

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1635 OF 2015

M/s.Nomula Brothers)
163/1A, Nallapadu Road, Guntur – 522005) **Petitioner**

VERSUS

M/s.Ruchi Worldwide Ltd.,)
Ruchi House, Royal Palms, Aarey Colony,))
Mayur Nagar, Goregaon (E),)
Mumbai – 400 065) **Respondent**

Mr.P.D.Prasad Rao for the Petitioner.

Ms.Bharati Narichania, i/b. Vibha Jurisconsult Co. for the Respondent.

CORAM : R.D. DHANUKA, J.

DATED : 20th JULY, 2016

JUDGMENT

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the award dated 24th August, 2012 passed by the learned arbitrator of Cotton Association of India. The respondent has raised a preliminary objection about maintainability of this arbitration petition in this court. Since the respondent has raised an objection about the maintainability of this petition in this court, I have heard learned counsel appearing for the parties on the issue of maintainability of this petition in this court only.

2. Learned counsel appearing for the respondent at the first instance invited my attention to the purchase order annexed to the notice of motion which was issued by the respondent to the petitioner. She submits that in the said purchase order it was clearly mentioned that the head office of the respondent is situated at

Indore (M.P.). My attention is also invited to the annextures to the said purchase order which provides that the contract incorporated the rules and bye-laws of the Cotton Association of India in force at that time when the said contract was entered into. All disputes will be settled amicably or will be referred to arbitration in accordance with the rules and bye-laws of the Cotton Association of India. It is provided that the said contract was subject to Indore jurisdiction.

3. It is submitted by the learned counsel for the respondent that no part of cause of action had arisen at Mumbai. It is submitted that since the head office of the respondent was situated at Indore, part of the cause of action had arisen at Indore and thus in view of the agreement between the parties conferring the jurisdiction on Court in Indore, the application filed by the petitioner under section 34 could have been filed only in the appropriate court at Indore.

4. Learned counsel appearing for the respondent placed reliance on the judgment of Division Bench of this court dated 17th February, 2016 in case of ***M/s.Subramanya Cotton Ginning Industries vs. M/s.Ruchi World Wide Ltd.*** in Appeal (L) No.209 of 2014 in Notice of Motion No.1288 of 2014 in Appeal (L) No.209 of 2014. She submits that merely because the arbitral proceedings were held by the learned arbitrator at Mumbai, the same would not confer any jurisdiction on the court at Mumbai.

5. Learned counsel appearing for the petitioner on the other hand submits that the registered office of the respondent is admittedly situated at Mumbai. He submits that merely because the head office of the respondent is situated at Indore, that would not confer any jurisdiction on the court at Indore. It is submitted by the learned counsel that the respondent herein had applied for transfer of the decree in

this court to the court at Andhra Pradesh (T.D.No.94/2013). He submits that since the respondent had made an application under Part I of the Arbitration and Conciliation Act, 1996 for transfer of decree in this court, in view of section 42 of the Arbitration and Conciliation Act, 1996 all subsequent application including this arbitration petition filed under section 34 also could be filed only in this court and not in other courts.

6. Learned counsel appearing for the petitioner placed reliance on the judgment of Supreme Court in case of ***State of West Bengal & Others vs. Associated Contractors, AIR 2015 SC 260*** and more particularly paragraph 25 which reads thus:-

25. Our conclusions therefore on Section 2(1)(e) and Section 42 of the Arbitration Act, 1996 are as follows:

(a) Section [2\(1\)\(e\)](#) contains an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" for the purpose of Part-I of the Arbitration Act, 1996.

(b) The expression "with respect to an arbitration agreement" makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an Award is pronounced under Part-I of the 1996 Act.

(c) However, Section [42](#) only applies to applications made under Part-I if they are made to a court as defined. Since applications made Under Section [8](#) are made to judicial authorities and since applications Under Section [11](#) are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section [42](#).

(d) Section [9](#) applications being applications made to a court and Section [34](#) applications to set aside arbitral awards are

applications which are within Section [42](#).

(e) In no circumstances can the Supreme Court be "court" for the purposes of Section [2\(1\)\(e\)](#), and whether the Supreme Court does or does not retain seisin after appointing an Arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil court having original jurisdiction in the district as the case may be.

(f) Section [42](#) will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-I.

(g) If a first application is made to a court which is neither a Principal Court 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](#). Also, an application made to a court without subject matter jurisdiction would be outside Section [42](#).

7. There is no dispute that the head office of the respondent is situated at Indore. There is also no dispute that in the purchase order relied upon by the respondent, the parties had agreed that the dispute if any between the parties was to be referred to arbitration in accordance with the rules and bye-laws of Cotton Association of India and that the said contract was subject to the Indore jurisdiction. In my view since part of the cause of action had arisen at Indore and part of cause of action within the jurisdiction of the other court, the parties could by agreement confer jurisdiction in one of the two courts having concurrent jurisdiction. It is not the case of the petitioner that the contract was executed between the parties at Mumbai.

8. Insofar as the submission of the learned counsel for the petitioner that since

the respondent had made an application for transfer of decree in this court to the court in Andhra Pradesh and therefore in view of section 42 of the Arbitration and Conciliation Act, 1996, this court alone will have jurisdiction to entertain this petition is concerned, in my view the application for transfer of a decree is not an application under Part I of the Arbitration and Conciliation Act, 1996.

9. A perusal of section 42 of the Arbitration and Conciliation Act, 1996 clearly indicates that if in respect of an arbitration agreement any application under Part I is made in a court, that court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that court and no other court. In my view the first application which is made before a court should have jurisdiction to entertain that application. Secondly for the purpose of applicability of the section 42 of Arbitration Act, the court has to decide whether the first application was the application provided in the first part of the Arbitration and Conciliation Act, 1996. In my view since the application for transfer of decree was not an application under Part I of the Arbitration and Conciliation Act, 1996, section 42 of the Arbitration and Conciliation Act, 1996 will not be attracted to the facts of this case.

10. Insofar as judgment of Supreme Court in case of *State of West Bengal & Others* (supra) relied upon by the learned counsel for the petitioner is concerned, the issue before the Supreme Court was whether any application filed under section 11 of the Arbitration and Conciliation Act, 1996 was an application before a court. The Supreme Court in that context held that since the application under section 11 which was filed in that matter before the Supreme Court which was not a court within the meaning of section 2(1)(e) of the Arbitration and Conciliation

Act, 1996, the application under section 34 could not have been filed before the Supreme Court challenging an arbitral award. In my view the judgment of Supreme Court in case of *State of West Bengal & Others* (supra) thus does not assist the case of the petitioner and is clearly distinguishable in the facts of this case.

11. In my view, the learned counsel appearing for the respondent is right in her preliminary objections that this court has no territorial jurisdiction to entertain this petition. I, therefore, pass the following order :-

- (a) Arbitration Petition No. 1635 of 2015 is dismissed due to lack of territorial jurisdiction of this court.
- (b) No order as to costs.

[R.D. DHANUKA, J.]