

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

FAO No.6281 of 2019 (O&M)
Date of Decision: 5.12.2019

Union of India

.....Appellant

Versus

M/s S.R. Engineering Construction and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Arun Gosain, Advocate, for the appellant.

Mr. Ghanshyam Dass Dhiman in person for respondent No.1.

NIRMALJIT KAUR, J.

The present appeal is filed against the order dated 28.8.2019 passed by the Additional District Judge, Chandigarh, whereby the plaint of the appellant was returned while accepting the application for rejection under Order 7 Rule 11 CPC moved by the respondents against the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') on the ground that the Court of Additional District Judge, Chandigarh has no jurisdiction to adjudicate the objections filed by the appellant-Union of India as the arbitration agreement was executed between respondent No.1 and CWE AF on 30.7.1992 and CWE shifted his office to AF Tughalakabad, New Delhi much before the appointment of Arbitrator and all the arbitration proceedings were attended by the CWE AF Tughalakabad, New Delhi and as per Section 31(5) of the Act received arbitral award at Delhi as also on the other grounds.

While praying for setting aside the said order, learned counsel

for the appellant submitted that the very application under Order 7 Rule 11

CPC was not maintainable as it did not satisfy the conditions laid down in the Order 7 Rule 11 CPC. Secondly, the Arbitrator in the present case was appointed by the Contractor from the Hon'ble High Court at Chandigarh. As per Section 42 of the Act, the jurisdiction in the present matter alone has to be exercised by the Chandigarh Courts. Thirdly, the question of jurisdiction is required to be raised at the earliest possible opportunity, which they did before this very Punjab and Haryana High Court at Chandigarh and lastly, the Court at Chandigarh could not have returned the plaint on the ground that the office of the Commander Works Engineer, AF, Chandigarh has been transferred to CWE AF Tughalakabad, New Delhi as the office of Commander Works Engineer, AF is even, as on date, in Chandigarh and only work has been transferred to CWE AF Tughalakabad, New Delhi. Reliance was placed on the condition No.71 of the IAFW 22-49 general conditions of contract to contend that the place of jurisdiction is the place from where the tender is accepted.

Respondent No.1 is present in person and argued the matter in person. It is contended by him that:-

(a) The Arbitrator was appointed by this Court in pursuance to the petition under Section 11(6) of the Act, wherein the CWE AF Tughalakabad, New Delhi was the party and not the Garrison Engineer GE (AF), MC, Chandigarh. Thus, the territorial jurisdiction was at Delhi. The proper parties reside in Delhi. Notice was also issued to CWE AF Tughalakabad, New Delhi. Further, all the arbitration proceedings were conducted by the CWE AF Tughalakabad, New Delhi on behalf of the Union of India and the arbitral award was also received by the CWE AF Tughalakabad, New Delhi as per Section 31 of the Act.

(b) Further, the arbitration agreement was signed by the CWE AF Tughalakabad, New Delhi on behalf of the Union of India and not the Garrison Engineer GE (AF) MC, Chandigarh. Therefore, the objections filed by the Garrison Engineer GE (AF) MC, Chandigarh are not maintainable.

(c) The learned Chief Justice of this Court vide order dated 22.11.2013 was pleased to appoint the Arbitrator in pursuance to the application under Section 11 of the Act. Reply was filed in the proceedings for appointment of Arbitrator. In the said reply, the appellant-Union of India denied that the High Court at Chandigarh had jurisdiction and the stand in the reply is reproduced as Under:-

“Thus, it is clear that the appointment of the Arbitrator is a consonance with the terms and conditions of the tender. Further the Arbitrator is appointed by the Head Quarter at New Delhi Cantt and appointing authority is Chief Engineer AF WAC. It is denied that the appointment of Arbitrator falls within the jurisdiction of the Hon'ble Courts.”

(d) The application for execution was moved under Section 36 of the Act against the award dated 16.5.2015 before the District Judge, Chandigarh. The District Judge, Chandigarh vide order dated 23.10.2015 returned the application to the respondent-decree holder to be presented the same in the competent Court of jurisdiction by holding that the said application has wrongly been filed at Chandigarh when it should have been preferred before the competent Court of jurisdiction, where, judgment debtor No.1 is situated, which in the present case was at Delhi. Accordingly, respondent No.1 proceeded to file the same before the Courts at Delhi, therefore, it was not his fault.

(e) Meanwhile, the Union of India filed review application against the order dated 23.10.2015. The said review application was also dismissed vide order dated 15.9.2017. Accordingly, respondent-decree holder No.1 moved the High Court at Delhi for execution of the award. Learned Single Bench of the Delhi High Court disposed of the application by directing the Union of India to deposit a sum of ₹ 48,40,431/- vide order and judgment dated 8.8.2016. The order dated 23.10.2015 passed by the learned Additional District Judge passed in the review application has attained finality and was never challenged.

(f) The appellant now cannot blow hot and cold in the same breath. The appellants are taking objections of jurisdiction as and when it suits them. The appellants at first raised the objections that the Courts of Chandigarh have no jurisdiction, it is the Court of Delhi, which is the competent Court of jurisdiction and now they are taking objections that the plaint could not have been returned by the ADJ, Chandigarh on the ground that the ADJ, Chandigarh has no jurisdiction as it is the Courts at Chandigarh, which are the appropriate Court of jurisdiction. Thus, it is evident that they are taking objection qua Courts of jurisdiction as per their convenience and as suitable to them.

Heard.

The matter came up for hearing on 21.11.2019. After hearing the parties, this Court dismissed the appeal as this Court understood the objections having been dismissed both on the questions of jurisdiction and merits but while dictating the order, it came to the notice of this Court that the application under Order 7 Rule 11 CPC was accepted only on the ground of jurisdiction and the plaint had been returned to be filed before the

appropriate Court of jurisdiction. The confusion probably arose as respondent No.1, who is arguing in person and raised all such arguments on the question of maintainability of the objections filed at the behest of Garrison Engineer GE (AF) MC, Chandigarh. Accordingly, it was listed for rehearing.

The pain and grievance of respondent No.1 is understandable but this Court is bound by law. It is a settled proposition of law laid down by Hon'ble the Apex Court in the case of M/s Bhandari Udyog Limited vs. Industrial Facilitation Council and another, 2015(2) RCR (Civil) 918, wherein it is held that it is the Court subordinate to High Court, which appoints the Arbitrator, who alone has the jurisdiction to decide the objections or take up the objections under Section 34 of the Act. Para Nos. 10 and 11 read as under:-

“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.

11. We, after giving our anxious consideration to the matter, are of the view that the District Court at Latur and High Court of Bombay have committed error of law in entertaining the application under [Section 34](#) of the Act and dismissing the revision petition.”

In the present case, the Arbitrator was appointed by Hon'ble Chief Justice of the Punjab and Haryana High Court. Thus, it is the Courts at Chandigarh that will have the jurisdiction.

The argument of respondent No.1 that the appellant itself had taken the objections at the time of appointment of the Arbitrator that it is the Courts at Delhi that have jurisdiction will not help. The appellant did not challenge the said order passed by Hon'ble the Chief Justice of the Punjab and Haryana High Court and accepted the jurisdiction at that point of time.

The next argument that the orders dated 23.10.2015 and 15.9.2017 passed by the Courts at Chandigarh, vide which, the execution application was returned, to be filed before the competent Court of jurisdiction at Delhi has attained finality too does not help as it is settled proposition of law laid down by Hon'ble the Apex Court rendered in the case of Sundaram Finance Limited vs. Abdul Samad and another, 2018(1) RCR (Civil) 994 that the execution petition can be filed anywhere. The relevant para No.22 of the said judgment is reproduced as under:-

“22. We are, thus, unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings.”

In view of the same, the appeal is allowed. The order dated 28.8.2019 is set aside. The Court of Additional District Judge, Chandigarh shall proceed to decide the objections on merits and the parties shall appear before the Court of Additional District Judge, Chandigarh on 20.12.2019. Taking into account the observations made by Hon'ble the Chief Justice of this Court in his order dated 22.11.2013. As per the said observations, “the petitioner finds himself in an unfortunate predicament where the disputes raised by him for resolution through the mode of arbitration do not stand

resolved since the last 13 years during which period of time eight persons have been appointed as Arbitrators by the respondents. If one may say, the very objective of an expeditious resolution of dispute through the mode of arbitration is sought to be defeated by the respondents by the manner in which these arbitration proceedings are stated to be carried on. The grave injustice being made to petitioner is also on account of the fact that the pendency of arbitration is being taken as an excuse by the respondents to deny any further contracts to the petitioner.” Accordingly, this Court directs that the Court of Additional District Judge, Chandigarh shall decide the said objections as expeditiously as possible preferably within two months of the appearance of the parties before it even if day to day hearing has to take place.

(NIRMALJIT KAUR)
JUDGE

5.12.2019
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No