

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.988 OF 2015

Sudhir R. Mohapatra

...Petitioner

V/s.

L & T Finance Limited

...Respondent

Mr.Sagar Agarkar for the Petitioner.

Mr.Anand Poojary with Ms.S.I. Joshi for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 1ST SEPTEMBER, 2015.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short "Arbitration Act"), the petitioner has impugned the arbitral award dated 5th November, 2014 passed by the learned arbitrator at Mumbai.

2. The respondent has raised an issue of territorial jurisdiction of this Court to entertain, try and dispose of the present petition on the ground that the respondent had filed an application (No.1179 of 2014) under section 9 of the Arbitration Act against the petitioner before the Calcutta High Court on 23rd April, 2014. It is the case of the respondent that the Calcutta High Court had passed an order for appointment of the Court Receiver on 19th November, 2014.

Learned counsel for the respondent placed reliance on section 42 of the Arbitration & Conciliation Act, 1996 and would submit that since the application filed by the respondent under section 9 of the Arbitration Act, which was prior in point of time filed before the Calcutta High Court, the present petition filed under section 34 of the Arbitration Act can be entertained only by the Calcutta High Court and not by this Court.

3. Learned counsel for the petitioner on the other hand invited my attention to the loan – cum - hypothecation agreement and would submit that the registered office of the respondent is admittedly situated at Mumbai. He submits that under clause 17 and 19.1, it is provided that the venue of the arbitration would be at Mumbai and the dispute would be subject to the non-exclusive jurisdiction of the courts of the city of Mumbai and thus the Calcutta High Court did not have jurisdiction at the first instance to entertain, try and dispose of the petition filed under section 9 of the Arbitration Act. He submits that since the proceedings filed under section 9 of the Arbitration Act was without jurisdiction, section 42 of the Arbitration Act would not apply to the present petition filed by the petitioner in this Court. In support of this submission, learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of **State of West Bengal & Ors. vs. Associated Contractors, (2015) 1**

SCC 32 and in particular paragraphs 21 to 25. It is held by the Supreme Court that section 42 only applies to the applications made in Part-I if they are made to the Court as defined. It is held that if a first application when made to a Court which is neither a Principal Court or territorial jurisdiction of Original Jurisdiction in a district or a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside section 42. The application made to a Court without subject matter jurisdiction would be outside section 42.

4. It is not disputed that the loan was sanctioned by the respondent at Kolkatta. Loan agreement was executed at Kolkatta. Material part of the cause of action has thus admittedly arisen outside the territorial jurisdiction of this Court. A perusal of clause 19.1 clearly indicates that though the parties had agreed that the agreement shall be governed by and construed or any dispute shall at the option of the lender is subject to the non-exclusive jurisdiction of the courts of the city of Mumbai, it further provides that it shall not however, limit the rights of the lender to take proceedings in any other court of competent jurisdiction. It is thus clear that if two courts had concurrent jurisdiction, the option is given to the lender to file the proceedings in one of the two competent courts having jurisdiction. It is not in dispute that the respondent herein had filed the proceedings under section 9

of the Arbitration Act much prior in point of time before Calcutta High Court. In my view, the provision under section 42 would be thus attracted in the facts of this case. The judgment of the Supreme Court in the case of **State of West Bengal & Ors.** (supra) thus would not assist the case of the petitioner but would assist the case of the respondent.

5. In my view the objection raised by the respondent about territorial jurisdiction of this Court to entertain, try and dispose of the present petition deserves acceptance. In my opinion, the present proceedings are thus not maintainable in this Court having no jurisdiction in view of section 42 of the Arbitration Act.

6. The petitioner seeks three weeks time to file the arbitration petition in appropriate Court. The petitioner is at liberty to do so. It is however, made it clear that if any issue in respect of limitation is raised by the respondent in such appropriate proceedings, if filed by the petitioner, the same is kept open.

7. Office is directed to return the petition to the petitioner for presentation before Calcutta High Court. Refund of court fees, if any, as per rules.

(R.D. DHANUKA, J.)

CERTIFICATE

"I certify that this order uploaded is a true and correct copy of original signed Order."

Uploaded by : Vasant A. Idhol

Uploaded on : 02/09/2015