

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 27.5.2009
Date of Order: 29th May, 2009

OMP No. 307/2009

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29.5.2009

M/s Era Infra Engineering Limited ... Petitioner
Through: Mr. Manoj K. Singh, Advocate

Versus

Ramvir Singh & Anr. ... Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORDER

This application/petition under Section 9 of the Arbitration & Conciliation Act, 1996 has been made by the petitioner seeking certain interim reliefs. However, the petitioner was asked to address the Court on the issue of jurisdiction as the agreement between the parties was entered into at Bahadurgarh (Haryana), the subject matter of the dispute is also situated in Haryana. The petitioner's address as given in the agreement is of New Delhi whereas the respondent's address is that of Haryana. The relief sought by the

petitioner is in respect of property situated in Village and P.O. Bhaprauda, Tehsil Bahadurgarh, District Jhajjar, Haryana.

2. The petitioner has invoked jurisdiction on the basis of arbitration clause in the agreement which provides that the arbitration between the parties in case of disputes or difference, shall be referred to a Sole Arbitrator to be appointed by the Managing Director of the petitioner. The proceedings of arbitration shall be as per the provisions of Arbitration & Conciliation Act, 1996 and the venue of the arbitration shall be at Delhi and the Courts at New Delhi shall have exclusive jurisdiction to the exclusion of other Courts.

3. It is settled law that where more than one Court have jurisdiction because of cause of action or some other reason, the parties have a right to arrive at an agreement as to which Court, would have jurisdiction. However, the parties do not have liberty to invest a Court with jurisdiction if it does not otherwise have. For example if the Courts in Punjab & Haryana and Delhi would simultaneously have jurisdiction over the subject matter because of cause of action or other reasons, the parties can choose either of the two courts. But, if Delhi and Punjab & Haryana Courts have jurisdiction, the parties cannot choose Mumbai as their Court of jurisdiction. In a case, where the subject matter of the dispute is immovable property, it is settled law that the Court where the immovable property is situated is the Court of appropriate jurisdiction. The agreement in this case was entered in Haryana, the property is situated in

Haryana therefore, the Courts of appropriate jurisdiction would be that of Punjab & Haryana Courts and not Delhi.

4. The learned Counsel for the petitioner argued that in case the parties chose a particular place as the place of holding arbitration proceedings that Court also is an appropriate Court of jurisdiction. I consider that this plea must fail. The Arbitration & Conciliation Act gives right to the parties to have the Arbitrator of their choice and the place of arbitration of their choice. The parties may chose that if the dispute is to be resolved in summer, the arbitration will be held in Srinagar or Shimla and in case the dispute arises in winter, the arbitration will be held in Chennai or Mumbai or the parties can chose another cosy place for holding arbitration proceedings. They can have a place of arbitration they like. The place of arbitration may depend upon the liking of the Arbitrator as well. Mere place of arbitration would not invest the Court of that place to entertain the proceedings under the Arbitration Act. Section 2(1)(e) of the Arbitration & Conciliation Act, 1996 defines the “Court” for the purpose of jurisdiction as under:

(e) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having, jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of the suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small causes:

5. It is apparent that in order to choose the Court of appropriate jurisdiction, it is to be seen that in case, the same subject-matter as that of the arbitration application was the subject matter of a suit, the Court where it is filed would have jurisdiction. Looking from this angle, the Delhi High Court does not have jurisdiction over the matter. The petition is liable to be returned to be filed before the Court of appropriate jurisdiction and is hereby directed to be returned.

May 29, 2009
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SHIV NARAYAN DHINGRA, J.