

AP 138 of 2020

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

ASRAFUL SK.
Versus
HINDUSTHAN CONSTRUCTION CO. LTD.

BEFORE:

The Hon'ble JUSTICE ASHIS KUMAR CHAKRABORTY
Date : 5th January, 2021.

Appearance:
Mr. Amitava Ghosh, Adv.
...for the petitioner.

Mr. Suvasish Sengupta, Adv.
Mr. Manoj Kumar Tiwari, Adv.
Mr. Sarosij Dasgupta, Adv.
...for the respondent.

The Court : In this application under Section 11(6) of the Arbitration & Conciliation Act, 1996 the petitioner has prayed for appointment of a sole Arbitrator to adjudicate the disputes arising between the parties herein relating to the work order dated November 5, 2011.

A strong objection has been raised by the respondent to the maintainability of this application before this Court. Citing the decisions of the Supreme Court in the cases of Indus Mobile Distribution Private Limited -versus- Datawind Innovations Private Limited & Ors. reported in (2017) 7 SCC 678 and Brahmani River Pellets Ltd. -versus- Kamachi Industries Ltd. reported in (2020) 5 SCC 462, it is contended that in the present case when the arbitration agreement contained in Clause 32 of the work order dated November 5, 2011 clearly stipulates that the venue of the arbitral proceeding shall be in Mumbai and the jurisdiction of

only Mumbai Court shall apply and as such, this Court lacks the jurisdiction to entertain this application.

The factum of the arbitration agreement contained in Clause 32 of the work order dated November 5, 2011 is not in dispute. Admittedly, the said arbitration clause stipulates that the venue of the arbitration shall be at Mumbai and the jurisdiction of only Mumbai Court shall apply.

In view of the decisions of the Supreme Court in the cases of Indus Mobile Distribution Private Limited (supra) and Brahmani River Pellets Ltd. (supra), in the present case when the parties have themselves chosen the venue of the arbitration to be in Mumbai, this Court lacks the jurisdiction to entertain this application.

In the facts of the present case, the decisions of the Supreme Court cited by the learned Counsel appearing for the respondent in the case of M/s. Patel Roadways Ltd., Bombay - versus- M/s. Tropipcal Agro Systems Pvt. Ltd. and Anr. reported in AIR 1992 SC 1514 holding that in a civil proceeding when no part of cause of action has arisen within the jurisdiction of the Court, parties by consent cannot confer jurisdiction to file any proceeding on such Court has no application.

For the reasons as aforesaid, the application, AP No.138 of 2020 stands rejected on the ground of lack of jurisdiction.

There shall, however, be no order as to costs.

(ASHIS KUMAR CHAKRABORTY, J.)