THE HIGH COURT OF TRIPURA

AGARTALA

CRP NO. 102 OF 2015

1. Sri Biswajit Deb,
S/O-Sri Birendra Kumar Deb,
Vill & P.O- Fatikroy, P.S.-Kumarghat,
Dist- Unokoti, Tripura.

..... Petitioner

- Vs –

1. The State of Tripura, represented by the Secretary
Public Works Department, New Secretariat Complex,
P.O.- Secretariat, Agartala, Tripura West, Pin-799010.

2. Addl. Chief Engineer,
PWD (Water Resource), Kunjaban,
P.O-Kunjaban, Agartala, West Tripura,
Pin-799006

3. The Executive Engineer,
PWD(R&B), Kumarghat Division,
P.O.- Kumarghat, Unokoti District.

..... Respondents

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the petitioner	**:**	Mr. C.S. Sinha, Advocate.
For the respondents	**:**	Mr. T.D.Majumder, G.A.
Date of hearing & delivery of Judgment & order	**:**	28.08.2015.

Whether Fit for Reporting : **Yes**

JUDGMENT & ORDER(ORAL)

Heard learned counsel, Mr. C.S. Sinha for the petitioner and learned G.A., Mr. T. Datta Majumder for the respondents.

2. The Revision application under Article 227 of the Constitution of India is filed challenging order dated 29.05.2015 passed by the learned District Judge, Unokoti District in Case No. T.S (ARBITRATION) 01/2014.

3. It is submitted by Mr. Sinha, learned counsel of the petitioner that an arbitral proceeding was pending between the petitioner and the respondents before the sole Arbitrator, Additional Chief Engineer, P.W.D, (Water resource), Kunjaban, Agartala vide Case No. 31/ARB/AD/2009 and that arbitral proceeding was terminated by the sole Arbitrator by order dated 26.09.2014.

4. Referring to Annexure-I to the Revision Application *i.e.* order of sole Arbitrator, dated 23.08.2014, in case No. 31/ARB/AD/2009, Mr. Sinha, learned counsel, submits that by that order the sole Arbitrator directed the petitioner who was the claimant contractor to submit stamp papers worth Rs. 75/- with sufficient semi papers but the arbitral proceeding was terminated without making any award by order dated 26.09.2014 which amounts to nil award and, therefore, the petitioner filed an application before the learned District Judge under Section-34 of

the Arbitration and Conciliation Act for setting aside the nil award passed by the Arbitrator.

5. Referring to the impugned order passed by the learned District Judge, Mr. Sinha, learned counsel, submits that the learned District Judge misread the ratio laid down by the Apex Court in the case of ***Executive Engineer, Road Development Division NO.III, Panvel & Anr. V. Atlanta Limited reported in AIR 2014 S.C 1093*** and according to learned counsel, Mr. Sinha an application under Section-34 shall be filed before the learned District Judge which is the original Court of Civil Jurisdiction and only in cases where the High Court has got original civil jurisdiction, the application under Section-34 shall be filed before the High Court. He has also referred to the decision of the Apex Court in ***Civil Appeal No. 6691 of 2005 between the State of West Bengal and Ors v. Associated Contractors*** disposed on 10th September, 2014.

6. Learned G.A., Mr. T. Datta Majumder appearing on behalf of the respondents submits that the petitioner has no case at all, even if the learned District Judge entertained the petition, he would have no other alternative but to dismiss the petition since there was no award at all passed by the sole Arbitrator which ought to be challenged under Section 34 of the Act before the learned District Judge. According to learned G.A., Section-34 is meant for setting aside arbitral award on certain specific grounds and none of those grounds attracted in the case of the petitioner herein. He has further drawn my attention to section-32 of the

Act and submits that by order dated 26.09.2014 the sole Arbitrator terminated and disposed the proceeding which attracted Section-32 of the Arbitration and Conciliation Act and no relief can be granted under Section-34 against an order made under Section 32.

7. Interestingly it is found that before the learned District Judge, the petitioner challenged order dated 23.08.2014 and not the order dated 26.09.2014. By order dated 23.08.2014 the sole Arbitrator directed the claimant contractor *i.e.* the petitioner herein to submit stamp papers worth Rs.75/- with sufficient number of *semi* papers for making and publication of the award but that itself was not an award made by the sole Arbitrator.

8. However, it is most fairly submitted by learned G.A., Mr. Majumder that since Tripura High Court has no original civil jurisdiction, a petition under Section 34 of the Arbitration and Conciliation Act shall lie before the learned District Judge.

9. The question herein what is raised is the jurisdiction of the District Judge. The learned District Judge has held that in view of the decision in the case of ***Panvel (Supra)*** he has no jurisdiction to entertain the petition filed before him.

10. Section 2(1)(e) defines the "court" for the purpose of the Arbitration and Conciliation Act, 1996 which means the principal Civil Court of original Jurisdiction *i.e.* the court of District Judge. In the case of ***Panvel (Supra)*** the Supreme Court laid down the law that where the

High Court has got ordinary original civil jurisdiction, the definition of the term 'Court' will be rendered nugatory, if exclusive jurisdiction is not given to the High Court. The learned District Judge perhaps was not correct in appreciating the law laid down in ***Panvel (Supra)*** that he has no jurisdiction in entertaining the petition.

11. In view of the fact that the Tripura High Court has got no original civil jurisdiction, and, under such circumstances the learned District Judge would entertain the petition and deal with it according to law.

12. In the case of ***State of West Bengal and Ors v. Associated Contractors (Civil Appeal No. 6691 of 2005)*** the Supreme Court in Para 15 of the judgment referring to the case of **Panvel *(supra)*** has observed:-

> ***"15. A recent judgment of the Hon'ble Court reported in Executive Engineer, Road Development Division No. III, Panvel & Anr. v. Atlanta Limited, AIR 2014 SC 1093 has taken the view that Section 2(1)(e) contains a scheme different from that contained in Section 15 of the Code of Civil Procedure. Section 15 requires all suits to be filed in the lowest grade of court. The Hon'ble Court has construed Section 2(1)(e) and said that where a High Court exercises ordinary original civil jurisdiction over a district, the High Court will have preference to the Principal Civil Court of original jurisdiction in that district. In that case, one of the parties moved an application under Section 34 before the District Judge, Thana. On the same day, the opposite party moved an application before the High Court of Bombay for setting aside some of the directions contained in Award. In the circumstances, it was decided that the "Court" for the purpose of Section 42 would be the High Court and not the District Court. Several reasons were given for this. Firstly, the very inclusion of the High Court in the definition would be rendered nugatory if the above conclusion was not to be accepted, because the Principal Civil***

Court of original jurisdiction in a district is always a court lower in grade than the High Court, and such District Judge being lower in grade than the High Court, would always exclude the High Court from adjudicating upon the matter. Secondly, the provisions of the Arbitration Act leave no room for any doubt that it is the superior most court exercising original jurisdiction which has been chosen to adjudicate disputes arising out of arbitration agreements. We respectfully concur with the reasoning contained in this judgment."

13. In view of the discussion made above the order dated 29.05.2015 passed by learned District Judge, Unokoti in T.S.(ARB)1 of 2014 is set aside.

14. The learned District Judge is directed to deal with the petition on its own merit according to law.

15. With this observation the Revision Application stand disposed of.

16. Send a copy of this order to learned District Judge.

JUDGE

Sohanjit