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

APPEAL (L.) NO. 209 OF 2014
IN
ARBITRATION PETITION NO. 457 OF 2013
WITH
NOTICE OF MOTION NO.1288 OF 2014
IN
APPEAL (L.) NO. 209 OF 2014
IN
ARBITRATION PETITION NO. 457 OF 2013

M/s. Subramanya Cotton Ginning Industries, VIII-Rukmapur, MDL, Choppadandi, Dist. Karimnagar (A.P.). … Appellant/Applicant. (Org.Petitioner)

V/s.

M/s. Ruchi World Wide Ltd., 7/5, South Tukoganj, Mahakoshi House Indore, Madhya Pradesh -452001 having registered office at 614, Tulsiani Chambers, Nariman Point, Mumbai-02 … Respondent. (Org.Respondent/ /Org.Claimant)

WITH
APPEAL (L.) NO. 210 OF 2014
WITH
NOTICE OF MOTION NO.1292 OF 2014
IN
APPEAL (L.) NO. 210 OF 2014
IN
ARBITRATION PETITION NO. 499 OF 2013

M/s. Seetharama Cotton Industries Veenavanka Road, Jammikunta-122, District: Karimnagar (A.P.). … Appellant/Applicant. (Org.Petitioner)

V/s.

M/s. Ruchi World Wide Ltd., … Respondent.
7/5, South Tukoganj, Mahakoshi House (Org.Respondent)
Indore, Madhya Pradesh -452001
having registered office at 614, Tulsiani
Chambers, Nariman Point, Mumbai-02

WITH
APPEAL (L.) NO. 211 OF 2014
IN
ARBITRATION PETITION NO. 545 OF 2013
WITH
NOTICE OF MOTION NO.1299 OF 2014
IN
APPEAL (L.) NO. 211 OF 2014
IN
ARBITRATION PETITION NO. 545 OF 2013

M/s. Karthikeya Cotton … Appellant/ Applicant.
College Road, Padmashali Street, (Org.Petitioner)
Jammikunta 505 122,
Dist. Karimnagar (A.P.).

V/s.

M/s. Ruchi World Wide Ltd., … Respondent.
7/5, South Tukoganj, Mahakoshi House (Org.Respondent)
Indore, Madhya Pradesh -452001
having registered office at 614, Tulsiani
Chambers, Nariman Point, Mumbai-02

Mr. Ram Apte, Senior Advocate a/w. Sagar Ambedkar, Advocate for the Appellant / Applicant in all matters.

Mr. Amrut M. Vernekar, Advocate for the Respondent in all matters.

CORAM : ANOOP V. MOHTA AND
G. S. KULKARNI, JJ.
DATE : 17th FEBRUARY, 2016.

ORAL JUDGEMENT : (Per : Anoop V. Mohta,J.)

1 Heard finally by consent. Admit. Hearing expedited.

2 We are inclined to dispose of these three Appeals filed under section 37 of the Arbitration and Conciliation Act, 1966 (for short "Arbitration Act") by this common order.

3 These Appeals were directed against the common judgment dated 25th November, 2013 passed by the learned Judge of this court under section 34 of the Arbitration Act. By the common judgment, the learned Judge maintained Award dated 10th January, 2013 passed by the Sole Arbitrator, who was appointed as Arbitrator pursuant to the Rules and Byelaws of the Cotton Association of India, Mumbai (CAI).

4 After hearing both the parties and noting the purchase order dated 31st August, 2010 and specifically the annexure to the contract, incorporating arbitration clause, the position as regards jurisdiction is conceded that "this contract is subject to the Indore Jurisdiction". Admittedly, the Rules

provide the place or venue of the arbitration to be at any place in India including Mumbai. The arbitration took place at Mumbai. The Respondent/Original Claimant's Head office is at Indore. Rule 32 of the Rules of Arbitration reads as under :

> Rule 32 : The place or venue of arbitration shall be India. The arbitration proceedings shall be held at Cotton Association of India, Cotton Exchange Building, Cotton Green, Sewri, Mumbai 400 033 or at such place in Mumbai determined by the Arbitrator (s), taking into considerations the convenience of all concerned. The decision of the Arbitrator(s) will be final and binding on all the parties concerned."

In the present case, in view of the settled provisions of law with regard to filing of section 34 application in "Court", as defined under section 2(1)(e) of the Arbitration Act, the agreed 'Court' jurisdiction should prevail. Therefore, out of two courts, in view of the above rules and the facts and circumstances of the case, as parties have agreed to the Indore Court's jurisdiction, in our opinion, filing of section 34 Application in this court at Mumbai and the order passed thereupon is without jurisdiction. The learned counsel appearing for the parties, considering the agreed clause itself, so reproduced above, conceded to this position so far as the court jurisdiction is concerned.

5 This Court in the case of **Anilkumar Phoolchand Sanghvi & others** vs. **Mr. Chandrakant P. Sanghvi & others** in Appeal ((Ldg.) No. 32 of 2016 decided on 1st February, 2016 and in the case of **Reliance Infrastructure Ltd., & another** vs. **M/s.Roadway Solution (I) Pvt. Ltd.**, in Arbitration Appeal (L.) No. 154 of 2016 decided on 7th January, 2016 held and considered the similar situation and issue revolving around "place" "venue" "agreed court jurisdiction" and held as under :

i) In para 30 in Appeal – **Anilkumar P. Sanghvi** (supra) it was held:

"30. Above position of law and in the facts and circumstances of the case, the convenient "venues" fixed by the Arbitral Tribunal as, Pune or Mumbai, that itself cannot be the reason to confer and /or to say that the Mumbai Court has concurrent jurisdiction over the Arbitration process, for the purpose of Section 9 Application.

ii) In paras 5, 12 and 16 in Appeal - **Reliance Infrastructure Ltd**., (supra) it was held :

"5. Normally, pending such matter at this stage, we would not have interfered with the order. Considering the scheme, object and purpose of the Arbitration proceedings and as the Agreement entered into between the parties, is clearly a commercial agreement, where parties knowing fully the nature of the contract and the concept of cause of action have chosen one out of two available forum/Court. They have specifically agreed for following clauses :

"43.4: Place of Arbitration :

The place of Arbitration shall be Mumbai for all disputes.

46.3: Governing Law and Jurisdiction:
The Agreement shall be governed by the laws of India. In respect of all matters arising out of or relating to the Agreement, the Courts of Mumbai India shall have jurisdiction."

Therefore, we are inclined to interfere with the order, at this stage itself, to avoid further delay and for early disposal of the matter in view of the urgency so expressed by the parties."

"12. Strikingly, the Supreme Court while dealing with the issue of jurisdiction of Courts when there is a agreement between the parties in respect of the seat of arbitration and dealing with the words "alone" "only" "the exclusive jurisdiction" in the case of **Swastik** (supra) has specifically recorded and observed as under :

"..... The intention of the parties by having clause 18 in the agreement is clear and unambiguous that the Courts at Kolkata shall have jurisdiction which means that the Courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary."

In a concurring judgment of Justice Madan B.Lokur,His Lordship has observed as under :

57. "For the reasons mentioned above, I agree with my learned Brother that in the jurisdiction clause of an agreement, the absence of words like "alone" "only" "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an

> agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute. In the present case,only the courts in Kolkata had jurisdiction to entertain the disputes between the parties."
>
> In the present case, the place of arbitration admittedly is Mumbai for all the disputes. This includes disputes and/or issues so raised in section 9 application by the respondent."
>
> "16. In the present case both clauses make the position clear about jurisdiction for all the disputes, as per agreement which shall be at Mumbai. No question of proving otherwise at this stage of arbitration proceedings in view of clear written commercial contracts terms between the parties, specifically when there is no challenge to these clauses and the terms. Such terms/clauses bind all."

6 Therefore, taking overall view of the matter and in view of the above admitted position, the impugned common judgment dated 25th November, 2013 is liable to be quashed and set aside, as without jurisdiction in view of specific agreed clause of Indore Court's Jurisdiction. Such permissible clause binds all. It is well within the frame of law of arbitration and such proceedings. The arbitral tribunal and hearing at Mumbai "venue" cannot prevail over the agreed specific Court's jurisdiction clause.

7 Now the next question is about the Limitation Act and the aspect of condonation of the delay in re-filing and/or

taking steps to re-submit Section 34 Application in the Court at Indore against the impugned Award. The Appellants submit that the Appellants had filed respective Appeals on 5th April, 2013 and this Court has heard the matter finally today, and therefore, the period which is spent in view of the pendency of the present Appeals in this court is required to be condoned. In our opinion, Appellants would be entitled to urge this issue before the Court at Indore and the same would be a matter for consideration by the Court at Indore on the foundation of Section 14 of the Limitation Act.

8 In the light of the above observations, we dispose of these Appeals by the following order :

ORDER

i) All these three Appeals are allowed. The impugned common judgment and order is set aside.

ii) Liberty is granted to the Appellants to file section 34 Applications within four weeks from today with applications for condonation of delay.

iii) All points are kept open.

9 In view of the above order, Notice of Motion No. 1288 of 2014 in Appeal (L.)No. 209 of 2014, Notice of Motion No. 1292 of 2014 in Appeal (L.)No. 210 of 2014 and the Notice of Motion No. 1299 of 2014 in Appeal (L.) NO. 211 of 2014 do not survive and the same are disposed of accordingly.

No costs.

(G.S.KULKARNI, J.) (ANOOP V. MOHTA,J.)

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