

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION NO.5266 OF 2016

Between:

M/s Sushee Ventures Private Limited .. Petitioner

and

Rahul Agarwal and others .. Respondents

DATE OF THE ORDER PRONOUNCED: 02.12.2016

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

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1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

ANIS, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS
+ CIVIL REVISION PETITION NO.5266 OF 2016**

% DATED 2nd DECEMBER, 2016

M/s. Sushee Ventures Private Limited .. Petitioner

Vs.

\$ Rahul Agarwal and others .. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : Sri B.Vijaysen Reddy

^Counsel for Respondent No.1 : Sri Y.Ratnakar

^Counsel for Respondent Nos.2 to 7 : Sri P.S.R.Chandra
Murthy

^Counsel for Respondent No.8 : Sri Kishore Rai

? CASES REFERRED:

1. (2012) 9 SCC 552
2. (2014) 4 HCC (Del) 1
3. (2013) 9 SCC 32
4. (2001) 7 SCC 698
5. (2016) 2 SCC 582
6. (2009) 3 SCC 107
7. (1989) 2 SCC 163
8. (2014) 5 SCC 1
9. 2016 SCC OnLine Del 5486
10. AIR 1966 SC 634
11. AIR 1954 SC 340
12. (1971) 1 SCC 286
13. (2005) 7 SCC 791
14. AIR 2002 SC 2308
15. AIR 2004 AP 280

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

CIVIL REVISION PETITION NO.5266 OF 2016

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

This civil revision petition under Article 227 of the Constitution arises out of the order dated 14.10.2016 passed by the learned VIII Additional District Judge, Ranga Reddy District at L.B.Nagar, in Arbitration O.P.No.672 of 2016. The petitioner herein filed the said petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act of 1996') seeking an injunction restraining the respondents from alienating or encumbering the petition schedule property or parting with their possession thereof or creating therein third party rights by any means whatsoever during the pendency of the arbitration proceedings. By the order under revision, the Court below returned the petition for want of jurisdiction, permitting the petitioner to present it before the proper Court within two weeks. Aggrieved thereby, the petitioner is before this Court.

While ordering notice before admission on 28.10.2016, this Court took note of the fact that an injunction was in operation pending disposal of the OP and accordingly directed the respondents to maintain *status quo* as regards the petition schedule property for four weeks. This interim order was extended until further orders on 21.11.2016, while reserving orders in the civil revision petition.

The case of the petitioner before the Court below was as under: Development Agreement-cum-General Power of Attorney (GPA) dated 22.01.2016 was entered into by the petitioner and the respondents for development of the petition schedule property. However, without

performing their obligations under the agreement, the respondents issued notice dated 30.07.2016 to the petitioner that they had cancelled the agreement. The petitioner spent more than Rs.3.50 crore on the project since April-May, 2015 and the delay in completion of the project was wholly attributable to the respondents. Clause XXV of the agreement provided for dispute resolution through mutual discussions, failing which, by arbitration. Pending initiation of such steps, the petitioner filed the subject petition under Section 9 of the Act of 1996 for protection of its interest.

Respondents 1 and 8 filed their counters before the Court below and the others adopted the same. Therein, they pointed out that the land covered by the Development Agreement-cum-GPA was located in Kolluru Village, Ramachandrapuram Mandal, Medak District, which fell within the jurisdiction of the civil Court at Sanga Reddy, while the parties were all residents of Hyderabad. They therefore asserted that the Court below had no jurisdiction to entertain the Arbitration OP.

The Court below took note of the fact that the petition schedule property was an extent of Ac.13.00 guntas in Survey Nos.205, 206, 207 and 209 of Kolluru Village, Ramachandrapuram Mandal, Medak District, and the fact that the cause title showed that the petitioner and the respondents were all residents of Hyderabad. Reference was also made to the fact that the Development Agreement-cum-GPA dated 22.01.2016 was executed at Hyderabad and was gotten endorsed by the Office of the District Registrar of Medak District at Sanga Reddy *vide* File No.G1/1877/2016 dated 10.08.2016. The Court below observed that the parties had not entered into the agreement within Ranga Reddy District and they were neither doing

business nor did any part of the transaction between the parties take place within its jurisdiction. The Court below accordingly concluded that as the petition schedule property was situated in Medak District; the parties were residents of Hyderabad; and the agreement was entered into at Hyderabad but gotten endorsed by the registration authorities of Medak District, it lacked territorial jurisdiction to entertain the Arbitration OP and returned it for proper presentation.

Heard Sri B.Vijaysen Reddy, learned counsel for the petitioner; Sri Y.Ratnakar, learned counsel for Respondent 1; Sri P.S.R.Chandra Murthy, learned counsel for Respondents 2 to 7; and Sri Kishore Rai, learned counsel for Respondent 8.

Two agreements were entered into by and between the parties. Development Agreement-cum-GPA dated 22.01.2016 was executed at Hyderabad, wherein the arbitration clause finds place. A separate agreement bearing the same date was executed by the parties at Hyderabad with regard to an interest-free refundable advance. The Development Agreement-cum-GPA was submitted to the Sub-Registrar at Sanga Reddy, Medak District, for payment of stamp duty. It is not in dispute that the land covered by these agreements is situated in Kolluru Village in Medak District. The agreements as well as the cause titles in this civil revision petition and the Arbitration OP put it beyond doubt that all the parties are residents of Hyderabad.

Notwithstanding the aforestated facts, Sri B.Vijaysen Reddy, learned counsel, would contend that the petition under Section 9 of the Act of 1996 was maintainable before the Court below in Ranga Reddy District. He would place reliance on the following clauses of the Development Agreement-cum-General Power of Attorney dated 22.01.2016:

XXV. ARBITRATION

All the disputes arising out of or in connection with this Development Agreement shall be initially resolved by mutual discussions among the GPA HOLDER and DEVELOPER or the nominated representatives of both the parties. In case of disputes not resolved by mutual discussions, the same shall be referred to the arbitration in accordance with the provisions of the Arbitration & Conciliation Act, 1996. The disputes shall be referred to the mutually agreed sole Arbitrator. The venue of Arbitration shall be at Hyderabad. The award of the Arbitrator shall be final and binding on both the parties.

XXVI. GOVERNING LAWS AND JURISDICTION

This Agreement shall be governed by and constructed in accordance with the laws of India and any disputes arising in relation hereto shall be subject to the exclusive jurisdiction of the courts in Ranga Reddy District.'

Learned counsel would contend that as exclusive jurisdiction was bestowed by express agreement upon the Courts in Ranga Reddy District in terms of Clause XXVI, the Court below has jurisdiction, in terms of Section 2(1)(e) of the Act of 1996, to entertain the subject petition under Section 9 thereof. He would place reliance on case law to support his contention:

In ***BHARAT ALUMINIUM COMPANY V/s. KAISER ALUMINIUM TECHNICAL SERVICES INC.***¹, the Supreme Court observed that Section 2(1)(e) of the Act of 1996 has to be construed keeping in view Section 20 thereof, which recognizes party autonomy in choosing the place of arbitration. The Supreme Court opined that the legislature had intentionally given jurisdiction to two Courts, i.e., the Court which would have jurisdiction where the cause of action is located and the Court where the arbitration takes place. In this connection,

¹ (2012) 9 SCC 552

the Supreme Court drew a distinction between the 'place/seat' of the arbitration as opposed to 'venue' of the arbitration proceedings. It was held that conducting hearings at a 'venue' fixed by the parties would not have the effect of changing the 'place/seat' of the arbitration. Sri B.Vijaysen Reddy, learned counsel, would particularly rely upon the observations in para 96 of the judgment to the effect that Section 20 of the Act of 1996 intentionally gave such an option, as the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties and therefore, the Court where the arbitration takes place would be empowered to exercise supervisory control over the arbitral proceedings.

Learned counsel would also place reliance on a Division Bench judgment of the Delhi High Court in **ION EXCHANGE (INDIA) LIMITED V/s. PANASONIC ELECTRIC WORKS CO. LIMITED**², wherein the definition of 'Court' in Section 2(1)(e) of the Act of 1996 fell for consideration. In this context, the Delhi High Court observed that Section 20 of the Act of 1996 gives the parties to the arbitration the freedom to choose the 'venue' of the arbitration. Reference was made to Section 42 of the Act of 1996, which states to the effect that where an application under Part I is made to a Court, that Court alone would have jurisdiction over the arbitration proceedings thereafter and for entertaining subsequent applications arising out of the agreement. Citing a hypothetical example, the Delhi High Court observed that if the cause of action arises at place 'A' and the seat of arbitration is place 'B', a petition under Section 9 of the Act of 1996 could be filed before the competent Court at either place 'A' or place 'B'.

² (2014) 4 HCC (Del) 1

In **SWASTIK GASES PRIVATE LIMITED V/s. INDIAN OIL CORPORATION LIMITED**³, the Supreme Court was dealing with a case where part of the cause of action had arisen at Kolkata. The contention of the appellant, however, was that part of the cause of action had also arisen at Jaipur, whereby the Rajasthan High Court would have jurisdiction to entertain an application under Section 11 of the Act of 1996. The question before the Supreme Court was whether the parties, by virtue of their agreement, had excluded the jurisdiction of the Courts at Jaipur. Upon perusal of the relevant agreement clause, the Supreme Court found that the agreement was subject to the jurisdiction of Courts at Kolkata. The Supreme Court therefore held that by making a provision that the agreement was subject to the jurisdiction of Courts at Kolkata, the parties had impliedly excluded the jurisdiction of other Courts. The Supreme Court observed that where the contract specifies exclusive jurisdiction of the Courts at a particular place and such Courts have jurisdiction to deal with the matter, an inference may be drawn that the parties intended to exclude all other Courts.

In **ADCON ELECTRONICS PVT. LTD. V/s. DAULAT AND ANOTHER**⁴, the Supreme Court was dealing with suits for land triable by the Bombay High Court. This judgment is therefore of no relevance to the present case.

In **SUMER BUILDERS PRIVATE LIMITED V/s. NARENDRA GORANI**⁵, the land which was the subject matter of the agreement for development was situated at Indore. The agreement in question was also executed at Indore. Disputes having arisen, the owner of the

³ (2013) 9 SCC 32

⁴ (2001) 7 SCC 698

⁵ (2016) 2 SCCC 582

land terminated the agreement and forfeited the security deposit amount of the builder. He also invoked the arbitration clause contained in the agreement. The builder filed a petition under Section 9 of the Act of 1996 before the Bombay High Court seeking an injunction restraining the owner from entering upon or alienating the land. The issue was whether the Bombay High Court would have jurisdiction to entertain the petition under Section 9 of the Act of 1996. In this context, the Supreme Court held that as the agreement created certain interests in the land and the core dispute between the parties pertained to possession of the land, any order passed under Section 9 of the Act of 1996 would have an impact on the land and therefore, the Bombay High Court would not have jurisdiction to entertain the petition under Section 9 of the Act of 1996.

In **RAJASTHAN STATE ELECTRICITY BOARD V/s. UNIVERSAL PETROL CHEMICALS LIMITED**⁶, reference was made by the Supreme Court to **A.B.C. LAMINART (P) LTD. V/s. A.P. AGENCIES**⁷ in the context of ouster of jurisdiction, wherein it had been held that when the clause is clear, unambiguous and specific, accepted notions of contract would bind the parties and unless the absence of *ad idem* can be shown, other courts should avoid exercising jurisdiction. The maxim '*expressio unius est exclusio alterius*' – 'expression of one is the exclusion of another' was held to have application and when jurisdiction is specified in a contract, an intention to exclude all others from its operation may be inferred. Dealing with the facts of that case, the Supreme Court found that the arbitration was to be held at Jaipur and the parties had agreed that all disputes that may arise between them in relation to or in

⁶ (2009) 3 SCC 107

⁷ (1989) 2 SCC 163

connection with the contract shall be deemed to have arisen at Jaipur and no court other than the Courts at Jaipur shall have jurisdiction to entertain or try the same. The bank guarantee in relation to the contract having been given at Calcutta, one of the parties moved the Court at Calcutta. Applying the law laid down in **A.B.C. LAMINART (P) LTD.** ⁷, the Supreme Court held that once there is an ouster clause, even though the Court at Calcutta had territorial jurisdiction to try and decide such dispute, only the Courts at Jaipur would have exclusive jurisdiction to entertain the case.

In **ENERCON (INDIA) LTD. V/s. ENERCON GMBH**⁸, the Supreme Court was dealing with a case where the governing law in relation to a dispute arising out of the agreement was the law of India but the venue of the arbitration proceedings was at London. The Supreme Court was seized of the issue as to where the 'seat' of the arbitration was, as that would determine the Court which would have exclusive jurisdiction to oversee such arbitration proceedings. The argument advanced was that the 'venue' at London actually referred to designation of the 'seat' of arbitration. However, the Supreme Court found otherwise and held that London was only to be the 'venue' to hold the arbitration proceedings but the juridical seat of the arbitration was in India.

In **BYGGING INDIA LTD. V/s. LANCO INFRATECH LTD.**⁹, a learned Judge of the Delhi High Court was considering whether the juridical seat of the arbitration proceedings was at Delhi or not for the purpose of conferring jurisdiction upon the Courts at Delhi. The agreement clauses were formulated to the effect that the venue of the arbitration was Delhi; that the Courts at Delhi would have sole

⁸ (2014) 5 SCC 1

⁹ 2016 SCC OnLine Del 5486

jurisdiction; and all disputes were to be governed exclusively by the Courts at Delhi. This agreement was however executed at Gurgaon, Haryana, and the argument was that no part of the cause of action had arisen in Delhi. Applying the law laid down in **BHARAT ALUMINIUM COMPANY¹**, the Delhi High Court held that as the parties had expressly agreed that arbitration proceedings were to be held at Delhi and conferred exclusive jurisdiction upon the Courts at Delhi, such Courts had jurisdiction over the place of arbitration, in terms of Section 20(1) of the Act of 1996.

Though all the above judgments were cited by Sri B.Vijaysen Reddy, learned counsel, in the context of the 'place/seat' of the arbitration as opposed to the 'venue' for determining the juridical seat of the arbitration and for conferring jurisdiction on the Court at that place, we fail to understand how these judgments further his case. Clause XXV of the Development Agreement-cum-GPA dated 22.01.2016 posits that the arbitration proceedings are to be held at Hyderabad. Though the word 'venue' has been used, there is no indication of any other alternative location for holding the arbitration proceedings. The 'place/seat' of the arbitration was therefore intended to be Hyderabad. As is clear from the cited judgments, these terms are sometimes used loosely and interchangeably in agreements leading to prodigious litigation. It is only by way of Clause XXVI that Ranga Reddy District was brought into the picture. This clause, while recording that the laws of India would govern the agreement and disputes arising in relation thereto, baldly states that such disputes shall be subject to the exclusive jurisdiction of the Courts in Ranga Reddy District. Be it noted, this clause does not even speak of arbitration proceedings, much less, the 'place/seat' thereof.

It is not in dispute that no part of the cause of action arose within Ranga Reddy District. The land which is the subject matter of the Development agreement-cum-GPA is situated in Medak District and the document itself was executed at Hyderabad. Further, all the parties thereto are residents of Hyderabad. Ranga Reddy District therefore did not figure in the picture at all, be it in relation to the cause of action or the arbitration proceedings. The dual jurisdiction conferred on Courts, viz., firstly, the place where the cause of action arises and secondly, the 'place/seat' of arbitration which may be wholly unconnected to the cause of action, does not arise in the present case. Ranga Reddy District is not shown to have anything to do with either the arbitration contemplated under Clause XXV or the cause of action in terms of the Development agreement-cum-GPA.

The judgments relied upon by Sri Y.Ratnakar and Sri Kishore Rai, learned counsel, are of relevance.

In **BAHREIN PETROLEUM CO. LTD. V/s. P.J.PAPPU**¹⁰, the Supreme Court held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a Court, otherwise incompetent to try the suit. The Supreme Court observed that where a Court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing and a decree passed by the Court, having no jurisdiction, would be *non est*. Earlier, in **KIRAN SINGH V/s. CHAMAN PASWAN**¹¹, the Supreme Court observed that it is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, as a defect of jurisdiction strikes at the authority of the Court to pass a decree and such a defect cannot be cured even by consent of the parties.

¹⁰ AIR 1966 SC 634

¹¹ AIR 1954 SC 340

In ***HAKAM SINGH V/s. GAMMON (INDIA) LTD.***¹², the Supreme Court was dealing with a contract for construction work but notwithstanding where the work was to be executed, the agreement was deemed to have been executed at Bombay and the Bombay Courts alone were to have jurisdiction to adjudicate disputes between the parties. The question was whether Bombay Courts alone had jurisdiction. In this context, the Supreme Court observed that it is not open to parties, by agreement, to confer jurisdiction on a Court which it does not possess, but where two Courts have jurisdiction to try a suit or proceeding, an agreement between the parties that the disputes between them shall be tried in one of such Courts would not be contrary to public policy. Applying this principle in ***HARSHAD CHIMAN LAL MODI V/s. DLF UNIVERSAL LTD.***¹³, the Supreme Court reiterated that if the Court has no jurisdiction over the subject matter of the suit, by reason of any limitation imposed by statute, charter etc., it cannot take up the matter and any order passed by such a Court, having no jurisdiction, would be a nullity.

In ***I.T.I. LTD. V/s. SIEMENS PUBLIC COMMUNICATIONS NETWORK LTD.***¹⁴, the Supreme Court observed that the Act of 1996 does not specifically provide for application of the Code of Civil Procedure, 1908, but there is no express prohibition against its application. It was therefore held that once there is no such express exclusion, applicability of the Code could not be excluded by inference. A similar view was taken by a Division Bench of this Court in ***B.RAMA SWAMY V/s. B.RANGA SWAMY***¹⁵.

¹² (1971) 1 SCC 286

¹³ (2005) 7 SCC 791

¹⁴ AIR 2002 SC 2308

¹⁵ AIR 2004 AP 280

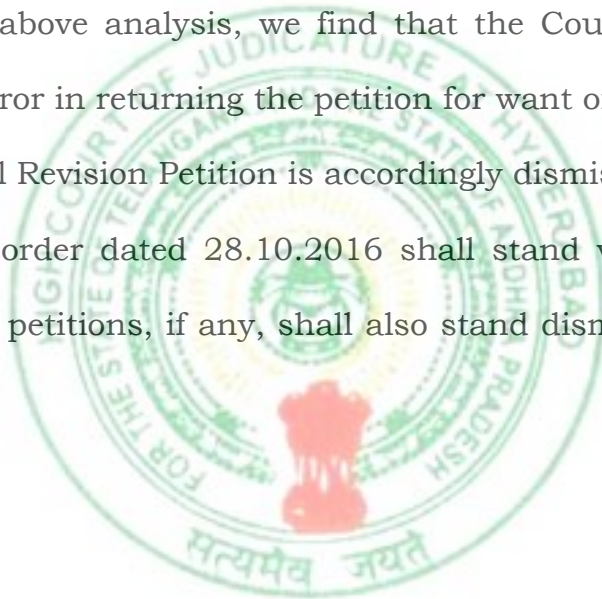
It may also be noticed that Section 2(1)(e), which defines ‘Court’ for the purposes of the Act of 1996, specifically speaks of jurisdiction to decide the questions forming the ‘subject matter of the arbitration’. The subject matter of the arbitration would invariably take within its fold the arbitration proceedings also. It is in this context that **BHARAT ALUMINIUM COMPANY¹**, applying Section 20 of the Act of 1996, justified jurisdiction being conferred upon Courts at two places – the place where the cause of action actually arose and the ‘place/seat’ of the arbitration, if it was not the same as the place where the cause of action arose. However, that situation, as pointed out *supra*, does not arise at all in the present case as neither the ‘place/seat’ nor the ‘venue’ of the arbitration proceedings contemplated under Clause XXV of the Development agreement-cum-GPA dated 22.01.2016 fall in Ranga Reddy District. As pointed out in **SWASTIK GASES PRIVATE LIMITED³**, it is only when the Court inherently has jurisdiction to deal with the matter and if the contract confers exclusive jurisdiction upon such Court, that an inference may be drawn that the parties intended to exclude all other Courts. The requirement, first and foremost, is that the Court upon which such exclusive jurisdiction is sought to be conferred must have inherent jurisdiction. Section 20 of the Act of 1996 merely adds a facet in this regard. Therefore, if the Court does not have jurisdiction inherently to deal with the matter, the parties cannot confer jurisdiction upon it by agreement. In the present case, that is exactly what was done under Clause XXVI of the Development agreement-cum-GPA. Ranga Reddy District had nothing whatsoever to do with either the land which was covered by the Development agreement-cum-GPA or the arbitration contemplated thereunder.

Though Sri B.Vijaysen Reddy, learned counsel, would also contend that convenience of the parties can be looked into and if the parties found it convenient to have their matters tried by a particular Court, there would be no illegality in conferring exclusive jurisdiction upon such a Court. This argument loses sight of the fundamental legal principles on jurisdiction. Convenience of the parties cannot be determinative of the jurisdiction of a Court. If such an argument is accepted, it would be open to a litigant to confer exclusive jurisdiction upon a Court without reference or regard to territorial and pecuniary jurisdiction also. This argument is mentioned only to be rejected.

On the above analysis, we find that the Court below did not commit any error in returning the petition for want of jurisdiction.

The Civil Revision Petition is accordingly dismissed.

Interim order dated 28.10.2016 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

ANIS, J

2nd DECEMBER, 2016

**Note: LR copy to be marked
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