

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

Amk

NOTICE OF MOTION NO. 2091 OF 2015  
IN  
ARBITRATION PETITION NO. 1709 OF 2015

The New India Assurance Co. Ltd. ...Applicant

In the matter between

The New India Assurance Co. Ltd. ...Petitioner

Versus

Gujarat Narmada Valley Fertilizers ...Respondent  
Co. Ltd.

AND  
NOTICE OF MOTION NO. 2204 OF 2015  
IN  
ARBITRATION PETITION NO. 1709 OF 2015

Gujarat Narmada Valley Fertilizers ...Applicant  
Co. Ltd.

In the matter between

The New India Assurance Co. Ltd. ...Petitioner

Versus

Gujarat Narmada Valley Fertilizers ...Respondent  
Co. Ltd.

.....

Mr. Gaurav Joshi, Senior Advocate a/w. Mr. Sharan Jagtiani a/w. T. Tadakamalla, D. Dutta, Mihir Tambe i/b Phoenix Legal for the Petitioner.

Mr. Kevic Setalvad, Senior Advocate a/w. Ms. Sushma Nagraj, Mr. Rakesh Mandavkar & Ms. Akshita Buch i/b Mr. Bhavesh V Panjuani of

M/s. Mulla & Mulla & CB&C for the Respondent.

CORAM : S. C. GUPTE, J.

DATE : 25<sup>th</sup> FEBRUARY, 2016.

P. C. :

1. This arbitration petition challenges an award passed by an Arbitral Tribunal. By the impugned award, the Arbitral Tribunal directed payment of Rs.34,58,13,879/- to the respondent along with interest. The dispute between the parties arises out of a Comprehensive Mega Policy of insurance issued by the petitioner in favour of the respondent. Under this policy of insurance, the respondent claimed indemnification of the loss incurred by the respondent as a result of breakdown/failure of an Air Compressor working in its plant, machinery break-down as well as business interruption raised being covered as insured risks under the subject insurance policy. The respondent made a claim under the policy, which was rejected by the petitioner and as a result, disputes arose between the parties. These disputes were referred to an Arbitral Tribunal consisting of 3 Arbitrators who passed the impugned award.

2. The present petition was filed on 29th September, 2015. It appears that in the meantime the impugned award dated 24.06.2015 was filed by the respondent before the District Court at Bharuch, Gujarat for execution of the award. The petitioner challenges the territorial jurisdiction of the Court at Bharuch inter alia under Section 42 of the Arbitration Act, as the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act") was filed prior in point of time. Be that as it may, since the Bharuch

Court has already initiated execution proceedings, the petitioner has taken out the present Notice of Motion seeking stay of operation and execution of the impugned award. It is submitted that though the present petition is not covered under the Arbitration and Conciliation (Amendment) Ordinance, 2015 promulgated on 23<sup>rd</sup> October, 2015, by way of abundant caution, the Notice of Motion is taken out. The petitioner has offered to deposit the entire award amount together with interest upto date in this Court presumably on the footing that such deposit would stop running of interest against the petitioner. The petitioner has also indicated its no objection to the respondent being permitted to withdraw this amount on terms and conditions as may be ordered by this Court.

3. By the accompanying Notice of Motion, namely, Notice of Motion No. 2204 of 2015 the respondent contests the jurisdiction of this Court to entertain an application under Section 34 of the Act. The respondent prays for hearing of the issue of jurisdiction as a preliminary issue and dismissal of the petition for want of jurisdiction. It is submitted by the respondent that the deposit, if any, be made only before the District Court at Bharuch, where the respondent's application for execution of the award is pending.

4. In the premises, the question as to whether or not this Court has jurisdiction to entertain the present arbitration petition is treated as a preliminary issue and heard accordingly.

5. That this petition is covered under Section 34 of the Act

and not by the Ordinance of 2015 is not a matter of contest. Accordingly it is not contested that filing of the present petition entails stay of execution of the impugned award before the Court at Bharuch.

6. The basis of jurisdiction of this Court, as indicated in the petition, is that the petitioner, who was the original respondent in the arbitration reference, has its principal place of business and carries on business in Mumbai and that this Court has jurisdiction to entertain the present petition in accordance with Section 2(1)(e) of the Act read with Clause 12 of the Letters Patent. It is submitted that this Court would have jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit. This position is contested by the respondent.

7. The gist of submission of Mr. Setalvad, learned Senior Counsel appearing for the respondent, is that the jurisdiction of the Court under Section 34 read with Section 2(1)(e) of the Act is determined by the place where the cause of action arises and not by the place of residence or business of either of the parties including the party against whom the claim is made. In other words, learned Counsel would equate the expression "subject matter of reference" appearing in Section 2(1)(e) of the Act with "cause of action in the reference". Based on this contention, it is submitted that the entire cause of action in the present reference having arisen within the local limits of the jurisdiction of Bharuch Court, it is that Court which is a 'Court' within the meaning of Section 2(1)(e) of the Act, before whom

a challenge to the award could be filed. Secondly, it is submitted that only other Court which has jurisdiction in the matter is the Court having supervisory control over the arbitration proceeding, that is to say, the Court of the seat of arbitration. Learned Counsel submits that the place of arbitration not having been agreed upon between the parties, the Arbitral Tribunal, in the present case, has determined such place under Section 20(2) of the Act. Relying on the judgment of the Supreme Court in the case **Bharat Aluminium Company Vs. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552** it is submitted that apart from the Court of the place where the cause of action arises, it is this Court, which is the Court of seat of the arbitration process, which alone has jurisdiction in the matter. It is submitted that the place of arbitration being thus determined by the Arbitral Tribunal at Bharuch, the District Court at Bharuch alone has jurisdiction even as the Court of the seat of arbitration process. It is submitted that this Court neither being the Court within whose jurisdiction the cause of action has arisen nor the Court of the seat of the arbitration process, has no jurisdiction to entertain the present petition. Learned Counsel also relies upon the judgment of the Supreme Court in the case of **Aligarh Muslim University Vs. Vinay Engineering Enterprises Pvt. Ltd., (1994) 4 SCC 710** and several judgments of Delhi High Court as well as judgments of Madras and Calcutta High Courts in support of his contention.

8. On the other hand, it is submitted by Mr. Joshi, learned Senior Counsel appearing for the petitioner, that under Section 2(1) (e) of the Act read with Clause 12 of the Letters Patent, this Court

being a Court of the place, where the respondent to the original reference carries on business, has jurisdiction over the subject matter of the disputes in the present case. He relies on judgments of the Supreme Court in the cases of **Food Corporation of India Vs. Evdomen Corporation**, (1999) 2 SCC 446 and **Jindal Vijayanagar Steel (JSW Steel Ltd) Vs. Jindal Praxair Oxygen Co. Ltd.** (2006) 11 SCC 521 and judgments of our Court in the cases of **Union of India Vs. Tolani Bulk Carriers Ltd.**, 2002(2) Bom.C.R. 256, **Ion Exchange (India) Ltd. Vs. Paramount Ltd.**, 2006 SCC Online Bom 544 and **Shri Upendra Kantilal Thanawala Vs. Shree Ram Builders**, MANU/MH/0017/2013 in support of his contentions.

9. On a plain reading of Section 2(1)(e) of the Act, it is apparent that 'Court' for the purposes of the Act including for the purposes of Section 34 means a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject matter of a suit. The question to be asked is whether, had the subject matter of the reference been the subject matter of a suit, such suit could have been entertained by this Court. Under Clause 12 of the Letters Patent if the defendant, or each of the defendants where there are more than one, at the commencement of the suit, carries on business within the local limits of the jurisdiction of this Court, this Court clearly would have jurisdiction to entertain the suit. If the subject matter of reference had been the subject matter of a suit, this Court, by reason of the defendant's place of business being in Mumbai, could have entertained the suit. On that basis this Court would have jurisdiction to entertain the petition

under Section 34 of the Act.

10. The question really does not admit of any controversy in view of a clear judgment of the Supreme Court in the case of **Food Corporation of India** (supra). In that case, the appellant before the Court - Food Corporation of India had signed a Charter Party Agreement with the respondent. The disputes between the parties arose out of this Charter Party Agreement. The disputes were referred to arbitration. The arbitrators gave their award and filed the same in this Court. It was contended before this Court that it had no jurisdiction to take the award on file or issue any process in connection with it. This Court upheld its jurisdiction on the ground that the appellant, who was in the position of the defendant, had one of its places of business at Bombay. When the matter was carried in appeal before the Supreme Court, it was contended, relying on Section 20 of the Code of Civil Procedure, that in respect of any cause of action, which arises at a place where the defendant has his subordinate office, the Court at that place would have jurisdiction. The Supreme Court negated the contention observing that Sections 16, 17 & 20 of the Code of Civil Procedure did not apply to a High Court in exercise of its original civil jurisdiction, by virtue of Section 120 of the Code of Civil Procedure. The Supreme Court held that the jurisdiction of the Bombay High Court to entertain a suit on its original side is determined by Clause 12 of the Letters Patent of Bombay High Court. Under Clause 12 of the Letters Patent, where the defendant, or each of the defendants where there are more than one, at the commencement of the suit, carries on business within the

local limits of its jurisdiction, this Court would have jurisdiction to entertain the suit. The Court held that Bombay High Court would, thus, have jurisdiction over the subject matter of the dispute in that case because the appellant did carry on business in Bombay. This decision, which was rendered under the Arbitration Act, 1940, has since been followed by learned Single Judges of our Court in the case of **Union of India** (supra), **Ion Exchange (India) Ltd.** (supra) and **Shri Upendra Kantilal Thanawala** (supra), all of which arose under the present Act, the relevant provisions of which in this respect are in *pari materia* with the provisions of the 1940.

11. In view of this position, I should have thought it was no longer possible for the respondent to contend against this Court's jurisdiction in the matter. Learned Counsel for the respondent, however, made several submissions in this behalf. He even suggested that the decision in **Food Corporation of India** (supra) was *per incuriam*, particularly since it did not consider the previous decisions of the Supreme Court including the case of **Aligarh Muslim University** (supra). Even this argument has been considered by the Supreme Court in the case of **Jindal Vijayanagar Steel** (supra). The Supreme Court did not accept the contention that **Food Corporation of India** (supra) was *per incuriam*. The Court, on the other hand, once again affirmed that neither Sections 16, 17 & 20 of the Code of Civil Procedure nor their principle can be made applicable to the Letters Patent, which alone governs the jurisdiction of this Court. The Court held that it was not only impermissible but also unnecessary to apply the Code of Civil Procedure to, or import the principle of

Section 20 of it into, the Letters Patent.

12. Learned Counsel for the respondent submitted that in the case of **Aligarh Muslim University** (supra) the Supreme Court held that the Court of the place where the respondent carried on business but where the cause of action did not arise was not the Court of competent jurisdiction in the matter of Section 31 of the Arbitration Act, 1940. The respondent before the Supreme Court in that case was actually a petitioner before the lower Court, i.e. the High Court of Calcutta, who had invoked the jurisdiction of that Court on the ground that it carried on business within the jurisdiction of that Court. The Supreme Court found that the Calcutta Court had absolutely no jurisdiction. The important point to be noted in this behalf is that there is nothing to show that the respondent in that case was in the position of a defendant as in the present case. This authority clearly has no bearing on the facts of our case. The facts of our case are similar to **Food Corporation of India** (supra), which was followed by **Jindal Vijayanagar Steel** (supra) and several other judgments of our Court referred to above.

13. Learned Counsel for the respondent referred to several judgments of Delhi High Court as well as judgments of Calcutta and Madras High Courts in support of his contention that it is the accrual of cause of action which alone determines the jurisdiction of a Court in an arbitration matter. I am afraid that is not the correct reading of the law. The line of judgments of Delhi High Court in this behalf, which starts with the case of **Kamal Pushp Enterprises Vs.**

**Chairman-Cum-M.D.G.A.I.L., 1994 (31) DRJ**, proceeds on the footing of the mandate of Section 20 of the Code of Civil Procedure. It is pertinent to note that Clause 12 of the Letters Patent does not apply in Delhi. The jurisdiction of Delhi High Court is determined by Section 20 of the Code of Civil Procedure. Based on the judgment of the Supreme Court in the case of **Patel Roadways Ltd. Vs. Prasad Trading Co. (1991) 4 SCC 270**, where the Supreme Court held that wherever the case fell within the later part of the explanation to Section 20, it was not the Court within whose jurisdiction the principal office of the defendant was situated, but the Court within whose jurisdiction it had a subordinate office which alone had jurisdiction in respect of any cause of action arisen at such place. In all these cases before Delhi High Court the cause of action fell within the later part of the explanation and accordingly, it was held that though the defendant or respondent had the principal place of business within Delhi, since the cause of action did not arise at Delhi but at the place where in each of these cases there was a subordinate office, Delhi Court had no jurisdiction. That is not the position insofar as this Court is concerned, as already observed above. No doubt in some of the judgments there is an observation to the effect that all matters connected with an arbitration agreement, award or conduct of arbitration proceedings can be initiated only in Court within whose territorial jurisdiction the cause of action has arisen. This statement, in the form of a broad proposition of law, is certainly not good law after **Food Corporation of India** (supra) and **Jindal Vijayanagar Steel** (supra). Amongst the judgments referred to by learned Counsel for the respondent, the only judgment where a

similar provision of Letters Patent was involved was the case of Madras High Court but its decision in the matter is no longer good law in view of what is observed by the Supreme Court in the case of **Food Corporation of India** (supra). A learned Single Judge of this Court, particularly in the case of **Tolani Bulk Carriers Ltd.** (supra), has noted this and observed that Madras High Court's view was no longer good law.

14. Learned Counsel for the respondent also submitted that in insurance transactions, as in the case of banking transactions, the dealing between the parties is said to occur at the place of the branch where the subject insurance is taken. That may be so. But this reflects merely on the place of accrual of the cause of action. It still cannot be said that the petitioner, who is in the position of a defendant here, does not carry on business in Mumbai. If it does carry on its business here, this Court has jurisdiction in the matter, as explained above.

15. In the premises, there is no merit in the contention that this Court lacks jurisdiction in the matter. Accordingly, I am inclined to reject the respondent's Notice of Motion. I am also inclined to allow the petitioner to deposit the award amount with interest upto date in this Court. At the request of the learned Counsel for the respondent, however, the petitioner is directed to deposit such amount only after a period of two weeks from today. No further orders are necessary on the petitioner's Notice of Motion, since admittedly the present petition is governed by Section 34 of the Act

as it stood before the Ordinance of 2015 and filing of a petition challenging an award, entails an automatic stay of its execution. Bharuch Court, in the premises, cannot proceed with the execution of the impugned award.

16. Both the Notices of Motion are disposed of accordingly. There shall be no order as to costs.

**(S. C. GUPTE, J.)**