

IN THE HIGH COURT OF BOMBAY AT GOA

GOA- PANAJI

APPEAL UNDER ARBITRATION ACT No.2 OF 2015

1. M/s. Nivaran Solutions,
a Partnership Firm, having
its Registered Office at
Mystical Rose Building, above
Papillion Hair and Beauty
Academy, near Saibaba
Temple, Aquem, Margao-Goa,
through its Partner,
Mr. Roonie Fernandez,
major of age.
 2. Mr. Roonie Fernandez,
major of age, Registered Office
at Mystical Rose Building, above
Papillion Hair and Beauty
Academy, near Saibaba Temple,
Aquem, Margao-Goa.
 3. Mrs. Hema Sheela Antoneta
Cruz Fernandez, Major,
Partner of M/s. Nivaran Solutions,
a Partnership Firm, having
its Registered Office at
Mystical Rose Building, above
Papillion Hair and Beauty
Academy, near Saibaba Temple,
Aquem, Margao-Goa.
(Registered Addresses)
- : APPELLANTS

...VERSUS...

1. M/s. Aura Thia Spa Services
Pvt. Ltd., Also known as M/s.
Aura Wellness and Healing

Services Pvt. Ltd., a Company
Incorporated under the Indian
Companies Act, 1956, having its
Registered Office at 601, 6th Floor,
God's Gift Tower, Junction of S.V.
Road and Hill Road, next to Lucky
Hotel, Bandra (West), Mumbai-
400 050, through its Director,
Mr. Malik Kashiff Khan,
major of age.

2. Mr. Malik Kashiff Khan, Major,
Director of M/s.
Aura Wellness and Healing
Services Pvt. Ltd., a Company
Incorporated under the Indian
Companies Act, 1956, having its
Registered Office at 601, 6th Floor,
God's Gift Tower, Junction of S.V.
Road and Hill Road, next to Lucky
Hotel, Bandra (West), Mumbai-
400 050.

(Registered Addresses)

: RESPONDENTS

Shri Rohit Bras De SA, Advocate for the Appellants.
Shri P.A. Kholkar, Advocate for the Respondents.

CORAM : S.B. SHUKRE, J.

DATE OF RESERVING THE JUDGMENT : 25th FEBRUARY, 2016.

DATE OF PRONOUNCING THE JUDGMENT : 04th MAY, 2016.

J U D G M E N T :

1. This appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (in short, "Arbitration Act") arises from an

order dated 29.10.2014 passed on Section 9 Arbitration Act application by the Principal District Judge, Panji, Goa refusing to exercise his authority under Section 9 on the ground that the Court has no territorial jurisdiction in the matter.

2. The appellant No.1 is a partnership firm and appellant Nos.2 and 3 are its partners. The respondent No.1 is a company incorporated under the Indian Companies Act and engaged in the business of offering various Spa and Saloon services. The respondent No.2 is the director of the respondent no. 1-company. The appellant No.1 being interested in marketing Spa and Saloon services in the State of Goa, executed two agreements with the respondent No.1, both dated 31st October, 2012. By these agreements, the respondent No.1 was appointed as Master Franchisee and was given exclusive right in the entire State of Goa to market the products and services of M/s. Aura Thia Spa Services Private Limited also known as “M/s. Aura Wellness and Healing Services Private Limited” in lieu of payment of Master Franchisee fee of Rs.30/- lakhs. This fee was paid by appellant No.1 to respondent No.1 Company, the receipt of which has been acknowledged in one of the agreements having the title as “Memorandum of Understanding-cum- Unit Franchisee Agreement”. Although the appellant No.1 was given exclusive right and licence to

market the products and services of respondent No.1 company in the entire State of Goa, the appellants learnt that the respondent No.1 company had already granted such franchisee right to one person by name Muktar Sheikh. According to the appellants, this was the breach of the essential term and essence of the agreements. Therefore, the appellants immediately demanded refund of their amount Rs.30/- lakhs from the respondents. A notice was also sent to the respondents under Section 11 of the Arbitration Act. The appellants, however, received an e-mail from the respondents thereby unilaterally terminating both the agreements, one titled as “Memorandum of Understanding-cum-Unit Franchisee Agreement” and the other as “Master Franchisee Agreement”. As the agreements were unilaterally terminated, the appellants sent a letter dated 7.3.2013 to the respondents claiming refund of amount of Rs.30/- lakhs, but there was no response from the respondents. Another notice dated 19.9.2013 demanding said amount of Rs.30/- lakhs was also sent to the respondents and alternatively it was intimated to them that the appellants would be invoking arbitration clause No.17.1 of Master Franchisee Agreement for resolution of the dispute between the parties.

3. The appellants, thereafter, filed an application under

Section 9 of the Arbitration Act, contending that the amount of Rs.30/- lakhs was required to be secured and accordingly they sought measure of interim protection under Section 9(1)(ii)(b) of the Arbitration Act. The respondents appeared and filed preliminary objection to the maintainability of the application on the ground that the Court of Principal District Judge, Panaji, did not have territorial jurisdiction. By an order dated 29.10.2014, the learned Principal District Judge upheld the objection and returned the application to the appellants for being presented to an appropriate forum. Being aggrieved by this order, the appellants have approached this Court in the present appeal.

4. Learned counsel for the appellants submits that the cause of action in this case arose not just at Margao, as wrongly held by the learned Principal District Judge, but in the entire State of Goa, as the breach of the agreements alleged by the appellants was a breach in relation to and in respect of entire State of Goa and, therefore, he further submits that the Courts of Principal District Judge, at Panaji and Margao had the territorial jurisdiction. He submits that in any case, the nature of jurisdiction exercised under the provisions of Arbitration Act by the Principal Civil Court of original jurisdiction like the Court of the Principal District Judge is supervisory in nature and,

therefore, the aspect of jurisdiction is required to be determined with reference to such supervisory jurisdiction and from this perspective, he further submits, the Court of Principal District Judge at Panaji would have jurisdiction to entertain and try Section 9 Application, as the arbitration proceedings are going to be held not at Margao but at Panaji. He submits that it cannot be that an application under Section 34 or the appeal against an order passed under Section 16(2) or 16(3) should be filed before the Court of Principal District Judge at Panaji and an application under Section 9 should be filed before the Court of Principal District Judge at Margao.

5. Learned counsel for the appellants further submits that by holding that the Court of District Judge at Panaji did not have territorial jurisdiction to entertain Section 9 application, the learned Principal District Judge has effectively refused to grant relief under Section 9 of the Arbitration Act and, therefore, this appeal filed under Section 37 of the said Act is maintainable.

6. Learned counsel for the respondents has taken a preliminary objection to the maintainability of this appeal. He submits that an order holding that a Court does not have territorial jurisdiction and returning the application for being presented to a proper forum is not an order granting or refusing relief under Section 9 of the

Arbitration Act. He further submits that the order passed by the learned Principal District Judge is legal and proper and requires no interference as the learned Principal District Judge has rightly found that the cause of action has arisen within the territorial limits of the District Court at Margao and not at Panaji. He submits that the agreements were entered into between the parties at Margao and the e-mail terminating the agreements was also received at Margao. He further submits that nothing in respect of the agreements in question had taken place within the territorial limits of the Court at Panaji. Thus, he submits that nothing wrong could be seen in the finding recorded by the learned Principal District Judge that his Court does not have territorial jurisdiction to entertain Section 9 application.

7. Since the learned counsel for the respondents has taken a preliminary objection regarding maintainability of this appeal filed under Section 37 of the Arbitration Act, it would be necessary to deal with it first.

8. The appellants filed an application under Section 9 of the Arbitration Act and claimed relief of interim measure under clause (ii) (b) of sub-section (1) of Section 9, Arbitration Act, for securing the amount in dispute in the arbitration proceedings and freezing the bank account to secure the money claimed from the respondents.

Learned Principal District Judge, Panaji, however, instead of refusing or rejecting the application held that the District Court at Panaji did not have territorial jurisdiction to entertain the application and thus returned it to the appellants for being presented to an appropriate forum.

9. Now, the question arising from the preliminary poser of the respondents is, whether an appeal against such an order (impugned order) would lie under Section 37 of the Arbitration Act? For this purpose, sub-section (1)(b) of Section 37 is relevant. It reads as under :

37. Appealable orders – (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

[(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under S.9

In the opinion of the learned counsel for the respondents, the impugned order is not the one which is appealable under Section 37 of the Arbitration Act, as the order neither grants nor refuses to grant any interim measure under Section 9. Learned counsel for the appellants submits that ultimate effect of this order is refusal to grant interim measure under Section 9 and so it is appealable under Section

37.

10. I think the learned counsel for the appellants is right in saying so. Although, the argument of learned counsel for the respondents looks impressive at first blush, on a deeper examination one can say it has no force. The immediate impact of the impugned order may be innocuous as it neither grants nor refuses to grant interim measure under Section 9 and it merely returns the application to the appellants for being presented to an appropriate forum. But the impact also has its ripple effect which hits the appellants and even the respondents in an adverse manner. The ripple effect in this case is quite like a seismic wave which causes more damage at farther distance than at the origin or at the epicentre as far as the party seeking the interim measure under Section 9 of the Arbitration Act is concerned. A preliminary objection taken on the ground of lack of jurisdiction when wrongly decided, would defeat the valuable right of the party to get immediate protection. The purpose of Section 9 is to swing law into motion without any loss of time to preserve the property, secure the amount in question, maintain status quo and the like. This right of the party to approach the Court for getting immediate interim relief under Section 9 would be seriously prejudiced, when the preliminary objection is upheld wrongly. This is

because if later on it is found that the Court upholding the preliminary objection did have the jurisdiction and the other Court to whom that party was directed did not have the jurisdiction, the position will be back to square one. Similarly, if the preliminary objection is wrongly rejected and the proceedings of the application are continued, although ought not to have been continued, a valuable right of the defendant, who is otherwise entitled to get the application dismissed on a preliminary ground, would also be seriously imperilled. Therefore, appealability of an order has to be gauged by not only its immediate effect but also its ripple effect. If the ripple effect brings the order within the circumference of Section 9, it would be an order appealable under Section 37(1)(b) of the Arbitration Act, which is what the order impugned herein is.

11. A three Judge Bench of the Hon'ble apex Court in the case of **Shah Babulal Khimji vs. Jayaben D. Kania & anr.** reported in **AIR 1981 SC 1786**, while deciding the question as to whether an order passed by a learned Single Judge of the High Court dismissing the application for appointment of a receiver as also for interim injunction would be a "judgment" as contemplated by clause 15 of Letters Patent of the High Court and thus an order appealable before the Division Bench, crystalised the law relating to appealability or otherwise of

various judgments and orders. Although, the Hon'ble apex Court examined the issue in the light of the word “judgment” used in clause 15 of the Letters Patent, the guidelines laid down by it serve as a beacon light for examining as to which orders or judgments could be termed as appealable and which would be falling beyond the scope of challenge by way of an appeal. The Hon'ble apex Court for this purpose categorized a judgment into three kinds :-

- (1) a final judgment amounting to a decree
- (2) a preliminary judgment, which is further divided into two sub-categories -
 - (a) An order dismissing a suit on a preliminary objection without going into the merits of the suit;
 - (b) An order passed on a preliminary objection relating to maintainability of the suit; such a bar of jurisdiction, *res-judicata*, a manifest defect in the suit, absence of notice under Section 80 of Code of Civil Procedure and the like but not terminating the suit;
- (3) Intermediary or interlocutory judgment, which is further divided into two sub-categories -
 - (a) those judgments which are covered by Order 43 Rule 1, CPC.

(b) those judgments which are not covered by Order 43 Rule 1, but are possessed of trappings of finality in the sense that they adversely affect valuable rights of parties or decide important aspects of the matter.

Their Lordships held that a final judgment in category (1) as well as a preliminary judgment falling in either of the sub-categories (a) or (b) of category (2) are judgments and appealable as such. Their Lordships further held that an intermediary or interlocutory judgment falling in category (3) (a) would be a judgment and hence appealable. However, their Lordships also held that in case of intermediary or interlocutory judgment falling in category (3)(b) above, there is a riddle which is required to be solved by taking into consideration all the facts and circumstances of the case. If the order affects some valuable right of a party adversely, directly and immediately rather than indirectly or remotely, the order would be a judgment and as such appealable. For the purpose of the present appeal, observations of the Hon'ble apex Court in respect of sub-category (b) of the preliminary judgment in category (2) are relevant and they enlighten us as to how to judge the appealability of an order which upholds or rejects the objection taken on the maintainability of the suit or an application filed under Section 9, Arbitration Act, as in the present

case, on the ground of bar of territorial jurisdiction. The relevant observations of the Hon'ble apex Court, as they appear in paragraph 113, are as under :

“113.

(1)

(2) A preliminary judgment – This kind of a judgment may take two forms – (a) where the trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendants or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the trial Judge is concerned and, therefore, appealable to the larger Bench, (b) Another shape which a preliminary judgment may take is that where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g., bar of jurisdiction, res judicata, a manifest defect in the suit, absence of notice under Sec. 80 and the like, and these objections are

decided by the trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to a larger Bench.”

It would be thus clear from the above decision of the Hon'ble apex Court that in the instant case the impugned order upholding the objection raised by the respondents on the maintainability of the suit for want of territorial jurisdiction is an order which affects vital right of the appellants, such as right to obtain immediate interim measure of protection for securing the amount, as we have seen earlier, and, therefore, the order is appealable.

12. In the case of **U.P. Co-operative Sugar Factories Federation Ltd., Lucknow & ors. v. M/s P.S. Misra, Gorakpur & anr.** reported in **AIR 2003 All. 123**, the Division Bench of Allahabad High Court decided an almost similar question, as is involved in this

case, by holding that the order passed by the learned District Judge, Lucknow, on 14.3.2002, rejecting the application filed under Section 34 of the Arbitration Act for the reason that he had no territorial jurisdiction and the Court at Gorakhpur had the jurisdiction, held that the order was appealable under Section 37(1) of the Arbitration Act. The relevant observations of Allahabad High Court, appearing in paragraph 20, are as follows :

“ **20.** Sub-section 1(b) of S.37 specifically makes such an order appealable, which either set aside or refuse to set aside the arbitration award under S. 34. The rejection of the application moved under S.34 of the Act of the appellants would fall within the aforesaid clause and it would be immaterial as to whether the application under S.34 has been rejected for want of jurisdiction or otherwise on merit. The said provision does not clarify anywhere that if an application under S.34 is rejected on merits alone, only then the appeal would lie. The ground of rejection may be multifarious but it is only the rejection of application, which would give a right to the appellant to file an appeal. The argument of the learned counsel for respondent no. 1 attempts to create artificial

classification with respect to the orders passed on the application under S.34 which classification is neither provided in the aforesaid provisions of the Act nor can be imported nor infused in the specific provisions. The application of the appellants having been rejected, the appellants have rightly filed an appeal under S.37 of the Act.”

This view completely supports the view taken by me earlier. Thus, I find that the order impugned here is appealable under Section 37(1) (b) of the Arbitration Act.

13. Now, coming to the question of territorial jurisdiction of Panaji Court, I find that the impugned order proceeds on a wrong footing that under Section 20 of the Code of Civil Procedure, 1908 place of residence or business or work of the plaintiff and not the place of residence or business or work of the defendant is relevant. I also find that the learned Principal District Judge has not taken into account the fact that the breach of the agreements alleged in this case is a breach of exclusive right granted under the agreements to the appellants to be the exclusive franchisee of the respondent No.1 for marketing its products and services in the entire State of Goa. At the cost of repetition it must be noted that the franchisee right so granted

under both the agreements executed between the appellants and the respondents is exclusive and, therefore, according to the appellants, no competition could be created for them by the respondents by granting similar franchisee right to someone else to operate in the State of Goa during the term of the agreements. So, this essential condition of the agreements has been breached, according to the appellants, and the result would be the violation of the right of the appellants to carry on their activities as exclusive franchisee for marketing products of respondent No.1 in the entire State of Goa. It would mean, the appellants no longer enjoy the exclusivity to carry on their activities under the said agreements either at Margao or at Panaji or at any other places within the limits of territorial jurisdiction of the Courts of Principal District Judge at Margao as well as Panaji.

14. In the case of **Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc.**, reported in **(2012) 9 SCC 552** the Hon'ble Apex Court has observed that the territorial jurisdiction of the Court as defined under Section 2(e) of the Arbitration Act has to be understood keeping in view the provisions in Section 20 of the Code of Civil Procedure and both of these provisions give recognition to principle of party autonomy. Section 2(e) defines the Court as the Principal Civil Court of original jurisdiction in a district having

jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been the subject matter of a suit. The Hon'ble Apex Court has held that the term “subject matter” of the arbitration cannot be confused with “subject matter” of the suit and its purpose is to identify the Courts having supervisory control over the arbitration proceedings. Therefore, the Hon'ble Apex Court in paragraph 96 held that said expression would refer to a Court which would essentially be a Court within whose local limits the seat of the arbitration process is situated.

15. The above referred case lays before us a broader perspective for developing an insight into what is considered to be territorial jurisdiction of the Court under Section 2(e) read with Section 20 of the Code of Civil Procedure in arbitration proceedings. Firstly, it explains that the issue of jurisdiction has to be resolved by referring to Section 2(e) as well as Section 20 of the Code of Civil Procedure, or any other relevant provision of the Code of Civil Procedure, depending upon the subject matter of the arbitration process. Secondly, it indicates that the expression “subject matter” of the arbitration has to be understood by keeping in view its purpose which is to identify the Courts having supervisory control over the arbitration proceedings and it would mean the Court within whose

local limits the seat of the arbitration process is situated.

16. The above exposition of law would necessitate a reference to the provision of Section 20 of the Code of Civil Procedure. In fact, in this case, learned Principal District Judge has also considered this provision holding that out of the provisions of Sections 15 to 20 governing the jurisdiction of the Civil court, Section 20 is relevant from the nature of the claim made and relief sought by the appellants. Section 20 lays down that a Court within the limits of whose jurisdiction the defendant resides or carries on business or personally works for gain shall have the jurisdiction to try the suit. It further lays down that the Court will also have the jurisdiction when the whole or part of the cause of action arises within its territorial limits. In this case, we are concerned with that part of Section 20 which confers jurisdiction on the Court on the basis of cause of action, as it is the contention of the appellants that the cause of action has arisen in the whole of State of Goa. The expression 'cause of action' has not been defined anywhere in the Code of Civil Procedure. It is well settled that it means a set of facts necessary to justify a right to sue. In the case of **Bloom Dekor Limited vs. Subhash Himatlal Desai and others**, reported in **(1994) 6 SCC 322**, the Hon'ble Apex Court has held that by 'cause of action' it means a cluster of facts which it is

necessary for the plaintiff to prove, in order to succeed in the suit. The relevant observations of the Hon'ble Supreme Court as they appear in paragraph 28 read as under :

“28. By “cause of action” it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court (Cooke vs. Gill). In other words, a bundle of facts which is necessary for the plaintiff to prove in order to succeed in the suit. This Court had occasion to refer to the case of Cooke in A.K. Gupta and Sons Ltd. vs. Damodar Valley Corpn. At Page 98 it is stated thus :

“The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in Cooke v. Gill in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Ltd. and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have understood to mean 'new set of ideas',: Dornan v. J. W. Ellis and Co. Ltd. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time.”

17. Thus, the expression 'cause of action' includes within its fold every fact and every set of facts which must be proved when controverted by the defendant, if he wishes to succeed in the suit. In

this case, the claim of refund of amount of Rs.30/- lakhs is grounded on the fact, as alleged by the appellant and traversed by the respondents, that the appellants are entitled to claim such a relief because their exclusive right as franchisee of the respondent No.1 has been breached by the respondents as a result of which, the appellants are not in a position to carry on their activities as franchisee to the exclusion of all other competitors not only at any place situated within the local limits of Margao Court but also at such other places as are situated within the local limits of Panaji Court. No doubt, the agreements in this case could be said to be terminated by the respondents at Margao as the e-mail sent by the respondents was received by the appellants at Margao. Termination of agreements at Margao is one of the facts constituting cause of action; but it is not the only fact which gives rise to the cause of action. As stated earlier, the 'cause of action' means every fact and every set of facts necessary for the plaintiff to prove in order to succeed in the suit. In order to lay their claim to secure the amount of Rs.30/- lakhs, it would be essential for the appellants to prove not only the termination of the agreements, but also the fact that such termination is illegal owing to breach of the essence of the agreements committed by the respondents. If the appellants cannot prove this fact, the clause of

non-refundability of the amount of Rs.30/- lakhs contained in the memorandum of understanding cum unit franchisee agreement (clause 2) would come in their way and then they would fail in the suit or arbitration proceeding. Therefore, it would be necessary for the appellants to prove the fact that the termination of the agreements, apart from being unilateral, was illegal, entitling the appellants to receive the refund of said amount together with interest, if any. Therefore, the cause of action in the instant case has arisen at every place in the State of Goa where breach of the right of the appellants to market products and services of the respondent No.1 to the exclusion of all others during the subsistence of the agreements has occurred and some of such places are situated within the local limits of territorial jurisdiction of the Panaji Court.

18. There is another way of looking at the aspect of cause of action. The expression “cause of action” includes not only the wrong done, but also its effect. Learned Single Judge of this Court in the case of *State of Maharashtra vs. Sarvodaya Industrial*, reported in *AIR 1975 Bombay 197* held, while interpreting the phraseology used by Section 19 of the Civil Procedure Code about “wrong done”, that when a wrongful act is done at one place and its resultant damage is caused at another place, the place where the wrongful act is actually

done and the place where the loss is actually suffered as a result of the wrongful act, both, would qualify to be called proper places of action. Similar is the view taken by the Division Bench of the High Court of Delhi in the Judgment rendered on 13.3.2013 in FAO OS 293/2011, Captain Cursy Driver vs. (200)(2013) (DLT 173). The Division Bench of the Delhi High Court has referred with approval to the view taken by the learned Single Judge of this Court in Sarvodaya Industries. So, if a wrongful act constitutes a cause of action, so does the resultant damage or effect leading to suffering of loss. In the instant case, wrongful act is illegal termination of the agreements at Margao, but the suffering of the resultant damage by the appellants, i.e. unjustifiable denial of appellants right as an exclusive franchisee for the entire State of Goa, is at several places across the State of Goa and some of those places are situated within the local limits of territorial jurisdiction of Court of Principal District Judge, Panaji. From this perspective also, the Court of Principal District Judge, Panaji would have the jurisdiction to try and decide in accordance with law the application filed under Section 9, Arbitration Act, by the appellants.

19. There is yet another dimension to the whole issue. The arbitrator appointed in this case, as informed by learned counsel for

appellants, is having his office at Panaji and would be holding arbitration proceeding at Panaji. This would mean, for the purpose of S.34 application, the supervisory jurisdiction over the arbitration tribunal shall be with the Court at Panaji. It would then be a Court of Principal District Judge at Panaji and therefore, following the law laid down by the Hon'ble Apex Court in Bharat Aluminium Co. Ltd., *supra*, the Court for the purpose of S.9 application would also be the same which is having supervisory control over the arbitral tribunal, which is of the Court of Principal District Judge, Panaji. If this were not so, an anomalous situation would arise. For Section 9 relief a party would go to Margao and for challenging the award under Section 34, it would come to Panaji. That is neither the purpose nor the object of the Arbitration Act.

20. Learned counsel for the appellants has referred to me the cases of Jindal Vijayanagar Steel (JSW Steel Ltd.) vs. Jindal Praxair Oxygen Co. Ltd., reported in (2006) 11 SCC 521, McDermott International Inc. vs. Burn Standard Co. Ltd. and others, reported in (2006) 11 SCC 181 and Centrotrade Minerals & Metals Inc. vs. Hindustan Copper Ltd., reported in (2006) 11 SCC 245.

21. So far as the case of *Jindal Vijayanagar Steel* (*supra*) is concerned, I must say that the facts of that case are quite different as

in that case, the parties themselves had chosen Mumbai to be situs for the arbitration proceedings and the pipeline supply agreement was approved by the Board of Directors of the appellant Company in Bombay and in this background of facts, it was held that if a Court has no territorial jurisdiction (but is otherwise competent to hear a matter), the judgment would be valid and not void or *non est*. In the second case, *McDermott International Inc.*, the Hon'ble Apex Court was considering the scope of Section 16 of the Arbitration Act and held that when a question of jurisdiction is raised by a party, it should be determined as a preliminary ground by the Tribunal itself. In the instant case, the question of competence of the Arbitral Tribunal to be decided under Section 16 is not involved. Thus, facts of both these cases of *Jindal Vijayanagar Steel* and *McDermott International Inc.* (supra) being different from the facts of the instant case, they would have no application to the present case.

22. As regards third case of *Centrotrade Minerals & Metals Inc.* (supra) relied upon by learned counsel for the appellants, what has been held by Hon'ble Apex Court as a proposition of law is that when a jurisdictional issue is raised, it goes without saying that it would have to be determined as a jurisdictional fact by the same Court before which it is raised. In the present case, the jurisdictional question was

indeed raised before the learned Principal District Judge and following the said principle of law, same issue has been decided by him as well, and rightly so.

23. Shri P.A. Kholkar, learned counsel for the respondent has referred to me the cases of C. Beepathuma and others vs. Shankaranarayana, reported in AIR 1965 SC 241 and Uttaranchal Road Transport Corpn. and others vs. Mansaram Nainwal, reported in (2006) 6 SCC 366. In the first case, the issue was of application of doctrine of election to a mortgage transaction which issue is not involved in the present case. So, with due respect, I must say, assistance from that case cannot be taken here. In the second case of *Uttaranchal Road Transport Corpn.* the Hon'ble Apex Court has held that a decision is an authority for what it actually decides and enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. By following this principle of law only that I have made my conclusions in the earlier paragraphs.

24. In view of above, I find that the Court of Principal District Judge, Panaji, has the jurisdiction in this case to decide the application filed under Section 9 of the Arbitration Act. The material aspects of the whole issue, as discussed earlier, having not been considered by

the learned Judge, I further find that the impugned order cannot be sustained in law and it deserves to be quashed and set aside by allowing the appeal.

25. The appeal stands allowed.

26. The impugned order is hereby quashed and set aside.

27. The matter is sent back to the Court of learned Principal District Judge, Panaji for being decided on its own merits in accordance with law. No costs.

JUDGE