

**FOR THE STATE OF TELANGANA AND THE STATE
OF ANDHRA PRADESH**

**CASE No. C.R.P.Nos.1323, 1324, 1325, 1326,
1327 and 1333 of 2014**

Paduru Venugopal Reddy and others ...
Petitioners

M/s. Kumar Urban Development Ltd. ...
Respondent

SUBMITTED FOR APPROVAL:

1. Whether reporters of local newspapers
Yes/No
may be allowed to see the order?
2. Whether the copies of order may be
marked to Law Reporters/Journals?
Yes/No
3. Whether Their Lordships wish to see the
Yes/No

fair copy of the order?

COMMON ORDER: (Per R. Subhash Reddy, J)

As common questions of law arise for consideration, on similar set of facts, all these civil revision petitions are heard together and disposed of by this common order.

2. For the sake of convenience, we refer to the facts as arising in C.R.P.No.1323 of 2014.

3. C.R.P.No.1323 of 2014 is filed, under Article 227 of the Constitution of India, filed by the respondents in Ar.O.P.No.1855 of 2013, aggrieved by the order dated 29.03.2014 passed in I.A.No.123 of 2014 by the III Additional Chief Judge, City Civil Court, Hyderabad.

4. The respondent-company has entered into Joint Development Agreement dated 19.10.2006 (for short "Agreement") in respect of the immovable properties situated at Lemoor and Tummalur villages of Kandukur Mandal, Ranga Reddy District. Clause 26 of the Agreement reads as under:

"DISPUTE RESOLUTION

Any disputes and/or differences whatsoever arising under or in connection with this Agreement which could not be settled by the parties through negotiations, shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 by an arbitral panel comprising of three arbitrators, one to be appointed by the OWNERS collectively, one by the DEVELOPER and the two arbitrators so appointed shall appoint the third arbitrator, who shall be the Chairman of the arbitral panel. All proceedings shall be conducted in English.

The venue of arbitration shall be Hyderabad. The decision of the arbitrators shall be final and binding on both parties.”

5. As certain disputes arose between the parties, the respondent-company has filed petition under Section 9 of the Arbitration and Conciliation Act, 1996, before the Chief Judge, City Civil Court, Hyderabad and the same is numbered as Ar.O.P.No.1855 of 2013. In the said petition, the respondent-company sought injunction orders restraining the petitioners herein from alienating the schedule property in favour of any third party or creating any third party rights, pending final adjudication of the disputes/claims, that have arisen between the parties, by the Arbitral Tribunal and also to grant injunction restraining the petitioners from interfering with its possession.

6. In the said Ar.O.P., petitioners herein filed I.A.No.123 of 2014 under Section 151 CPC praying the Court to reject the petition, i.e. Ar.O.P.No.1855 of 2013, alleging that the said Court has no jurisdiction to decide the matter, primarily on the ground that the properties covered under Section 9 of the petition are immovable properties which are situated in Ranga Reddy District and by applying the doctrine of “suit for land”, the City Civil Court, Hyderabad has no jurisdiction to decide the Ar.O.P.

7. The Civil Court, relying on clause 26 of the agreement, stating that the place of arbitration is shown as

Hyderabad, dismissed the I.A., filed by the petitioners herein. As against the same, this civil revision petition is filed.

8. It is mainly contended by Sri B. Venkat Rama Rao, learned counsel for the petitioners, that the subject matter of the Agreement is with regard to the lands, which are agreed to be developed by the respondent-company, situated within the District limits of Ranga Reddy District and in view of the provision under Section 16 (d) of CPC, suit is to be instituted only before the Court within the local limits of whose jurisdiction the properties are situated. Learned counsel referred to the Rules framed by the High Court under Section 82 of the Arbitration and Conciliation Act, 1996, particularly, Rule 4 (1) (b) of the Rules and submitted that, in every application under Section 9 of the Act, it is obligatory to state the facts showing the Court to which the application is presented has jurisdiction.

9. In support of his arguments, learned counsel for the petitioners relied on the following decisions:

- *Globe Congeneration Power vs. Sri Hiranyakeshi Sahakari Sakkere Karkhane Niyamit* ^[1],
- *SBPL Infrastructure Ltd. v. India Media Services Pvt. Ltd.* ^[2],
- *Trehan Promoters and Builders Pvt. Ltd. v. Welldone Technology Parks Development Pvt. Ltd.* ^[3]
- *Ansal Housing & Construction Ltd. in both up*

sames v. AJB Developers^[4] and

- *New Moga Transport v. United India Insurance Co. Ltd.*^[5]

10. On the other hand, it is submitted by the learned counsel for the respondent-company that, as per the Agreement, parties have specifically agreed for resolution of their disputes by way of arbitration; venue of which is Hyderabad. It is further submitted that, therefore, the Civil Court, Hyderabad, is the competent court of jurisdiction; as such, the I.A., filed by the petitioners is rightly dismissed. In support of his submissions, he relies on the following decisions:

- *Executive Engineer, Road Development Division No.III, Panvel and Anr. v. Atlanta*^[6]
Ltd.,
- *Jatinder Nath v. Chopra Land Developers Pvt. Ltd. and Anr.*^[7]

11. Having heard learned counsel for the parties, we have perused the material on record.

12. Section 82 of the Arbitration and Conciliation Act, 1996 empowers the High Court to make rules consistent with the provisions of the Act. This Court has framed Rules in exercise of power under Section 82 of the Act, titled as Andhra Pradesh Arbitration Rules, 2000. As per

Rule 4 of the Rules, the application under Section 9 shall be duly signed and verified in the manner prescribed by order VI Rules 14 and 15 CPC and it shall state the provision of law under which it is filed and contain a statement of concise form-

- (a) of the material facts consisting cause of action;
- (b) of facts showing that the Court to which the application is presented has jurisdiction.

13. In the Ar.O.P., filed under Section 9, with regard to jurisdiction, it is stated as under:

“As per Clause 26(a) of the Development Agreement Cum General Power of Attorney dated December 26, 2007, venue of the arbitration shall be at Hyderabad, therefore the courts at Hyderabad shall have exclusive jurisdiction to try and or entertain the present petition. Hence this Hon’ble Court has jurisdiction to entertain the present petition.”

14. Ordinarily, suits are to be instituted where subject matter is situated, as per Section 16 of CPC, subject to the pecuniary or other limitations prescribed under law. As per Section 16(d), suits are to be instituted where the subject matter is situated where the suit is for determination of any other right to or interest in immovable property. Section 20 (c) CPC provides place of filing suits which are not covered by Sections 16, 17, 18 and 19, at the place where the cause of action wholly or in part arises. But, under the Scheme of the Arbitration and Conciliation Act, 1996, it is always open to the parties to enter into agreement for resolution of disputes by way of

arbitration. Under Section 9 of the Act, a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36 of the Act, apply to a Court for interim measures, for preservation, interim injunction or the appointment of a receiver etc. The Court as defined under Section 2(1)(e) means the Principal Civil Court of original jurisdiction in the 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. Under Section 20 of the Act, parties are free to agree the place of arbitration.

15. In this case, it is not in dispute that as per the Agreement, there is a clause where the parties have agreed the place of arbitration in case any dispute arises. To decide the question of territorial jurisdiction for filing suits, ordinarily, procedure contemplated under the Code of Civil Procedure, 1908 is to be taken into consideration. But, at the same time, when petition is filed under the provisions of the Arbitration and Conciliation Act, 1996, the same is to be decided keeping in mind and also looking at the agreement between the parties. It is well settled that parties by agreement cannot confer

jurisdiction on a Court which is otherwise not having jurisdiction. But, for the purpose of arbitration, there can be an agreement on the place of arbitration in case dispute arises between the parties.

16. In the decision in *Globe Congeneration Power* (1 supra), relied on by the learned counsel for the petitioners, a Division Bench of Karnataka High Court, at para-35, held as under:

“There is absolutely no scope for the Court to apply the rule of "purposive construction". Firstly, the provisions of Section [2\(1\)\(e\)](#) of the Act are quite plain, unambiguous and they are not capable of bearing more than one construction. Secondly, if the construction suggested by Sri D.L.N. Rao is not accepted, it will not result in any hardship, serious inconvenience, injury or anomaly. Thirdly, we also do not find any absurdity that may entail by interpreting the provisions of Section [2\(1\)\(e\)](#) of the Act by applying rule of literal interpretation or popularly known as 'Golden rule'. Fourthly, simply because the parties have agreed to resolve the disputes between them at Bangalore, by way of arbitration, only on that ground we cannot hold that the Bangalore Court is the "Court" within the meaning of Section [2\(1\)\(e\)](#) of the Act and that it has jurisdiction to entertain the application filed under Section [9](#) of the Act. The question whether a particular Court established under a statute has jurisdiction or not to entertain a dispute is of vital importance and fundamental consideration for the State as well as its citizens in the domain of administration of justice, and therefore, where

that question has been settled by the lawmaker by exercising the power vested in it by the Constitution by enacting a law, the parties who are governed by that law cannot confer jurisdiction on an incompetent Court contrary to or in breach of such enacted law to decide the disputes between them by their consent or agreement. It is well settled that the parties by consent cannot confer jurisdiction on a Court to decide disputes if such Court has no jurisdiction to entertain such disputes in terms of law.”

17. In the decision in *SBPL Infrastructure Ltd.* (2 supra), a learned single Judge of Calcutta High Court has taken a view that when a claim is made before the Court where the property is outside such Court, such Court has no jurisdiction to entertain the petition.

18. In the decision in *Trehan Promoters and Builders Pvt. Ltd.*, (3 supra), considering the scope of the provisions under Section 9 of the Arbitration and Conciliation Act, 1996, Section 22 of the Specific Relief Act and Section 16 of CPC, a learned single Judge of the Bombay High Court has held that appellate Court has no territorial jurisdiction to entertain the petition as much the property which is the subject-matter was situated in Gurgaon. In the said decision, relying on the provision under Section 16(d) of CPC, it is held that suit is to be instituted in the Court within the local limits of whose jurisdiction the immovable property is situated.

19. Further, in the decision in *New Moga Transport Company*

(5 supra), the Hon'ble Supreme Court has held that if on the facts of a given case, more than one Court has jurisdiction, parties by their consent may limit the jurisdiction to one of the Courts, but, by an Agreement, parties cannot confer jurisdiction to a Court which otherwise does not have jurisdiction to deal with the matter.

20. Learned counsel for the respondent-company has vehemently relied upon the decision of the Hon'ble Supreme Court in *Executive Engineer, Road Development Division No.III, Panvel and Anr.*

(6 supra) and also *Jatinder Nath* (7 supra). In the decision in *Executive Engineer* (6 supra), while considering the various provisions of the Arbitration and Conciliation Act, 1996 vis-à-vis the provisions under Section 16 and 20 of CPC, the Hon'ble Supreme Court has held that provision under Section 2 (1) (e) of the Arbitration and Conciliation Act, 1996 is to be construed keeping in view the provisions of Section 20 which give recognition to party autonomy. It is further held therein that the legislature has intentionally given jurisdiction to two Courts, i.e., the Court which would have jurisdiction where the cause of action is located and the Court where the arbitration takes place. In the aforesaid judgment, it is

further held as under:

“Despite the objection noticed in the foregoing paragraphs, it was the vehement contention of the learned Counsel for the Respondent, that the High Court and not the District Judge, Thane, had the jurisdiction to adjudicate the controversy raised by the rival parties with reference to the award of the arbitral tribunal dated 12.5.2012. In order to make good the aforesaid submission, it was asserted, that the contractual agreement dated 12.7.2000, as also, the supplementary agreement dated 11.5.2005, were executed at Mumbai. Additionally, it was submitted that the parties had mutually agreed, that the seat of arbitration in case of any disputes arising between the parties, would be at Mumbai. Relying on the aforesaid undisputed factual position, learned Counsel for the Respondent invited our attention to the determination rendered by this Court in *Bharat Aluminium Co. and Ors. v. Kaiser Aluminium Technical Services Inc and Ors.* (2012) 9 SCC 559, and made pointed reliance to the following observations recorded therein:

96. xxx

We are of the opinion, the term "subject matter of the arbitration" cannot be confused with "*subject matter of the suit*". The term "*subject matter*" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned Counsel for the Appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the

agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order Under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located.

97. The definition of Section 2(1)(e) includes "*subject matter of the arbitration*" to give jurisdiction to the courts where the arbitration takes place, which otherwise would not exist. On the other hand, Section 47 which is in Part II of the Arbitration Act, 1996 dealing with enforcement of certain foreign awards has defined the term "*court*" as a court having jurisdiction *over the subject-matter of the award*. This has a clear reference to a court within whose jurisdiction the asset/person is located, against which/whom the enforcement of the international arbitral award is sought. The provisions contained in Section 2(1)(e) being purely jurisdictional in nature can have no relevance to the question whether Part I applies to arbitrations which take place outside India."

21. Further, in the case of *Jatinder Nath (7 supra)*, where there is agreement between the parties for development of property and place of resolution of

dispute is mentioned as Faridabad, the Hon'ble Supreme Court has held as under:

“Applying the above tests to the facts of the present case, we are of the view that at the relevant time the appellant resided at Faridabad. He resided at Faridabad when the contract was made. Under the contract, the parties agreed to refer all disputes to the Faridabad court. Apart from the residence, we are also concerned with the place of accrual of the cause of action. In the present case, a bare reading of the agreement indicates that it is an agreement to develop. The appellant remains the owner, the Developer remains the contractor. The Developer is the financier. The appellant is the owner of an asset. The contractor/ Developer agrees to exploit that asset on behalf of the owner. The Developer funds the scheme. The building plans remained in the name of the owner. The D.D.A. informs the owner regarding revocation of the building plan. The owner files the writ petition challenging the revocation. The contractor is paid consideration in terms of a part of the property. In the circumstances, it cannot be said that this case is similar to a suit for land. One cannot look at para 16 alone in isolation. On the other hand, with open eyes, the parties had entered into the contract, they had agreed to refer all disputes to an arbitrator at Faridabad and they had agreed that the Faridabad court alone shall have jurisdiction. In a matter of this kind, it cannot be said that the claim is similar to a suit for land. A housing complex has to be constructed at the site. When dispute arises, it will not be confined only to immovable property. Such disputes also require accounts to be maintained. The disputes also involve rendition of accounts. In the circumstances, in our view, Section [20](#) CPC alone is attracted. Therefore, in our view, the High Court was right in holding that the Faridabad court had jurisdiction to make the Award the rule of the court.”

22. From a perusal of the aforesaid two decisions, which are relied on by the learned counsel for the

respondent, it is clear that whenever there is agreement, agreeing the place of arbitration; in view of the supervisory jurisdiction conferred on the Courts under the Arbitration and Conciliation Act, 1996, both the Courts, i.e., the Court where the subject-matter of the agreement is situated and also the Court where the place of arbitration is agreed, will have jurisdiction to decide the matter.

23. The said decisions as relied on by the learned counsel for the respondent support the case of the respondent, to hold that City Civil Court, Hyderabad has jurisdiction to try the Ar.O.P., filed by the respondent-company, as much as the agreement entered into between the parties, in unequivocal terms, agreed the place of resolution of dispute as Hyderabad. Hence, it can be held that the City Civil Court, Hyderabad is having supervisory jurisdiction over the arbitration proceedings. In that view of the matter, merely on the ground that properties which are agreed to be developed are within the limits of Ranga Reddy District, it cannot be said that the City Civil Court, Hyderabad does not have jurisdiction to entertain the Ar.O.P.

24. For the foregoing reasons, we do not find any valid ground to interfere with the impugned order rejecting the I.A., filed by the petitioners.

25. The civil revision petitions are devoid of merits and

are accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

7th August, 2015
MRR

[\[1\]](#) AIR 2005 (Karnataka) 94

[\[2\]](#) LAWS (CAL)-2013-5-2

[\[3\]](#) [MANU/DE/2023/2009](#)

[\[4\]](#) (2012) ILR 4 Delhi418

[\[5\]](#) AIR 2004 SC 2154

[\[6\]](#) 2014 (2) ABR 243

[\[7\]](#) AIR 2007 SC 1401