

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1118 OF 2019

Housing & Urban Development
Corporation Limited

..Petitioner

Versus

CICON Environment Technologies
Pvt. Ltd. (CINCON) & Ors.

..Respondents

Mr. V. N. Ajaykumar, Advocate for the Petitioner.

Mr. Yoesh Deshpande, Advocate for Respondent Nos.4 & 5.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATE : 4th NOVEMBER, 2019

P.C.

1] Heard learned counsel for the parties.

2] Challenge in the Writ Petition is to an order dated 2nd May 2017 passed by the Debt Recovery Appellate Tribunal dismissing Misc. Appeal No.269 of 2009 filed by the Appellant laying a challenge to an order dated 15th October 2009 passed by DRT-III, Mumbai. To appreciate the impugned order relevant fact to be noted is that the Petitioner filed an Original Application registered as No.447 of 2002 before DRT-III against ENBEE Infrastructure Ltd. as Respondent No.1 and its directors and additional directors as Respondent Nos.2 to 9. Respondent Nos.11 to 15 in the Original

Application were impleaded as corporate guarantors. Only qua Defendant No.2 and Defendant No.4 in the Original Application it was pleaded that they had executed personal guarantees. Meaning thereby, other directors and additional directors of ENBEE Infrastructure Ltd. were uselessly impleaded for the reason it is not pleaded in the Original Application that they stood personal guarantees.

3] Be that as it may, the guarantors took a plea before the Tribunal that the deeds of guarantee had an exclusive jurisdiction clause vesting jurisdiction at Delhi and this led to the Original Application being returned with a finding by the DRT-III that it had no territorial jurisdiction. Said order was affirmed in the Appeal. The Petitioner filed a Writ Petition in this Court which was registered as Writ Petition No.654 of 2006. Vide order dated 2nd August 2006 the Writ Petition was disposed of observing that as regards Defendant No.1 before the Tribunal issue of territorial jurisdiction would be decided afresh. In paragraph 9 the High Court wrote by way of clarification that as regards the guarantors the Court was not inclined to interfere with the order of the Tribunal. The High Court also categorically observed that the Writ Petitioners would be entitled to proceed against the guarantors before the DRT at Delhi which Writ Petitioner has done.

4] At the remanded stage the Appellant wanted to proceed with against the guarantors as well and this resulted in the Tribunal

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passing an order on 15th October 2009 restricting the proceeding before it on remand only against the 1st Respondent. The Appellate order has affirmed as passed by the Debt Recovery Appellate Tribunal.

5] The order dated 2nd August 2006 passed in Writ Petition No.654 of 2006 is clear. In paragraph 8, it is clearly recorded that the order impugned in said Writ Petition concerning territorial jurisdiction has been set aside only as regards Respondent No.1. In paragraph 8 the Court has categorically held that as regards the guarantors, remedy of the Petitioner is to file an application before the DRT Delhi.

6] Thus, the Writ Petition is dismissed.

**Balaji G.
Panchal**

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Balaji G. Panchal
Date: 2019.11.05
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE