

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 32 of 2018**

1. Sachin Choudhary, S/o Sadanand Choudary, Aged About 44 Years, R/o 45/11, Maitrikunj, Risali, Tehsil And District Durg, Chhattisgarh,
2. Gunjan Choudhary, W/o Sachin Chaudhary, Aged About 39 Years, R/o 45/11 Maitrikunj, Risali, Tehsil And District Durg, (C.G.)

---- Appellants**Versus**

- Cholamandalam Investment And Finance Company Ltd. Corporate Office Dare House 2 NSG Road paras, Chennai (Madras) Branch Office Shop No. 2 IInd Floor, Chauhan Estate, GE Road, Bhilai, Tehsil And District Durg, Chhattisgarh,

---- Respondent

For Appellants	:Shri Jitendra Gupta & Shri C.B. Kesharwani, Advocates
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Hon'ble Shri Justice Sanjay Agrawal**Judgment on Board****17.01.2019**

1. This appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act, 1996) against the order dated 10.07.2018 passed by the learned District Judge, Durg (C.G.) in Civil M.J.C.No. 20/2017 whereby the application preferred under Section 34 of the Act, 1996 has been dismissed.
2. Shri Jitendra Gupta, learned counsel for the appellants submits that the order impugned as passed by the learned District Judge holding the application as framed under Section 34 of the Act, 1996 is barred by jurisdiction, is apparently contrary to law. He submits further that although the sole Arbitrator has passed the arbitral award on 27.01.2016 at Chennai

but based upon the same, an application for its execution was initiated before the Executing Court at Durg. Therefore, under such circumstances, the Court below ought not to have rejected the said application as such. He, therefore, submits that the order impugned be set aside and the matter be remitted back to the concerned Court below for its decision on merits.

3. I have heard learned counsel for the appellants and perused the entire papers annexed with this appeal carefully.
4. Admittedly, the sole Arbitrator so appointed has passed the award dated 27.01.2016 at Chennai. The said award has been questioned by way of application under Section 34 of the Act, 1996 on 25.01.2017 before the learned District Judge at Durg. Since the award has been passed at Chennai, therefore, the Court below has no jurisdiction to decide the same in view of the provisions prescribed under Section 42 of the Act, 1996, which reads as under:

“42. Jurisdiction.-- Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of the agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

5. By virtue of the aforesaid provision, it is clear that the Court where the award has been passed alone has jurisdiction and to examine the validity of the same. The issue of a like nature in relation to the aforesaid provision has been dealt with by the Supreme Court in the matter of ***M/s. Bhandari Udyog Limited v. Industrial Facilitation Council and another*** reported in **AIR 2015 SC 1320** and observed at paragraphs 8, 9 & 10 of its judgment

as under:

“8. Admittedly, the arbitration proceeding was concluded within the jurisdiction of Raichur Court. The only forum available to respondent No. 2 was to make an application under Section 34 of the Act before the Civil Court of original jurisdiction at Raichur, since the Karnataka High Court has no original jurisdiction.

9. Recently, when a similar question for consideration arose before three Judges Bench of this Court in the case of State of West Bengal & Ors. v. Associated Contractors (2015) 1 SCC 32 : (*AIR 2015 SC 260*), this Court held :---

“22. One more question that may arise under Section 42 is whether Section 42 would apply in cases where an application made in a court is found to be without jurisdiction. Under Section 31(4) of the old Act, it has been held in *F.C.I. v. A.M. Ahmed & Co.* (2001) 10 SCC 532 at p. 532, para 6 and *Neycer India Ltd. v. GMB Ceramics Ltd.* (2002) 9 SCC 489 at pp. 490-91, para 3 that Section 31 (4) of the 1940 Act would not be applicable if it were found that an application was to be made before a court which had no jurisdiction. In *Jatinder Nath v. Chopra Land Developers (P) Ltd.* (2007) 11 SCC 453 : (*AIR 2007 SC 1401*) at p. 460, para 9 (at P.1405 of AIR) and *Rajasthan SEB v. Universal Petro Chemicals Ltd.* (2009) 3 SCC 107 : (*2009 AIR SCW 607*) at p. 116, paras 33 to 36 (at P. 615, paras 26 to 28 of AIR) and *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.* (2013) 9 SCC 32 at pp. 47-48, para 32, it was held that where the agreement between the parties restricted jurisdiction to only one particular court, that court alone would have jurisdiction as neither Section 31(4) nor Section 42 contains a non-obstante clause wiping out a contrary agreement between the parties. It has thus been held that applications preferred to courts outside the exclusive court agreed to by parties would also be without jurisdiction.”

10. Indisputably, the Arbitration proceeding has been conducted within the jurisdiction of Raichur Court, which has jurisdiction as per Section 20 of the Code of Civil Procedure and is subordinate to the High Court of Karnataka which entertained Section 11 Application. Hence, the Award cannot be challenged before a Court subordinate to the High Court of Bombay. Exercise of jurisdiction by such court shall be against the provision of Section 42 of the Act.”

6. By applying the aforesaid principles to the case in hand, it is evident that since the alleged award has been passed by the sole Arbitrator on

27.01.2016 at Chennai, therefore, I do not find any scope of interference in the order impugned rejecting the application filed under Section 34 of the Act, 1996 holding the same is barred by jurisdiction.

7. This appeal is accordingly dismissed in *limine*. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge