

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

MISC. CIVIL APPLICATION NO.849 OF 2014

(M/s. PBA Infrastructure Ltd. ..vs.. M/s. Nagpur Sical Gupta Road Terminal Ltd.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 14-07-2016

Heard Shri H.D. Marathe, Advocate for the
applicant. None appears for the non-applicant.

2. According to the applicant, a dispute exists between the applicant and the non-applicant which is required to be resolved by an arbitrator. The applicant had filed Misc. Civil Application No.492/2011 before this Court praying that an arbitrator be appointed to resolve the dispute. The application was opposed by the non-applicant on the ground that as per Clause 20(A)(i) of the agreement, the party aggrieved has to seek reference to the Steering Committee constituted by the non-applicant and the Steering Committee after hearing the respective parties is required to give its advice within twenty-eight days. The non-applicant contended that after getting the notice of the dispute raised by the applicant, the non-applicant had constituted Steering Committee and had informed about it to the applicant and in view of these facts, the application filed by the applicant before this Court was premature. This Court

accepted the submissions made on behalf of the non-applicant and disposed the application as premature.

3. The applicant has now come up with this application making the grievance that the Steering Committee had taken steps at the initial stages, however, after the applicant submitted his statement of claim, the Steering Committee has not taken any action after 12-07-2013. The applicant states that in these circumstances, it is constrained to approach this Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator to resolve the dispute.

4. The cause title of the application shows that the applicant is having its registered office at Mumbai and an office at Nagpur and the address of the non-applicant is shown as of Chennai. The learned Advocate for the applicant has relied on Clause 1.4(b) of the agreement to urge that this Court has jurisdiction to entertain and decide the present application. Clause 1.4(b) of the agreement reads as follows :

“1.4(b). Law - The contract shall be governed by and construed in accordance with the law of India and no suit or other proceedings relating to the contract shall be filed or taken by the Contractor in any Court of law except in the High Court of Mumbai which shall have exclusive jurisdiction to hear and determine all actions and proceedings in

connection with and arising out of the contract and the Contractor shall submit to the jurisdiction of the aforesaid Court of law for the purpose of any such action and proceedings.”

5. According to the above clause, the parties have agreed that the High Court of Bombay will have jurisdiction to hear and determine the disputes between the parties and the jurisdiction of all other Courts except of High Court of Bombay is excluded by the agreement between the parties.

The submission on behalf of the applicant is that the cause of action has arisen at Nagpur and therefore, the Nagpur Bench of Bombay High Court can entertain the present application. I do not find any averments in the application to the effect that cause of action has arisen only at Nagpur and even part of cause of action has not arisen at Mumbai. It is settled that the parties of this Court cannot confer jurisdiction on any Court which is not having jurisdiction, however, if the cause of action arises at more than one place, the parties, by agreement, can oust the jurisdiction of other Courts and agree to get the dispute resolved by a Court at a particular place where part of cause of action has arisen. In the present case, as the applicant has not been able to show that the cause of action for filing this application has arisen only at Nagpur, the application cannot be entertained at Nagpur giving a go-bye to the Clause 1.4(b) of the agreement. The term “High Court of Mumbai” as

referred in Clause 1.4(b) of the agreement will not include the Benches of the High Court of Bombay.

The learned Advocate for the applicant has relied on the judgment given by the Hon'ble Supreme Court in the case of *Rajasthan High Court Advocates' Association vs. Union of India and others* reported in *(2001)2 SCC 294* and the order passed by this Court in Criminal Application (BA) No.785/2015 on 23-12-2015 and has submitted that Clause 1.4(b) of the agreement between the parties which lays down that the dispute is required to be taken up before the High Court of Bombay will mean that the party can approach Nagpur Bench also. The above judgment and order are given in different context and do not support the applicant in the present case.

6. In view of the above, I am not inclined to entertain the present application. The miscellaneous civil application is dismissed with liberty to the applicant to take appropriate proceedings before the appropriate forum. The parties to bear their own costs.

JUDGE

adgokar

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : P.M. Adgokar.

Uploaded on : 27-07-2016.

P.A. to Hon'ble Judge.