

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1640 of 2018**

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Mora Tollways Limited, 302, Shree Ambashanti Chambers, Opp. Hotel Leela,
Andheri Kurla Road, Andheri (East), Mumbai- 400059, through its authorised
signatory namely Anil Kumar Rao, son of Sri Chandradip Rao, resident of
village Murgaon, P.S. Islampur, District Nalanda Petitioner

Versus

1. Bihar State Road Development Corporation Limited Through Its Managing
Director, Central Mechanical Workshop Campus, Near Patna Airport, Patna
2. The Managing Director, Bihar State Road Development Corporation
Limited, Central Mechanical Workshop Campus, Near Patna Airport, Patna
... .. Respondents

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar, Adv.
Mr. Rajeev Shekhar, Adv.
For the Respondent/s : Mr. Lalit Kishore, AG

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

Date : 12-12-2018

Heard Mr. Sanjeev Kumar, learned counsel representing
the petitioner and Mr. Lalit Kishore, learned Senior Advocate
representing the respondents.

This application has been filed for setting aside the order
dated 17.5.2018 passed by the learned District Judge, Patna in
Misc. (Arbitration) Case No. 68 of 2018 by which the learned
District Judge has dismissed the application preferred by the
present petitioner under section 29A(4) of the Arbitration and
Conciliation Act, 1996 (as amended up-to-date) (hereinafter
referred to as ‘the Act of 1996’).

The brief facts which led to filing of the present
application are not in dispute. Pursuant to termination of a work



contract of operation and maintenance of National Highway No.30 in the State of Bihar which was awarded to the present petitioner, a dispute arose between the petitioner and the respondents. The said dispute has been referred to a three-Member Arbitral Tribunal which is presided over by Hon'ble Mr. Justice G.B.Patnaik, former Chief Justice of India. After initiation of the arbitration proceeding, the parties participated therein but the proceeding could not be concluded within a period of 12 months as envisaged under section 29A of 'the Act of 1996'.

Under the provisions contained in Section 29A since the parties have been given one opportunity to extend the period of mandate to the Arbitrators by another six months, the petitioner as well as the respondents exercised their power thereunder and extended the period of mandate by another six months with mutual consent. Since within the extended period also the proceeding could not be concluded, this time the parties had no option but to move the court of the learned District Judge, Patna for extension of time. Though the facts revealed from the records also disclose that earlier an application for extension of time was filed in the Hon'ble Delhi High Court but in view of the opinion expressed by the Hon'ble Delhi High Court saying that only because sittings of the Arbitral Tribunal are being held at Delhi, as a matter of



convenience to the parties, it cannot be said that the seat of the Arbitration is at Delhi and in such circumstance, it will be Patna Court where the parties will have to seek extension of time, that an application for extension was filed in the court of learned District Judge, Patna.

By the impugned order dated 17.5.2018 the learned District Judge, Patna dismissed the application by holding as under:

“ I came to the conclusion that in the State of Bihar the District Judges have no original pecuniary and territorial jurisdiction, as a Court, to decide, any civil nature case/civil suit. As such, in the State of Bihar the original territorial and pecuniary jurisdiction, within its District, lies up to valuation of the property Rs. 1,50,000/- before the Court of the Munsif (Civil Judge Junior Division) and thereafter the original pecuniary and territorial jurisdiction, within the District, lies with the Sub-Judge (Civil Judge Senior Division) for the valuation of the property of unlimited amount. Accordingly, the district Judges of the State of Bihar has no original jurisdiction to decide any civil suit as a Court. Hence, in my opinion, as per provision as provided U/s 2(1) (A)(e) of the Arbitration and Conciliation (Amended) Act, 2015, as well as the territorial and pecuniary jurisdiction of the Civil Courts of the State of Bihar, this miscellaneous arbitration petition is not



maintainable before this Court. Accordingly, it is liable to be rejected at the state of admission itself.”

In fact after rejection of the application by the learned District Judge, Patna, this time the respondents moved an application before the learned Sub Judge I, Patna giving rise to Misc. (Arbitration) Case No. 68 of 2018 seeking extension of time but the learned Sub Judge I, Patna vide his order dated 10th August, 2018 held that in view of the judgment of the Hon’ble High Court in the case of **Shivam Housing Pvt. Ltd. & Anr. v. Thakur Mithilesh Kumar Singh & Anr.**, reported in 2015(3) PLJR 876, the court of the learned Sub Judge had/ has no jurisdiction to consider the matter and the miscellaneous arbitration case was held not maintainable before the said court. It is, thus, crystal clear that on one hand the learned District Judge rejected the application of the petitioner saying that he has no jurisdiction and the jurisdiction vests with the learned Sub Judge, the learned Sub Judge held otherwise holding that in view of the judgment of the Hon’ble High Court no jurisdiction is vested with the court of learned Sub Judge and hence, the petition is not maintainable.

We have heard Mr. Sanjeev Kumar, learned counsel representing the petitioner, who has drawn our attention towards the provisions as contained in Section 29A(4) of ‘the Act of 1996’.



Mr. Kumar submits that the word 'the court' has been defined under section 2(1)(e) of 'the Act of 1996' and the definition of the word 'the court' came to be considered by the Hon'ble Division Bench of this Court in the case of **Shivam Housing Pvt. Ltd. & Anr. vs. Thakur Mithilesh Kumar Singh & Anr.**, reported in 2015(3) PLJR 876. Learned counsel submits that the Hon'ble Division Bench of this Court has in ultimate analysis in paragraph 32 of the said judgment considered the definition of the word the "Court" and recorded its opinion whereunder it has been held by the Hon'ble Division Bench that the jurisdiction to consider the validity of the arbitral award in terms of Section 34 of 'the Act of 1996' is the Court of District Judge, which has also the original civil jurisdiction and is not of a grade inferior to any other civil court within the same jurisdiction. Further it has been held that the Court of Sub-ordinate Judge being a grade inferior to the Court of the District Judge may not be competent court within the meaning of Section 34 read with subsection (1)(e) of Section 2 of 'the Act of 1996' to consider the validity of the arbitral award.

Mr. Kumar has further relied upon another judgment of the Hon'ble Supreme Court in the case of **State of Jharkhand & ors. vs. Hindustan Construction Company Ltd.**, reported in



(2018)2 SCC 602, wherein the definition of the word the “Court” under 1996 Act came to be considered and was compared with the definition as contained in the 1940 Act.

Mr. Lalit Kishore, learned Senior Advocate representing the respondent Corporation, agrees with the submission advanced on behalf of the petitioner as according to the learned Senior Advocate now in view of the judgment of the Division Bench of this Court and the discussions present in the judgment of the Hon’ble Supreme Court in the case of **Hindustan Construction Company Ltd.** (supra) it is well settled that the court of learned District Judge would be the competent court to consider the application of the present nature and to that extent there is no quarrel with the propositions laid down by the Hon’ble Apex Court as well with regard to the meaning of the word ‘the court’ as occurring under section 2(1)(e) of ‘the Act of 1996’.

Having heard learned counsel for the petitioner and the learned Senior counsel for the respondents and after going through the aforesaid judgments of the Hon’ble Supreme Court and that of this Hon’ble Court, we are of the considered opinion that the learned District Judge, Patna has committed jurisdictional error while rejecting the Misc. (Arbitration) Case No. 68 of 2018. The court of the District Judge being competent court in view of the



provisions of 'the Act of 1996' as well as by virtue of the judicial pronouncement on the subject present in the case of **Shivam Housing Pvt. Ltd.** (supra) there was no reason with the learned District Judge, Patna to reject the application. To that extent we find that the view expressed by the learned Sub Judge in his order dated 10th August, 2018, as contained in Annexure 6 to the present application, is the correct view. The order dated 17.5.2018 passed in Misc. (Arbitration) Case No. 68 of 2018 is, therefore, bad in law and is liable to be struck down. It is accordingly set aside by this Court.

At this stage, having set aside the order of the learned District Judge while we could have remanded the matter back to the court for afresh consideration, learned counsel for the parties have submitted that a remand at this stage would only result in wastage of time and it is likely to cause further delay in completion of arbitration case, therefore this Court may allow the application seeking extension of time.

We have been told that the parties have already advanced their arguments before the learned Arbitral Tribunal and at this stage they are exchanging their written notes of arguments. Therefore, the extension by six months from the date of passing of the order by this Court would be suffice and shall meet the ends of



justice. We are persuaded to accept the request of the learned counsel for both the parties, instead of remanding the matter once again to the court of the learned District Judge, we think it just and proper to allow this petition. Since we are exercising our power under Article 227 of the Constitution of India being power of supervisory jurisdiction, and have found that the learned District Judge while rejecting the miscellaneous arbitration case has committed a serious error of jurisdiction, we are persuaded to consider the request of the learned counsel for the parties.

In result, we allow Misc. (Arbitration) Case No. 68 of 2018 and extend the period of mandate by another six months from today. The learned Arbitral Tribunal shall proceed with the arbitration proceeding to bring it to an end. We request the Arbitral Tribunal to conclude the proceedings within the extended period.

The application is allowed.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.12.2018
Transmission Date	NA

