

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4157 OF 2017

Union of India through
The Chief Engineer

... Petitioner

Vs.

M/s. Arun Kumar Deedwania

... Respondent

Ms. Vaishali Choudhari, Advocate for the petitioner.

Mr. Vishwajeet Sawant a/w. Mr. Prabhakar Jadhav a/w. Mr.
Veerdhaval Kakade, Advocate for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **12th April, 2017.**

JUDGMENT:

Rule. Rule made returnable forthwith. By consent, the Petition is heard finally and disposed of at the stage of admission.

2. The petitioner-Union of India challenges the order dated 24th January, 2017 passed by the Additional District Judge, Pune in Execution Petition No. 2416 of 2016. The respondent is a decree holder in the arbitral proceedings, so he filed Special Darkhast No. 2418 of 2016 before the District Judge, Pune.

3. In this case, the Union of India had filed Civil Miscellaneous Application No, 450 of 2011 challenging the award under section 34 of the Arbitration Act for setting aside the arbitral award passed in

favour of the respondent. The said application was rejected by the District Judge-12, Pune on 2nd May, 2014. After losing that case, the UOI preferred Arbitration Appeal bearing No. 33 of 2014 before this Court, which was dismissed by this Court by order dated 18th June, 2015. In the said Appeal, no ground was taken by the petitioner/UOI that the said Application under section 34 of the Arbitration Act ought to have been entertained and decided by the Principal District Judge and should have decided by the District Judge-12, Pune.

4. Thereafter, the respondent filed Special Darkhast No. 2418 of 2016 for execution of award under section 36 of the Arbitration Act. The Application under section 36 was presented before the District Court. In the said Darkhast, one Application Exhibit 12 was filed by UOI praying that the darkhast should be dismissed for want of jurisdiction, as it was not filed before the Principal District Judge, who was supposed to be the principal Civil Court of original jurisdiction under the Arbitration Act. The said Application was opposed by the respondent/decreed holder that the execution was filed in the Court of Principal District Judge and his Court is not Subordinate Court like Civil Judge Senior Division, Civil Judge Junior Division or Small Causes Court. The said Application was rejected on 24th January,

2017 and learned District Judge-13, Pune has taken a view that under section 36 of the Act, if the execution petition is filed before the Principal District Judge, it can be assigned by the Principal District Judge to any other Court including the Court of Civil Judge Senior Division.

5. The learned counsel for UOI submitted that in the said Darkhast, the judgment debtor-Union of India moved an application that the Darkhast for enforcement of the arbitral award is not maintainable before the said Court because the Court as defined under section 2(1)(e) of the Arbitration and Conciliation Act, 1996 is of a Principal District Judge and the order is passed by the Additional District Judge, Pune and the proceedings are before the Additional District Judge, Pune, hence the order passed by him rejecting the application taking objection to the maintainability of the order is to be quashed and set aside in view of Section 2(1)(e) of the Arbitration and Conciliation Act.

6. The learned counsel for the respondent while supporting the order passed by the District Judge, Pune pointed out that the order is not passed by the Additional District Judge as mentioned in prayer clause but it is the order of the District Judge, Pune. He submitted

that as per the definition of “Court” under section 2(1)(e) of the Arbitration Act, it is the principal Civil Court of original jurisdiction in a district and it is not to be read as Principal District Judge. He further submitted that in fact earlier the petitioner itself has filed the proceedings under section 34 of the Arbitration and Conciliation Act before the District Court and it was disposed of by the District Judge-12, Pune. The learned counsel further submitted that the Arbitral award is enforced by the District Court and it may be either Principal District Judge or any other District Judge.

7. In support of his submissions, he relied on the order of Division Bench of Nagpur Bench of Bombay High Court dated 22nd and 23rd December, 2010 in Letters Patent Appeal No. 229 of 2010 in the case of **The Akola Janata Commercial Cooperative Bank Ltd. vs. Raju Natthuji Badhe vs. Ors.**

8. The learned counsel further submitted that in the order under challenge, the learned District Judge has mentioned that the matter in hand was presented before the Principal District Judge and thereafter he assigned the matter to the District Judge. Therefore, the objection taken on the jurisdiction is devoid of merits in law and

also in facts. The learned counsel further submitted that if the analogy of the hierarchy between the Principal District Judge is applied, then that will be applicable in Bombay High Court also. Under section 34 of Arbitration Act, Bombay High Court is the Court of principal civil court of original jurisdiction, then only the Hon'ble the Chief Justice is empowered to entertain the Application under section 34 or under section 36 of the Arbitration Act.

9. On the point of precedent, the learned counsel relied on following decisions:

(I) Three Judges Bench of Hon'ble Supreme Court in the case of Government of West Bengal vs. Tarun K. Roy & Ors., reported in (2004) 1 SCC 347.

(II) Special Bench of Bombay High Court in the case of State of Maharashtra & Ors. vs. Murarao Malojirao Ghorpade & Ors., reported in 2009(6) Mh. L.J. 788.

10. At the outset, it is made clear that in the prayer clause (a) of the petition, the nomenclature of the authority is wrongly mentioned as Additional District Judge, Pune. The authority who passed the order is District Judge-13, Pune. There is difference in Additional District

Judge and District Judge. A short point which arose is formulated as follows :

“Whether the meaning of “Court” which is defined under section 2(1)(e) of the Arbitration and Conciliation Act, 1996 is restricted to the Principal District Judge or it covers all the District Judges in the District.”

11. Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 reads as follows:

(e) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having, jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

12. The relevant nomenclature used is “principal Civil Court of original jurisdiction in a district”. In the Act, the legislature has not used the terms as “Principal District Judge of original jurisdiction”. The Principal District Judge and District Judges also are within the scope of term “principal civil Court of original jurisdiction in a district”. In order to understand the meaning and scope of principal Civil Court of original jurisdiction, I refer and rely the definition of District Courts in Part III of Bombay Civil Courts Act of 1869. Section 7 of the

Bombay Civil Court Act is about the Original jurisdiction of District Court -

“The District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure”.

Thus, the nomenclature of the authority which is worded in the Bombay Civil Courts Act is adopted as it is and mentioned in Section 2(1)(e) of the Arbitration and Conciliation Act, 1996.

13. There is difference in terms “Court” and “Judge”. “Court” includes many Judges and “Judge” refers to a person holding that post. Therefore all District Judges are covered under the term “District Court”. There may be only one District Judge or may be 10 District Judges, but all form the “District Court”.

14. For better understanding of the phrase, Section 2(4) of Civil Procedure Code is to be seen -

“District” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”) and includes the local limits of the ordinary original civil jurisdiction of High Court.

15. In Section 2(8) of CPC, “Judge” means a Presiding Officer of the Civil Court.

16. Section 3 of the Civil Procedure Code is about subordination of Courts which reads thus-

“For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.”

17. However, the hierarchy between the Principal District Judge, District Judge or Additional District Judge is not defined under the Code but the terms “District Judge” and “District Court” is defined and explained in Maharashtra Civil Courts Act of 1869. Section 5 of Maharashtra Civil Courts Act reads thus -

“There shall be in each District a District Court presiding over by a Judge to be called the District Judge”.

18. Section 7 of Maharashtra Civil Courts Act reads as follows:

“The District Court shall be the Principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure.”

19. Section 9 of Maharashtra Civil Courts Act states about -

“Powers of the District Judge having the control and inspection of Courts.”

20. Section 11 states about -

“The seal which the District Judge is required to use”.

The Maharashtra Civil Courts Act has created a cadre of Additional District Judge.

21. Maharashtra Judicial Service Rules, 2008 (as amended upto 11-02-2016), in Chapter II-Constitution of Service, there is no such post of Principal District Judge but it is a post of only District Judges and all these District Judges necessarily form a District Court and the District Court which is defined under section 2(1)(e) of Arbitration Act as principal Civil Court of original jurisdiction.

22. This hierarchy illustrates that the District Court is a higher Court than the Civil Court and Small Causes Court. Thus, all District Judges who are sitting in the District Court are the Judges having the higher rank than the Judges of Civil and Small Causes Courts. In Section 2(4) of Code of Civil Procedure also the legislature has used and incorporated the same terminology, i.e., principal Civil Court of original jurisdiction and it is further mentioned "hereinafter called a "District Court"". Thus, the word "principal" which is used as an adjective of Civil Court, is to be read in context with original jurisdiction. In the absence of word "principal", the terminology is "Civil Court of original jurisdiction" means "any Civil Court", i.e., Civil Judge Junior Division or Civil Judge Senior Division or Small Causes

Court Judge, i.e., the Court of first forum. Had the legislature intended to vest the powers of execution of the arbitral award or powers under section 34 of the Arbitration Act exclusively with the Principal District Judge then the legislature would have specifically mentioned the said designation. Under such circumstances, the jurisdiction to entertain the execution of the arbitral award or challenge under section 34 of the Arbitration Act would have been vested *persona designata* with the Principal District Judge only and not with any District Judge. However, the legislature did not use the designation in the act which it has used wherever intended.

For eg.: Earlier before the amendment of 2015 under Section 11 of the Arbitration Act, the power vested only with the Chief Justice.

23. While dealing with this issue I could lay my hand on a judgment dated 11th June, 2015 passed by the Hon'ble Single Judge of this Court, Bench at Aurangabad in **Writ Petition No. 2218 of 2015 in the case of Sanjay Suryakant Mhaske & Ors. vs. Zilla Parishad, Jalna**. In the said Petition, the legality and validity of the order passed by the learned Principal District Judge, Jalna of assigning the matters under section 34 of the Arbitration Act to the District Judges and Adhoc District Judges was challenged. The learned Judge in the

said case has heavily relied on the judgment of Full Bench of this Court in **Fountain Head Developers and etc. vs. Mrs. Mariya Arcangela Sequeria (decd.) by LRs. & Ors., reported in AIR 2007 Bombay 149**. The learned Single Judge held that “it would not open for a Principal District Judge to exercise powers under Maharashtra Civil Courts Act under section 16 thereof to delegate or assign his powers to deal with the proceedings under Arbitration and Conciliation Act to any other Judge and thus he allowed the Writ Petition and set aside the order of the Principal District Judge. With due respect to the view taken by the Hon'ble Single Judge of Aurangabad Bench, I am of the opinion that in the judgment of **Fountain Head Developers** (*supra*) wherein the Full Bench has not held anywhere either the District Judge to be read as Principal District Judge or the principal Court of Civil jurisdiction means the principal District Judge only. In the case of **Fountain Head Developers**, the Full Bench has held that the District Judge in a district alone is the principal Court of original civil jurisdiction and it is not included in other Judge subordinate to him. It is also held that “The Parliament intended to have only one court as the forum for arbitral proceedings, that is, the “principal court of original jurisdiction” in a district”. This ratio laid down by the Full Bench in

Fountain Head Developers cannot be misread that the District Judge or the District Court means only a Court of Principal District Judge. It appears that the order of the Division Bench of Nagpur Bench in **The Akola Janata Commercial Cooperative Bank Ltd.** which is very relevant and useful, was not placed before the Hon'ble Single Judge and therefore, he had no opportunity to consider this aspect from the other prospective.

24. In the case of **The Akola Janata Commercial Cooperative Bank Ltd. (supra)**, the Division Bench of Nagpur has held that

“The word “Court” occurring in Section 36 must be held to be a Court of District Judge also for the purpose of enforcement of the award. It further held that “From a conjoint reading of these provisions, it is clear that an award must be treated as a decree passed by the District Judge and, therefore, it may be executed either by the District Judge himself or by any Court to which it may be sent by such District Judge for execution vide Section 38 of the Code of Civil Procedure . The transfer of decree by the District Judge would be governed by Section 39 of the Code of Civil Procedure. Thus, a decree holder must apply for execution of an award to the Court of District Judge, who may either execute the award as a decree himself or send it for execution to another Court including a subordinate Court of competent jurisdiction.”

25. In the absence of the judgment in the case of **The Akola Janata Commercial Cooperative Bank Ltd.**, the ratio laid down in the case of **Sanjay Suryakant Mhaske (supra)** being a precedent, binding on this Court. While meeting this situation, it is worthwhile to refer the case of **Government of West Bengal (supra)**, wherein the three Judges Bench of Hon'ble Supreme Court has held that the Court is to follow the precedent binding on it. While discussing the rule of law and the rule of binding precedent, it is held that -

“An order passed to the contrary by another learned Single Judge in ignorance of the earlier binding precedent by itself would not constitute a binding precedent and may be held to have been rendered per incuriam.”

26. The Special Bench in the case of **State of Maharashtra and Ors. vs. Murarao Maljirao Ghorpade & Ors., (supra)**, held that -

“The law of precedent lays down the judicial discipline leading to certainty and finality in judicial decisions. Further it is held that “Normally, the judgment of a higher Court or a larger Bench or Coordinate Bench would be binding on a Bench of a lesser strength. The exception to the applicability of the law of precedent is, if on the facts of a given case and the law applicable, the case falls for good and valid reasons within the exception specified in the judgment, or that the judgment is per incuriam, sub silentio

and/or hit by stare decisis. Unless the subsequent judgment discusses such an issue and records reason, it may fall within the mischief of violating the law of precedent which may not be in conformity with the canons of judicial discipline. The concept of certainty and finality is essential in judicial decision making process.”

27. Thus, the principal Civil Court of original jurisdiction has a wider connotation which includes Principal District Judge and so also of the District Judges, who collectively fall under the category of Judges having principal Civil Court of original jurisdiction. Hence, the challenge given cannot sustain. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)