

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

ARBITRATION APPLICATION No.36 OF 2014

ORDER:

This is an Application for a measure under Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996; for short, 'the A&C Act'.

2. The applicant and the respondent-Rail Vikas Nigam Limited entered into a contract as evidenced by the material papers on record. The plea of the applicant is that the respondent has adhered to the insistence to have an Arbitrator of his choice from the panel provided by it and the application has been filed in view of refusal to proceed further in the matter.

3. It is the definite plea of the applicant that the appointment of Arbitrator was not made by the respondent within the requisite time frame and that the respondent is not justified in pleading that it issued a letter, which had lost in transit.

4. One of the fundamental contentions of the respondent is that this application is not maintainable before this Court having regard to the fact that clause 20.3(vii) provides that the arbitration proceedings shall be held at New Delhi, India, and therefore, the seat of arbitration is decisive for determining the jurisdiction of the Court where the application under sub-sections (5) and (6) of Section 11 of the A&C Act could be made.

5. Perusing the agreement between the parties, it can be seen that the contract document is endorsed on stamp paper purchased in the name of Rail Vikas Nigam Limited in Chennai, Tamil Nadu. It is signed on behalf of the respondent and attested in Chennai. That

document is signed with attestation, on behalf of the applicant, in Hyderabad. The work entrusted to the applicant by the respondent was 'proposed new BG line between Obluvaripalle and Venkatachalam', South Central Railway. The contract is thus shown to have been entered into through series of documents being offered and accepted, and the fundamental contract being signed as aforesaid; one party signing from Chennai and the other party signing from Hyderabad. The locus of the work cannot by itself be treated as determinative of the territorial jurisdiction to entertain the application under the A&C Act. Having regard to the provision that the parties have agreed that the arbitration proceedings shall be held at New Delhi, the learned counsel for the respondent is justified in making reference to the decision of this Court in **Paramita Constructions Private Limited vs. UE Development India (P) Limited**¹ to argue for the position that when the place of arbitration is chosen by the parties, that is an important factor in deciding the Court for the purpose of Sections 9 and 34 of the A&C Act. The said decision lays down the principle that the place of award is crucial in determining the jurisdiction of the Court and the High Court at the pre and post arbitral proceedings. This view is taken by making reference to Section 31(4) of the A&C Act. The learned Judge consequently held that in law, when once the parties chose the place of arbitration, the application for requisite measure under Section 11 of the A&C Act is to be made before the Chief Justice or the High Court relatable to territorial jurisdiction within which the agreed seat of arbitration falls. I am of the view that the issues raised by the respondent by way of objections to the application, are covered by the

¹ 2008 (3) ALT 440

decision in **Paramita Constructions Private Limited** (supra) and hence, eligible to be upheld.

6. For the aforesaid reasons, the Arbitration Application is eligible to be rejected without prejudice to due recourse before the appropriate Chief Justice/High Court, in accordance with Arbitration and Conciliation Act.

7. In the result, the Arbitration Application is rejected with such liberty as noted above.

31 .12.2018
pln

THOTTATHIL B. RADHAKRISHNAN, CJ

