

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
and
THE HON'BLE SMT JUSTICE ANIS**

CIVIL MISCELLANEOUS APPEAL No.795 of 2015

JUDGMENT: (per SK, J)

This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for brevity 'the Act of 1996'), was preferred by the respondents in Arbitration O.P.No.1068 of 2015 on the file of the learned Chief Judge, City Civil Court, Hyderabad, aggrieved by the order dated 26.06.2015 passed therein.

Arbitration O.P.No.1068 of 2015 was filed under Section 9 of the Act of 1996 by the first respondent herein and by the order under appeal, the Court below granted an interim injunction restraining the appellants before us from invoking/encashing the scheduled bank guarantees issued by the second respondent bank and also restraining the said bank from honouring/encashing the said bank guarantees. A further direction was given to the first respondent herein to renew bank guarantee No.3, which was going to expire by 31.07.2015, for a period of six months.

Heard Sri Deepak Sancheti, learned counsel for the appellants, and Sri G. Kalyan Chakravarthy, learned counsel for the first respondent.

Sri Deepak Sancheti, learned counsel, would contend that the Court below had no jurisdiction to entertain the O.P. under Section 9 of the Act of 1996 in terms of the agreement and contract between the parties. Learned counsel would point out that the said agreement was entered into at Indore in Madhya Pradesh State and the work to be executed under the said agreement was also in the State of Madhya Pradesh. He would further point out that the arbitration, if any, in terms of the arbitration clause contained in the agreement is to take place only in Madhya Pradesh and the parties specifically conferred exclusive jurisdiction on the Courts at Indore in relation to all disputes arising under the contract.

Sri G. Kalyan Chakravarthy, learned counsel, would however point out that the bank guarantee furnished by the first respondent was from a local bank at Secunderabad and therefore, a part of the cause of action would arise within the jurisdiction of the Court below. He however does not dispute the fact that the contract was entered into at Indore and that the work to be executed thereunder also falls in the State of Madhya Pradesh exclusively. He would place reliance on the judgment of a Division Bench of this Court in **Incomm Tele Limited v. Bharat**

Sanchar Nigam Limited and others¹ and more particularly, the observations in para 41 as to the jurisdiction of the Court in terms of Section 20 CPC. No doubt, this judgment was rendered in the context of an Arbitration O.P. under Section 9 of the Act of 1996 but the distinguishing factor which needs to be taken note of is that the disputes therein related to two contracts, one of which was executed at Hyderabad.

In that view of the matter, the aforestated judgment is of no avail to the first respondent as it is an admitted fact in the present case that except for the furnishing of a bank guarantee from a local bank at Secunderabad, no part of the contract is relatable to Hyderabad.

Sri Deepak Sancheti, learned counsel, on the other hand, placed reliance on the judgment of the Supreme Court in **B.D.Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited**². Therein, referring to its earlier judgment in **State of West Bengal v. Associated Contractors**³, the Supreme Court affirmed that where the agreement between the parties restricted jurisdiction only to a particular Court, that Court alone would have jurisdiction as neither Section 31(4) nor Section 42 of the Act of 1996 contains a

¹ 2005(6) ALT 642 (D.B.)

² (2015) 12 Supreme Court Cases 225

³ (2015) 1 SCC 32

non-obstante clause, wiping off the contract agreement between the parties. Relevant to note, the aforestated judgment also arose out of an application filed under Section 9 of the Act of 1996.

In the light of the aforestated circumstances, we are of the considered opinion that the Court below had no jurisdiction whatsoever, as it did not fall within the definition of a 'Court' under Section 2(1)(e) of the Act of 1996 for the purpose of entertaining an application under Section 9 thereof. Unless the Court below had jurisdiction to adjudicate the questions forming the subject matter of the arbitration, if the same had been the subject matter of a suit, it cannot assume jurisdiction for the purposes of Section 9. As the contract between the parties related to works executable in the State of Madhya Pradesh and the arbitration clause specifically spoke of the arbitration, if any, being undertaken only in the State of Madhya Pradesh, the question of Court below assuming jurisdiction to decide the subject matter of the arbitration, had it been a suit, does not arise.

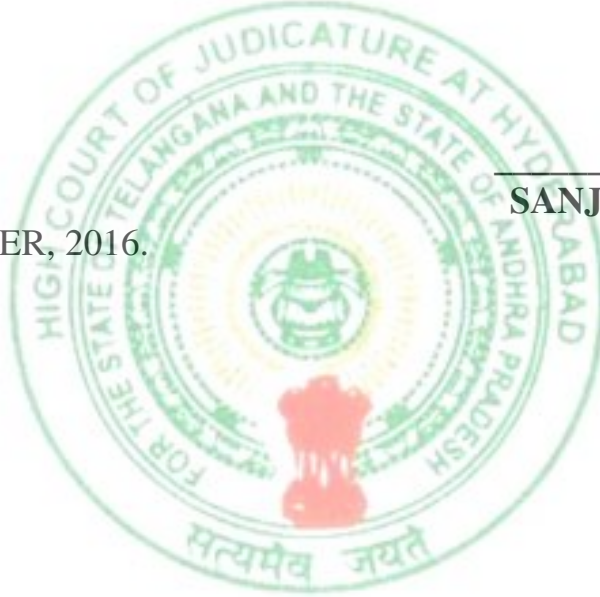
Viewed from any angle, the Court below had no jurisdiction to entertain the application made by the first respondent under Section 9 of the Act of 1996.

We therefore allow the appeal setting aside the order dated 26.06.2015 passed by the learned Chief Judge, City Civil Court, Hyderabad, in Arbitration O.P.No.1068 of 2015. We further declare that the said Arbitration O.P. was not maintainable before the learned Chief Judge, City Civil Court, Hyderabad. The Court below shall take steps in the matter accordingly.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

1st NOVEMBER, 2016.

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SANJAY KUMAR, J

ANIS, J