

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4227 of 2018 (O&M)

Date of Decision: 16.03.2020

Jasbir Singh and Another

... Petitioner(s)

Versus

Dalbir Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Mayank Jain, Advocate
for the petitioners.

Mr. Atul Goyal, Advocate
for respondent No.1.

Anil Kshetarpal, J.

This revision petition has been filed under Article 227 of the Constitution of India assailing correctness of order passed by learned Additional District Judge, Ludhiana dated 30.05.2018 returning the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”) for presentation before appropriate Court at Chandigarh. The learned Additional District Judge has formed an opinion that the petition under Section 34 of the 1996 Act is maintainable only before the Court having territorial jurisdiction over the area of Chandigarh. The learned Additional District Judge has formed his opinion while recording two reasons – (1) the arbitration took place at Chandigarh and (2) seat of the arbitration has been determined by the High Court while deciding application under Section 11 (6) of the 1996 Act.

and with their able assistance, gone through the paper book.

It is not disputed before this court that the present revision petition under Article 226 is maintainable as well as the agreement (partnership deed) dated 20.11.1977 containing arbitration clause does not refer to any seat of arbitration or confer exclusive jurisdiction to any Court.

Before this Court proceeds to examine the issue in detail, it would be appropriate to refer to the relevant statutory provisions of the 1996 Act. Sections 2(e), 20 and 42 of the 1996 Act are extracted hereunder:

“2. Definitions.—(1) In this Part, unless the context otherwise requires,—

(a) to (d) XXXX XXXX XXXX XXXX

XXXX

(e) “Court” means—

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having

jurisdiction to hear appeals from decrees of courts subordinate to that High Court”.

2(f) to (19) XXXX XXXX XXXX XXXX

20. Place of arbitration.—(1) *The parties are free to agree on the place of arbitration.*

(2) *Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.*

(3) *Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.*

(21) to (41) XXXX XXXX XXXX XXXX

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 that agreement and the arbitral proceedings shall be made in that Court and in no other Court”.*

Learned counsel for the petitioner has submitted that both the reasons given by the learned Additional District Judge are erroneous. He also contended that the High Court never determined the seat of arbitration. He further submitted that the arbitration at Chandigarh took place as it was a convenient venue. He further submitted that the Arbitrator also did not determine arbitration seat at Chandigarh.

Per contra, learned counsel for the respondent has submitted that once the arbitration took place at Chandigarh, as per Section 42 of the 1996 Act, the Court at Chandigarh has the exclusive jurisdiction to entertain and decide an application under Section 34 of the 1996 Act. He further submitted that during the arbitration proceedings, an application under Section 27 of the 1996 Act has been filed in the Court at Chandigarh and therefore, also since Section 42 starts with a non-obstante clause, therefore, the Courts at Chandigarh have exclusive jurisdiction.

This Court has critically analysed the arguments of learned counsel for the parties and is of the considered view that the present petition deserves to be dismissed.

As regards first reason, learned Additional District Judge has relied upon a judgment passed by the Hon'ble Supreme Court in ***Bhandari Udhyog Limited V. Industrial Facilitation Council (2015) 14 SCC 515***. This Court has carefully read the aforesaid judgment passed by the Hon'ble Supreme Court. In the aforesaid case, the appellant before the Supreme Court was doing his business from Raichur (State of Karnataka), whereas the respondent was doing his business from Latur (State of Maharashtra).

The dispute arose between the parties. The appellant before the Supreme

Court invoked the jurisdiction of Industrial Facilitation Council in the State of Karnataka. Later on, the appellant filed an application under Section 11 of the 1996 Act in the Karnataka High Court resulting in appointment of the Arbitrator, which passed an award. The arbitration proceedings also took place within the jurisdiction of State of Karnataka. In the invoice issued by the appellant, it was clearly stated that it is subject to exclusive jurisdiction at Raichur. The respondent filed proceedings under Section 34 of the 1996 Act before the Court at Latur i.e. State of Maharashtra. In the aforesaid facts, the Supreme Court, while interpreting Section 42 of the 1996 Act, held that the Courts at Latur did not have territorial jurisdiction to entertain the proceedings under Section 34. The facts of the aforesaid case are not parallel to the facts of the present case, hence, the aforesaid judgment has been wrongly relied upon by the learned Additional District Judge.

The learned Additional District Judge has further relied upon a brief order passed by this Court in ***F.AO. No. 1328 of 2014 Kamlesh Yadav and Another v. Mahindra and Mahindra Financial Services Ltd., Mumbai and another*** decided on **30.05.2016**. In the aforesaid brief order, this Court has relied upon a judgment in ***State of West Bengal v. Associated Contractors (2015) 1 SCC 32***, passed by the three Judge Bench of the Hon'ble Supreme Court. In the aforesaid case, the Supreme Court was examining the question that which Court will have the jurisdiction to entertain and decide an application under Section 34 of the 1996 Act. After noticing the facts, the Supreme Court held that mere filing of an application under Section 8 or Section 11 of the 1996 Act would not result in conferring exclusive jurisdiction on the Court of that place because the application

under Section 8 is dependant upon the place where the suit has been filed and an application under Section 11 is not filed before the Court. The Supreme Court, in para Nos. 24 & 25, held as under:-

“24. If an application were to be preferred to a Court which is not a Principal Civil Court of original jurisdiction in a district, or a High Court exercising original jurisdiction to decide questions forming the subject matter of an arbitration if the same had been the subject matter of a suit, then obviously such application would be outside the four corners of Section 42. If, for example, an application were to be filed in a court inferior to a Principal Civil Court, or to a High Court which has no original jurisdiction, or if an application were to be made to a court which has no subject matter jurisdiction, such application would be outside Section 42 and would not debar subsequent applications from being filed in a court other than such court.

25. Our conclusions therefore on Section 2(1)(e) and Section 42 of the Arbitration Act, 1996 are as follows:

(a) Section 2(1)(e) contains an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as “court” for the purpose of Part-I of the Arbitration Act, 1996.

(b) The expression “with respect to an arbitration agreement” makes it clear that Section 42 will apply to all applications made whether before or during arbitral

proceedings or after an Award is pronounced under Part-I of the 1996 Act.

(c) However, Section 42 only applies to applications made under Part-I if they are made to a court as defined. Since applications made under Section 8 are made to judicial authorities and since applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.

(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.

(e) In no circumstances can the Supreme Court be “court” for the purposes of Section 2(1)(e), and whether the Supreme Court does or does not retain seisin after appointing an Arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil court having original jurisdiction in the district as the case may be.

(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-I.

(g) If a first application is made to a court which is neither a Principal Court of original jurisdiction in a district or a High Court exercising original jurisdiction in a State, such

application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject matter jurisdiction would be outside Section 42.

The reference is answered accordingly”.

As noticed above, the Hon’ble Supreme Court, in the considered view of this court, in the aforesaid judgment did not lay down that venue of the arbitration would exclusively determine the jurisdiction of the Court.

The second reason assigned by the learned Additional District Judge that this Court, while deciding application under Section 11(6) of the 1996 Act, had determined Chandigarh to be the seat of arbitration, is again erroneous. The operative part of the order passed on 09.02.2010 by this Court while appointing Sh. R.N.Singal, District & Sessions Judge (Retired) as an Arbitrator, in the opinion of this Court did not determine the seat of arbitration. Para No. 4 thereof reads as under:-

“4. Accordingly, this petition is allowed and Shri R.N.Singhal, District & Sessions Judge (Retd.) is appointed as a sole Arbitrator to adjudicate upon the disputes between the parties. In the meanwhile, the parties will exchange the statements of claim and response thereof. The statement of claim be supplied to counsel for the respondents within four weeks and response to the statement of claim shall be supplied to the counsel for the petitioner within four weeks thereafter. The parties shall appear before the Arbitrator on 12.5.2010 at 4.00 P.M. or on an agreed date convenient to the parties but not

later than a fortnight from the date of exchange of pleadings as directed aforesaid. The Arbitrator shall make an endeavour to dispose of the reference not later than six months from the date of first appearance of the parties. The fee of the Arbitrator is fixed Rs. 50,000/- (Rs. Fifty thousand only) which shall be borne in equal proportion by the parties”.

At this stage, it would be relevant to note that there is a subsequent judgment passed by the Hon’ble Supreme Court in **BGS SGS Soma JV v. NHPC Limited 2019 (6) Arbitration Law Report 393**. Apart therefrom, there is a detailed judgment passed by a Co-ordinate Bench in **M/s Adie Broswn Breweries Pvt. Ltd. v. M/s KLA Construction Technologies Private Limited and another 2019(2) PLR 761**. In case **M/s Adie Broswn Breweries Pvt. Ltd. (supra)**, this Court has held that merely because the venue of arbitration was at Delhi would not confer exclusive jurisdiction to entertain the petition under Section 34 of the 1996 Act on the Courts at Delhi.

Learned counsel for the respondent has pointed out that an application under Section 27 of the 1996 Act was filed before the Chandigarh Court. This fact is not disputed by learned counsel for the petitioner.

An application under Section 27 of the 1996 Act is maintainable before the Court for assistance in taking evidence. The Arbitral Tribunal or a party with the approval of the Arbitral Tribunal can apply to the Court for assistance in taking evidence. The word “Court” has been defined in Section 2(e) of the 1996 Act. Section 42 of the 1996 Act

starts with non-obstante clause. It provides that where, with respect to an arbitration agreement any application under this part has been made in a Court, then, that Court alone shall have the jurisdiction over the arbitral proceedings and all the subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court. In a simple language, it provides that if any application is moved under Part-I of the 1996 Act before a Court, then that Court alone shall have a territorial jurisdiction not only with respect to the arbitral proceedings but all the subsequent applications arising out of that agreement and the arbitral proceedings. Thus, the Courts at Chandigarh would have exclusive jurisdiction in view of the fact which is not disputed that the petitioner filed an application under Section 27 of the 1996 Act before the Court at Chandigarh.

In view of the above discussion, this Court finds no ground to interfere in the order passed by the learned Court below, although for entirely different reason. Hence, the present revision petition is dismissed.

The miscellaneous application(s) pending, if any, shall also stand disposed of in terms of the main order.

(Anil Kshetarpal)
Judge

March 16, 2020
“DK”

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No