

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Civil Revision No.6940 of 2017 (O&M)
and other connected revision petitions
Date of Order: 2nd November, 2017**

Lakshmi Precision Screws limited

..Petitioner

Versus

M/s Bharat Industries

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Chetan Mittal, Sr. Advocate, with
Mr. Vivek Singla, Advocate and
Mr. Ramesh Kadian, Advocate,
for the petitioner.

ANIL KSHETARPAL, J.

This judgment shall dispose of Civil Revision Nos.6940, 6941, 6942, 6943, 6945 and 7091 of 2017, as common issue is involved.

In this case, judgment debtor is trying to avoid/delay the execution of the award of the Arbitrator, which is equivalent to a decree, by taking hyper technical objections.

In the considered opinion of this Court, two issues arise in the present cases.

(i) Whether execution of a decree (award of the Arbitrator) can only be filed at a place where arbitration proceedings took place, even in the absence of any agreement conferring exclusive territorial jurisdiction of a Court of a particular place or not?

(ii) Whether as the provisions of Section 36 of the

Arbitration and Conciliation Act, 1996, for the purpose of enforcement/execution, provisions of the Code of Civil Procedure would apply or not?

It is not in dispute before this Court that the awards passed by the learned Arbitrator have become final between the parties as no objections under Section 34 of the Arbitration and Conciliation Act, 1996 have been filed.

There was no arbitration agreement between the parties. Arbitration took place in accordance with the provisions of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSMED Act). Section 18 is extracted as under:-

“18.Reference to Micro and Small Enterprises Facilitation Council.—

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation

Act, 1996(26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”

The respondent filed application before the Chairman, Haryana

Micro, Small and Medium Enterprises Facilitation Council, Chandigarh, for

getting the recovery from the petitioner-company. Initially, council made efforts to bring the parties to some settlement through conciliation as per Section 18(2) of the MSMED Act, however, on failure of the conciliation proceedings, the dispute in all the cases were referred to the Arbitrator in accordance with Section 18(3) of the MSMED Act. Learned Arbitrator held proceedings at Gurgaon.

Both the parties i.e., petitioner and the respondent are carrying on their business at Rohtak. It is further not in dispute that in most of the cases, petitioner herein, had filed applications under Section 9 of the Arbitration and Conciliation Act, 1996, before the Court at Rohtak.

The decree holder/respondent filed an application for execution of the decree/award of the Arbitrator at Rohtak. Petitioner objected to the territorial jurisdiction of the Court to entertain execution petition. The Executing Court vide detailed order dated 19.09.2017, dismissed the objections with regard to the territorial jurisdiction, relying upon Section 42 of the Arbitration and Conciliation Act, 1996 and provisions of the Code of Civil Procedure.

Now the stage is set for discussing issues, which are involved in the present case:-

Question No.(i)

Whether execution of a decree (award of the Arbitrator) can only be filed at a place where arbitration proceedings took place, even in the absence of any agreement conferring exclusive territorial jurisdiction of a Court of a particular place or not?

Learned counsel for the petitioner has very vehemently argued that once the arbitration proceedings had taken place at Gurgaon, the Courts

at Gurgaon have the exclusive territorial jurisdiction to entertain and decide all proceedings including execution. Learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court in the case reported as **Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. and others, (2017) 7 SCC 678.**

In the considered opinion of this Court, the judgment referred to above does not help the petitioner for 3 reasons:-

- (i) the judgment is dealing with arbitration proceedings and not execution or enforcement of award;
- (ii) Hon'ble Supreme Court had interpreted a clause in the agreement conferring exclusive territorial jurisdiction to the Courts at Mumbai;
- (iii) The seat of arbitration was also at Mumbai.

In the present case, the position is not the same. There is no agreement conferring exclusive territorial jurisdiction to the Courts at Gurgaon. The learned Arbitrator fixed the venue for holding the proceedings at Gurgaon for his own convenience.

Section 20 of the Arbitration and Conciliation Act, 1996, provides that parties are free to agree on the place of arbitration. Failing any agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties. It is further provided that arbitral tribunal may unless otherwise agreed by the parties, meet at any place where it considers appropriate. Thus, Section 20 of the Arbitration and Conciliation Act, 1996 provides for different venues for carrying out arbitration proceedings.

Still further, Section 42 of the Arbitration and Conciliation Act, 1996 deals with the jurisdiction. It is clearly provided that where with respect to an arbitration agreement, any application under this Part, has been made to a Court, that Courts at that place alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings, shall be made in the Courts at that place and in no other Court of any other place.

In view of the discussion made above, it is held that the place where the arbitration proceedings were held cannot be taken as the only ground to exclusively confer territorial jurisdiction on the Courts at that place even in absence of any agreement between the parties to that effect.

Question No.(ii)

Whether as the provisions of Section 36 of the Arbitration and Conciliation Act, 1996, for the purpose of enforcement/execution, provisions of the Code of Civil Procedure would apply or not?

As per Section 36 of the Arbitration and Conciliation Act, 1996, which is extracted hereunder, enforcement of the arbitral award shall be in accordance with the provisions of the Code of Civil Procedure, 1908. Section 36 is extracted as under:-

36.Enforcement.—

(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub -section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908) , in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

In view of the aforesaid provision, the provisions of the Code of Civil Procedure would govern the enforcement/execution petition.

As per Section 20 of the Code of Civil Procedure, the proceedings are to be initiated where the defendants reside or carrying on his business or cause of action arises within local limits.

In the present case, both the parties, namely, the petitioner and the respondent are carrying their business at Rohtak. The cause of

action had also arisen within the territorial jurisdiction of the Courts at Rohtak.

Still further, Gurgaon and Rohtak, fall within the territorial jurisdiction of one High Court and distance between the two cities is approximately 80 kms. The petitioner has not shown any prejudice or inability to defend the enforcement/execution of the decree at Rohtak.

In view of the discussion made hereinabove, it is held that enforcement/execution of the decree shall be governed by the provisions of the Code of Civil Procedure, 1908.

For the reasons recorded hereinabove, all the revision petitions are dismissed.

**2nd November, 2017
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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No