

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2218 OF 2015

1. Sanjay Suryakant Mhaske,
Age: 42 years, Occu. Business,
R/o Kotwalpura, Khadkeshwar,
At post Aurangabad.
Dist. Aurangabad.
2. Vishnu Sarjerao Dongare,
Age: 26 years, Occu. Business,
R/o 26, Samarth Nagar,
Behind zilla Parishad,
Beside Anand Coaching Class,
Jalna.
3. M/s Raj Constructions
through Proprietor
Bhaktiram A Rathod
Age: 56 years, Occu. Business,
R/o Riddi-Siddhi Apartment,
Samarth Nagar, Near Government
Hospital, Jalna.
4. M.A. Ambhore,
Age: 48 years, Occu. Business,
R/o Samarth Nagar,
Behind Zilla Parishad, Jalna.
5. Santosh Balabhau Bujade,
Age: 42 years, Occu. Business,
Kadrabad, Jalna.
6. Kailash Uttamrao Pawar,
Age: 51 years, Occu. Business,
R/o Ambad Chauphuli,
Aurangabad- Jalna Road,
Jalna.
7. Vishnu Abaji Bade,
Age : 54 years, Occu. Business,
R/o Nutan Vasahat, Changale Nagar,
At post Ambad, Dist. Jalna.

8. Y.B. Savant,
Age: 23 years, Occup. Business,
R/o at post Panewadi,
Tal. Ghansawangi, Dist. Jalna.
9. S.D. Ghare,
Age: 38 years, Occu. Business,
R/o at post Kendhali, Mantha,
Tal. Mantha, Dist. Jalna.
10. P.S. Tupe,
Age: 46 years, Occu. Business,
R/o at post Shevta,
Wadod Bazar, Tal Phulambri,
Dist. Aurangabad.
11. Vasant Gavanaji Nalawade,
Age: 50 years, Occu. Business,
R/o Plot No. 29, N-4 (Sought),
New Hanuman Nagar, CIDCO,
Aurangabad.
12. Amarsi Jetha Rathod,
since deceased through Legal Heirs.
- 12A] Bhaktiram Amarsi Rathod,
Age: 56 years, Occu. Business,
R/o Riddhi-Siddhi Apartment,
Smarth Nagar,
Near Govt. Hospital, Jalna.
(Already on record Petition No.3)
- 12B] Lalit Amarsi Rathod,
Age: 53 years, Occu. Business,
R/o: 50, Shriniketan Colony,
Behind Amarpreet Hotel,
Aurangabad.
- 12C] Purushottam Amarsi Rathod,
Age: 50 years, Occu. Business,
R/o Samarth Nagar,
Opp. Jalna District Court.
Jalna.
- 12D] Bhupendra Amarsi Rathod,
Age: 48 years, Occu. Business,
R/o 50 Shriniketan Colony,
Behind Amarpreet Hotel,
Aurangabad.

- 12E] Santosh Amarsi Rathod,
Age: 42 years, Occu. Business,
R/o House No. 9, Solicitor Park,
D.P. Road, Aundh,
Pune.
- 12F] Girish Amarsi Rathod,
E-8 Deep-Mela Apartment,
Rahatani Road,
Pimpri Saudgar, Pune.
- 13] Prakash Panditrao Joshi,
Age: 75 years, Occu. Business,
R/o c/o R.B. Kachole,
B-79 Nath Nagar, Near Sindhi
colony, Aurangabad.
- 14] M/s Pawan Constructions,
through Proprietor,
Mahesh R. Duse,
Age: 41 years, Occu. Business,
R/o House No. 54, Pawanraje Niwas,
Opp. Hindustan Petroleum Quarter,
CIDCO, Aurangabad.

...PETITIONERS
(Original Applicants)

versus

Zilla Parishad, Jalna
Through its Chief Executive Officer,
Jalna, Dist. Jalna.

...RESPONDENT
(Original Respondent)

.....

Mr. A.K. Gawali, Advocate for Petitioners
Mr. V. L. Patil, Advocate holding for
Mr. U.B. Bondar, Advocate for respondent

.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 11th JUNE, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the parties finally with consent.

2. The present petition has been moved questioning propriety, legality and validity of order dated 15-01-2015, passed by the Principal District Judge, Jalna, in Miscellaneous Civil Application No. 144 of 2014, whereunder request of petitioners to transfer Civil Miscellaneous Application No. 98 of 2013 and other similar applications assigned by him to the courts of District Judge-2, Jalna and *Ad-hoc* District Judge-2, Jalna, to his court has been turned down.

3. While taking up the issue, succinct reference to facts giving rise to the present petition would be worthwhile.

After following due process about acceptance of tenders, the petitioners were allotted works as had been referred to in the tender notices. As disputes arose amongst parties giving rise to claims by the present petitioners against Jalna Zilla Parishad, pursuant to the terms of contract, the matter went into arbitration and awards came to be passed in arbitral proceedings. Petitioners filed execution proceedings for enforcement of awards bearing special darkhast No. 184 of 2011 and other 43 special darkashts.

4. In the execution proceedings, present respondent - Zilla Parishad appeared and tried to object to the arbitration proceedings and awards contending that the same are without jurisdiction. The petitioners had raised *preliminary objection* to the objection filed by respondents to the execution proceedings pursuant to section 47(4) of the Code of Civil Procedure (hereinafter referred to as "CPC") and submitted that remedy available to the respondents was under section 34 of the

Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the AC Act") to question the award. *Preliminary objection* by present petitioners to the objection by respondents to the execution proceedings was negated by the Principal District Judge vide order dated 17-10-2012, giving rise to writ petition by present petitioners bearing No. 9015 of 2012. High Court under order dated 24-07-2013 disposed of said writ petition as Zilla Parishad had approached the District Court, Jalna by filing application under section 34 of the AC Act. The High Court had directed to stay execution proceedings during pendency of application under section 34 of the AC Act.

5. While applications for condonation of delay in filing proceedings pursuant to section 34 of the AC Act before the District Court, Jalna were opposed by the present petitioners on the ground of power and jurisdiction to condone delay beyond prescribed period, the Principal District Judge, Jalna purportedly exercising administrative powers assigned said matters to District Judge -2 and *Ad-hoc* District Judge-2, Jalna as referred to above. The petitioners had filed Miscellaneous Civil Application bearing No. 144 of 2014 against said order contending that only the principal court of original civil jurisdiction is empowered to hear such proceedings and would have jurisdiction to decide the matter under section 34 of the AC Act and requested to transfer the proceedings to himself. As in such a case power under and its exercise under Maharashtra Civil Courts Act, 1869 (hereinafter referred to as "MCC Act") would not be available and possible for assigning or delegating powers under section 34 of the AC Act. The Principal District

Judge under order dated 15-01-2015 has purportedly rejected requests made under Miscellaneous Civil Application No. 144 of 2013 and others and thus petitioners are before this court.

6. Mr. Gawali, learned counsel for petitioners refers to various provisions of the Arbitration and Conciliation Act, 1996, particularly, to definition of "Court" under Section 2 (1) (e) of the AC Act, which reads as under :

"2. (1)....

(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 a suit, but does not include any civil Court of a grade inferior to such principal civil Court, or any Court of Small Causes;"

7. He further refers to the provisions of MCC Act, 1869 and draws attention particularly to Sections 5, 7, 9, 12 and 16 thereof, which for ready reference are reproduced below;

*"Section 5- **District Judges**- There shall be in each district a District Court presided over by a Judge to be called the District Judge.*

*Section 7 – **Original Jurisdiction of District Court**- The District Court shall be the Principal Court of original civil jurisdiction in the district, within the meaning of the [Code of Civil Procedure.]*

*Section- 9- **Control and inspection of Courts**.- The District Judge shall have general control over all the Civil Courts and their establishments within the district, and it shall be his duty to inspect, or to cause one of his assistants to inspect the proceedings of all the Courts subordinate to him, and to give such directions with respect to matters not provided for by law as he may think necessary.*

The District Judge shall also refer to the High Court all such matters as appear to him to require that a rule of that Court should be made thereon.

*Section 12 – **Power to appoint [Joint District Judges]** – The [State Government] may appoint in any District a [Joint District Judge] who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits and*

shall transact such civil business only as he may receive from the District Judge, or as may have been referred to the [Joint District Judge] by order of the High Court.

*Section 16 – **Original Jurisdiction of [Additional District Judges]** – The District Judge may refer to any [Additional District Judge] sub-ordinate to him [any original suits and proceedings of a civil nature], [applications or references under special Acts,] and miscellaneous applications.*

The [Additional District Judge] shall have jurisdiction to try such suits and to dispose of such applications [or references]

When the [Additional District Judge's] decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds [ten-lakh rupees]”

8. Mr. Gawali vehemently submits that perusal of provisions referred to hereinabove would clearly show that any judge other than Principal District Judge would not be able to deal with matters under section 34 of the AC Act. He submits that pursuant to section 5 of the MCC Act, each district is supposed to be presided over by a District Judge. Section 12 of the MCC Act enables the State Government to appoint Joint District Judge. Section 12 of the MCC Act further stipulates that Joint District Judge shall not keep file of civil suits though powers of Joint District Judge would be co-extensive with District Judge. He further emphasises that even Joint District Judge would be able to take up only such files as would be received at his end from the District Judge or High Court and no other business can be transacted by him. He purports to distinguish the powers and authority of Joint District Judge and *Ad-hoc* District Judge. He submits that power of Joint District Judge may be co-extensive with District Judge, however, taking into account purport and phraseology appearing under section 12 of the MCC Act, it cannot be said that the Joint District Judge

would have authority to deal with any business other than assigned to him by the District Judge or High Court. He reiterates that, however, such assignment would not include civil suits, as the same is expressly precluded statutorily. With reference to phraseology of Section 15 of the MCC Act, he submits that Additional District Judge is clearly treated as sub-ordinate court under the Statute.

9. The learned counsel submits that taking into account the definition of the "Court" under Section 2 (1) (e) of the AC Act Principal Court of original civil jurisdiction would decide question forming subject matter of arbitration if the same had been a subject-matter of a suit. He submits that definition further clarifies that no court of inferior grade to such Principal Court of civil jurisdiction or any court of small causes would be the "Court" within the meaning of definition 2(1) (e) of the AC Act. He contends that conjoint reading of the provisions of Arbitration and Conciliation Act, 1996 and Maharashtra Civil Courts Act, 1869, definition under section 2(1) (e) of the AC Act and sections 12 and 16 of the MCC Act make it very clear that it is only Principal Court of original civil jurisdiction in the district which would be able to take up arbitral proceedings. He particularly puts stress on the word "Principal" used in definition 2 (1) (e) of the AC Act. He submits that the word "Principal" in the context as has been defined means only one and the highest and at the apex in hierarchy.

10. In order to buttress his submissions, Mr. Gawali cites a judgment of full bench of this court in the case of *M/s Fountain Head Developers and etc. Vs. Mrs Mariya Arcangela Sequeria deceased by L.Rs and ors*

reported in *AIR 2007, Bombay 149*. Paragraphs No. 9 and 16 thereof read as under:

“9. It is against this backdrop, we now proceed to consider the definition of "Court" in the the Act. The intendment of the Parliament is clearly reflected in the language employed in defining the term "Court" under section 2(e) of the the Act. **The Parliament intended to have only one Court as the forum for arbitral proceedings, that is, the "principal court of original jurisdiction" in a district.** In this group of matters we are not concerned with inclusive definition as occurring in section 2(e) of the Act of 1996 relating to the jurisdiction of the High Court also being the court of ordinary original civil jurisdiction. The principal Court of original jurisdiction in a district does not include any civil Court to a grade inferior to such principal civil Court or any Court of Small Causes. In other words, it categorically excludes civil Courts of "a grade inferior to such principal civil Court". The Parliament has, clearly, narrowed down the definition of the term "Court". The only condition contemplated in the definition of "Court" is that it should have jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit. In our opinion, the definition of "Court" in the the Act of 1996, does not contemplate that such Court should have jurisdiction over the subject matter of the dispute. What it means is the jurisdiction to decide "the question forming the subject matter of the arbitration" if the same had been the subject-matter of a suit. The pecuniary jurisdiction of a Court, therefore, has no significance for the purposes of the the Act. The Court, however, must have a territorial jurisdiction. The expression "subject matter of the arbitration", therefore, cannot be read to mean a Court where the suit can be filed in respect of that cause of action and would, therefore, cover all the provisions from sections 16 to 20 of the Code of Civil Procedure. In other words, the pecuniary jurisdiction is no longer a material for deciding the jurisdiction of a court being the principal Court of original jurisdiction for the purpose of a petition under section 34 of the Arbitration and Conciliation Act.

16. Section 5 of the Bombay Civil Courts Act defines "District Judges" to mean that there shall be in each district a District Court presided over by a Judge to be called the District Judge. Section 7 says that the District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure. Section 9 confers the powers on the District Judge of general control over all civil Courts and their establishment within the District and its inspection. Section 16 deals with original jurisdiction of "Additional District Judge". Under this provision the District Judge has a power to refer to any Additional District Judge subordinate to him any original suits and proceedings of a civil nature, applications or reference under the special Acts and miscellaneous applications. The

*Additional District Judge shall have jurisdiction to try such suits and to dispose of such applications or references. It further provides that where the Additional District Judge decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according to amount or value of the subject matter. Section 16, thus, says that the District Judge can refer any original suit and proceedings of civil nature to any Additional District Judge, who shall have jurisdiction to try such suit. Section 21 provides for number of subordinate civil Courts. It says that there shall be in each district so many Civil Courts subordinate to the District Court as the State Government shall from time to time direct, Provided that for special reasons it shall be lawful for the State Government at any time to close temporarily any such Subordinate Court. Section 24 provides for Classes of the Civil Judges. It says the Civil Judge shall be of two classes. The jurisdiction of a Civil Judge, Senior Division extends to all the original suits and proceedings of a civil nature. The other class is of Civil Judge, Junior Division to which we are not concerned in the present case. It is thus clear that the Civil Judge, Senior Division is inferior in grade to the District Court and is subject to its administration control. Even the provisions of Goa, Daman and Diu Civil Courts Act, 1965 are similar and they do not make any material distinction so as to have any effect on the view taken by us in these matters. From bare perusal of all the relevant provisions in these two statutes, we have no hesitation to hold that the **District Judge in a district alone is the principal Court of original civil jurisdiction and does not include any other Judge subordinate to him.**"*

11. He places reliance also on a judgment of a learned single judge of this court in the case of *State of Goa Vs. C.M. Noorudhin* reported in *Laws (Bombay) 2014-1-49* and cites paragraph No. 8 of the same which, according to him, by analogy held that Additional District Judge-2 would not have jurisdiction. He further refers to that the learned single judge has considered that *M/s Fountain Head Developers case* referred to in said judgment was decided in the same way.

12. The learned counsel further places reliance on the judgment in the case of *State of West Bengal and others Vs. Associated Contractors* reported in *2014 AIR SCW 5844*. With reference to paragraphs No. 15, 16, 17 and 18 of the same, he submits that when reference is to a particular authority

and conferment of powers is on it to deal with specific matter and when Act intends the highest judicial authority in the district to deal with same, the matter cannot be dealt with by any subordinate authority.

13. The learned counsel for respondent, on the other hand, contends that judgment of full bench cannot be said to be exactly supporting the contentions as have been canvassed by the learned counsel for the petitioners. Full Bench dealt with entirely different situation which was in respect of assignment of work to court of Civil Judge, Senior Division. Observations as are appearing in the judgment are in the context of facts of that case and would hardly be applicable to the case in hand and would not lead to cause interference with order impugned.

14. Learned counsel for respondents also refers to a certain sentence from paragraph No. 16 of the judgment in the case of *M/s Fountain Head Developers (Supra)*, which reads thus-

" the District Judge has a power to refer to any Additional District Judge Subordinate to him any original suits and proceedings of a civil nature..."

This submission, I find to be underwhelming, because the portion relied on is more of a narration of the powers of the District Judge under section 16 of the MCC Act by which it cannot be said to have been held that under Arbitration and Conciliation Act, the District Judge would be able to assign the work to any other District Judge. Further, paragraph No. 16, specially last sentence, reads as under:

“ We have no hesitation o hold that the District Judge in a district alone is the principal Court of original Civil Jurisdiction and does no include any other Judge subordinate to him”

15. Perusal of impugned order shows that the matter has been cursorily considered by the learned Principal District Judge. Learned District Judge appears to be oblivious of Section 2(1) (e) of the AC Act and purport underlying the ruling relied on *AIR 2007 Bombay 149 (supra)*.

16. It has to be considered that section 5 of the MCC Act is pointer to that a District Court is to be presided over by a Judge to be called District Judge signifying singular position of a District Judge in a district Court. Section 7 of the MCC Act further makes the same clear by making District Court to be Principal Court of original civil jurisdiction. Control and inspection of court is vested in the District Court under section 9 of MCC Act. Wordings used in section 12 of the MCC Act takes away consideration of civil suits by Joint District Judge and puts him on a little different par than the one on which District Judge has been placed. Section 16 of the MCC Act distinctly makes Additional District Judges, sub-ordinate to District Judge. Conjoint reading of provisions do indicate that the District Judge is a singular authority. All other Judges, Joint and/or Additional District Judges are placed on a little different par from that of a District Judge.

17. Section 2 (1) (e) of the AC Act prescribes the “court” to mean principal civil court of original jurisdiction in a district. On consideration of relevant provisions of MCC Act, it appears that position of the District Judge under legislative intent is singular. Other positions are either

Joint or Additional District Judges. As such, the most important and first from them is presently being designated as 'Principal District Judge'. Word "principal" signifies "main/most important." Principal District Judge generally is to be at the apex and first and is to be considered main or most important in the Judges in a district. His such position precedes all other positions, Joint or Additional District Judges in a district. He thus would be the principal civil court in a district.

18. The Supreme Court has clearly referred to in the decision cited *supra* (AIR 2007 Bombay 149) that, "*the Parliament intended to have only one Court as the forum for arbitral proceedings, that is, the "principal court of original jurisdiction" in a district*". The Supreme Court has further observed that, "*District Judge in a district alone is the principal Court of original civil jurisdiction and does not include any other Judge subordinate to him.*"

19. In view of the clear legislative intent appearing under the definition of section 2(1) (e) of the AC Act, a Central enactment, it would not open for a District Judge (Principal District Judge) to exercise powers under MCC Act, a State enactment, particularly, under section 16 thereof to delegate or assign his powers to deal with the proceedings under AC Act to any other Judge.

20. Having regard to aforesaid, I am not inclined to and it is difficult to accept and go by submissions advanced on behalf of respondent. Writ petition, therefore, deserves to be allowed.

21. Accordingly, order dated 15-01-2015 passed by the Principal District Judge, Jalna in Miscellaneous Civil Application No. 144 of 2014

stands set aside. Principal District Judge, Jalna to proceed with matters accordingly and dispose of the same as expeditiously as possible, preferably within a period of eight months from the date of receipt of writ of this order.

22. Writ petition stands allowed. Rule is made absolute accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
