impliedly

[17] (1991) 4 SCC 270
[18] (1995) 4 SCC 153
[19] (2004) 4 SCC 677
[20] (2005) 10 SCC 704
[21] (2009) 3 SCC 107
[22] (2012) 2 SCC 315

or explicitly confer jurisdiction on a specific set of courts. These three limbs/criteria have to be mandatorily fulfilled.

19. ***Swastik Gases (P) Ltd.*** (supra) is wholly applicable to the facts at hand, and being a larger Bench decision, binds us.

20. However, in none of the precedents of this Court, noticed above, did an service/employment contract fell for consideration. According to Mr. Deshmukh and Mr. Chaturvedi, learned counsel for Rakesh and Deepti, respectively, the decision in ***Vishal Gupta*** (supra) correctly explains the legal position vis-à-vis service/employment contracts and, therefore, this Court may consider accepting the forward-looking posture and practical view expressed by the learned Judge. It has been contended that in an unequal battle between the mighty lion (employer) and the timid rabbit (employee), where the dice is heavily loaded from the inception against the employee, no further embargo ought to be placed in his/her pursuit for justice by pinning him/her down to the courts in the city (Mumbai) mentioned in the appointment letter/employment agreement.

21. At this stage, it would be appropriate to glance through a legal position having a bearing on these appeals. There is a gulf of difference between a public service and a service contract with a private employer. The origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office, the government servant acquires a status and his rights and obligations are no longer determined by the consent of both the parties, but by the

statute or statutory rules as framed. In other words, the legal position of a government servant is more one of status than that of contract. A government servant may not be tied down by his employer to a court at a particular place, should a dispute arise for adjudication by a law court. Articles 14, 16 and 21 could stand in the way. On the other hand, service in the private sector is governed by the terms of the employment contract entered into by and between the parties *inter-se*. Like any other contract, even in an employment contract, a concluded contract pre-supposes the existence of at least two parties with mutual rights and obligations. Once a concluded contract comes into existence, it is axiomatic that such rights and obligations of the parties are governed by the terms and conditions thereof. Since there is a prior meeting of minds of the contracting parties, their intentions have to be gathered from the contract (appointment letter/employment agreement, here) and looking at the same, it can safely be inferred that the contracting parties were *ad idem* on the terms of the appointment letter/employment agreement which specified courts in Mumbai exclusively as the situs of dispute resolution.

22. Nowadays, the private sector employs individuals pan-India for providing services to reach people in the last mile. Therefore, it may not be possible for all employers in the private sector to contest suits at far-off places from the registered office. This seems to be the overwhelming reason why exclusion clauses are inserted. Rakesh and Deepti having accepted the terms and conditions of the appointment

letter/employment agreement and acted upon its terms by joining their respective posts, they could not have possibly avoided the contract on a second thought that a term contained therein may not be beneficial for them at a subsequent stage.

23. As long as an employment contract does not offend the provisions of any applicable legislation, such as the Contract Act or the CPC, ordinarily, there should be no reason to interfere. It cannot but be gainsaid that the scope of interference, in such matters, is quite narrow.

24. The contention on behalf of Rakesh and Deepti that the decisions referred to above would not be applicable in the case of a service contract has not really impressed us. A contract – be it commercial, insurance, sales, service, etc. – is after all a contract. It is a legally binding agreement, regardless of the parties involved or their *inter se* strengths. To make a distinction for employment contracts on the specious ground that a mighty lion and a timid rabbit are the contracting parties would violate the principle of equality, in the sense that rights and liabilities would not be dependent on the parties' status, power or influence. Contracts should be treated equally, without bias or distinction. The fact that one party is more powerful or influential (the mighty lion) and the other more vulnerable (the timid rabbit) does not justify making exceptions or distinctions in the application of contractual principles.

25. We may also emphasize that unequal bargaining power is not unique to contracts of personal service. In many areas, such as business,

commerce, or real estate, contracts may involve parties with dissimilar levels of strength, resources or negotiating power. As and by way of illustration, we can cite instances where big builders sub-contract a part of the development work entrusted to them to sub-contractors. Such contracts too involve the mighty lion and, though not a timid rabbit, but a weak lamb. Based on the status of the parties, the latter cannot escape from the consequences if the former seeks to enforce a condition in the contract which the latter perceives is oppressive or the latter, refusing to perform any of its obligations considering it as onerous faces a law suit for breach of contract.

26. Law treats all contracts with equal respect and unless a contract is proved to suffer from any of the vitiating factors, the terms and conditions have to be enforced regardless of the relative strengths and weakness of the parties.

27. Thus, we are unable to approve the law laid down in ***Vishal Gupta*** (supra).

28. Upon a perusal of the service contract and the exclusive jurisdiction clause under consideration in the instant appeals, we are convinced that the Patna High Court has offered a sound legal opinion with reference to the facts at hand while the Delhi High Court has erred in dismissing the civil revisional application placing entire reliance on the decision in ***Vishal Gupta*** (supra). All the three applicable mandatory criteria to hold that the clause is valid have been fulfilled in the instant appeals. We propose to assign brief reasons for each of the applicable limbs.

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.

31. Lastly, the clause in the contract has clearly and explicitly barred the jurisdiction of all other courts by using the word "exclusive". A profitable reference may be made to the extract of ***ABC Laminart*** (supra) reproduced above.

RELIEF

32. HDFC Bank is, thus, justified in its claim that the suits ought to have been instituted in an appropriate court in Mumbai.

33. We hasten to observe that the Patna High Court, while correctly holding in favour of HDFC Bank on the point of law, has committed a fundamental error. It has allowed the application of HDFC Bank under Order VII, Rule 11 of the CPC meaning thereby the plaint stands rejected. Since the courts in Mumbai have the jurisdiction to decide the dispute raised by Rakesh and his plaint is not otherwise liable to rejection on attraction of any of the clauses of Rule 11, the proper course for the Patna High Court would have been to direct return of the plaint by the trial court under Order VII, Rule 10 of the CPC to Rakesh for its presentation before the competent court in Mumbai. While directing the trial court to return the plaint to Rakesh and to make the necessary endorsement in terms of sub-rule (2) of Rule 10, we grant him the liberty to present such plaint in the competent court in Mumbai.

34. If Rakesh wishes to institute a fresh suit in a competent court in Mumbai, in such a case he need not take back the plaint but may have the suit instituted by him withdrawn.

35. Insofar as the suit instituted by Deepti too is concerned, the plaint has to be returned to her for presentation in a court in Mumbai. In the alternative, she may have her pending suit withdrawn and file a fresh suit in a competent court in Mumbai.

36. We have also noticed from the pleadings and prayers made in the respective plaints by Rakesh and Deepti that the same are defective. We grant them liberty to seek amendment of their respective plaints. If applications in this behalf are made, the trial courts may, in their discretion, allow the prayers therein. If fresh suits are instituted, this liberty would cease to operate.

37. If fresh suits are instituted, Rakesh and Deepti may plead in their plaints the grounds on which exemption from the law of limitation is claimed in terms of Order VII, Rule 6 of the CPC.

CONCLUSION

38. The impugned judgment and order of the Patna High Court is affirmed to the extent mentioned above and the lead appeal is dismissed. The connected appeal, however, stands allowed and the impugned judgment and order of the Delhi High Court is set aside.

39. We clarify that the merits of the disputes have not been examined and all points are left open.

40. No order as to costs.

.....J.
(DIPANKAR DATTA)

.....J.
(MANMOHAN)

NEW DELHI;
APRIL 08, 2025.