

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

ARBITRATION APPEAL NO.5 OF 2021

M/s. Sat Chikitsa Prasarak Mandal, Yavatmal,
bearing permanent registration number
MH2014E12257 of Ministry of Rural Develop,
Government of India having its head office at Dr. Bhausaheb
Nandurkar College of Engineering & Technology,
Sri Satya Sai Krida Nagar, Waghapur Road,
Yavatmal – 445001, Maharashtra through its
Secretary and authorized signatory
Mr. Prakash Bhaskar Nandurkar,
Aged about 65 years. **APPELLANT**

...V E R S U S...

1. Bihar Rural Livelihoods Promotion Society
(State Rural Livelihood Mission)
Vidyut Bhawan, Bailey Road,
Patna-800021 through;
 - i. Mr. Jitendra Kumar,
Aged about 45 years,
State Project Manager,
Bihar Rural Livelihoods
Promotion Society, Vidyut Bhawan,
Bailey Road, Patna-800021.
 - ii. Mr. Balamurugan,
State Mission Director,
Bihar Rural Livelihoods Promotion
Society, Vidyut Bhawan, Bailey Road,
Patna-800021, Email-ceo@brlp.in.
2. Khamgaon Urban Co-operative Bank Ltd.,
Dhamangaon Railway Branch,
Amravati-444709, through its
Branch Manager,
Email- dhamangaon@khamgaonbank.in

..... **RESPONDENTS**

Mr. Sandip Tiwari, Advocate h/f Mr. R. R. Vyas, Advocate for Appellant.

Mr. R. D. Dhande, Advocate for Respondent 1.

Mr. G. L. Agrawal, Advocate for Respondent 2.

CORAM: **ROHIT B. DEO, J.**

DATE: **10th DECEMBER, 2021.**

ORAL JUDGMENT:

This appeal is preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (Act) challenging the order dated 20.04.2021 (Exhibit-22) rendered by the learned Principal District Judge, Yavatmal in Civil Miscellaneous Application 41/2020 whereby the application preferred by the appellant under Section 9 of the Act is rejected on the ground of absence of territorial jurisdiction.

2. Facts are few and broadly uncontroverted.

3. The appellant and the respondent 1 entered into a Memorandum of Understanding (MOU) 30.12.2017 whereunder the appellant was assigned the Skill Development Training and Placement of 550 candidates from the State of Bihar. The appellant was to be paid Rs.3,52,67,536/- (Rupees Three

Crores Fifty-Two Lakhs Sixty-Seven Thousand Five Hundred and Thirty-Six only) and the work was to be completed within thirty-six months.

4. One of the conditions was that the appellant shall submit performance guarantee. Accordingly the appellant furnished two performance bank guarantee in the sum of Rs.44,08,442/- (Rupees Forty-Four Lakhs Eight Thousand Four Hundred and Forty-Two only) and Rs.10,00,000/- (Rupees Ten Lakhs only) respectively. The bank guarantees were extended by the Khamgaon Urban Co-operative Bank Ltd., Dhamangaon Railway, District Amravati.

5. Certain disputes arose between the parties. Considering the limited issue involved, it would not be necessary to note the exact nature of the dispute. Suffice it to state, that the respondent 1 invoked the performance bank guarantee.

6. The appellant preferred an application under Section 9 of the Act seeking an order restraining the respondent from invoking the bank guarantee. The said application is rejected by the impugned order.

7. It is common ground that after this Court vacated the interim order in favour of the appellant, the bank guarantee/s is duly encashed.

8. The learned counsel for the appellant Mr. Sandip Tiwari would submit that the learned Judge seriously erred in not appreciating that the jurisdiction of the court under Section 9 of the Act is dependent upon the subject matter of the dispute and not the seat of arbitration. The extension of the submission is that the MOU containing the arbitration clause makes no reference to an agreed seat of arbitration and therefore, the jurisdiction shall be determined only on the basis of the subject matter. It is further submitted that the High Court at Patna is not the principal civil court of original jurisdiction, and therefore, the contractual clause which refers to the courts within the jurisdiction of the High Court at Patna, is of no relevance. It is submitted that the registered office of the appellant is at Yavatmal and that the bank guarantee is issued by the respondent 2 bank, which has one of its offices at Yavatmal.

9. In rebuttal, the learned counsel for the respondent 1 Mr. Dhande would submit that nothing survives in the appeal in

the sense that the only relief claimed in the application under Section 9 was an order seeking to restrain invocation of the bank guarantee, which have been duly invoked. It is further submitted that while the appellant claims to have invoked the arbitration clause vide notice dated 05.05.2021, no step is taken seeking appointment of Arbitrator under Section 11 of the Act, with the result, that the applicant is even otherwise not entitled to any relief under Section 9 of the Act. Mr. Dhande would then emphasize that the MOU which contains the arbitration clause has confined exclusive jurisdiction on courts which are within the jurisdiction of the Patna High Court.

10. I must record that both Mr. Tiwari, the learned counsel for the appellant and Mr. Dhande, the learned counsel for the respondent 1 have referred to certain decisions. However, in my considered view, it would not be necessary to refer to the decisions cited on the nuances of the arbitration law and in particular the implication of the parties not having specified the seat of arbitration. The submission of Mr. Tiwari is that the learned Judge ought to have decided the issue of jurisdiction on the basis of the subject matter. Even if this submission is accepted, *arguendo*, the learned Judge committed no error in holding that

the court at Yavatmal would not have the jurisdiction to entertain the application under Section 9 of the Act.

11. I cannot be oblivious to the fact that the appellant is, even otherwise, not entitled to any relief under Section 9 of the Act. The appellant has not shown any interest in seeking appointment of an arbitrator. The appellant has issued the notice invoking the arbitration clause in May, 2021 and has taken no step thereafter. Moreover, the MOU does specify that a party seeking judicial remedy shall institute the proceedings at courts within the jurisdiction of the Patna High Court. I must state, that no definite observation on the jurisdictional clause is necessary, since I am otherwise satisfied that even if the subject matter is looked into, the court at Yavatmal committed no error in not entertaining the application under Section 9 of the Act.

12. The bank guarantee was issued pursuant to the condition incorporated in the MOU dated 30.12.2017, which is executed at Patna. The entire work was to be executed in the State of Bihar. The bank guarantee was issued to ensure the performance of work in the State of Bihar. The bank guarantee appears to have been issued by the Dhamangaon Railway branch

of the respondent 2 – Bank, which is located in the Amravati District.

13. In this view of the matter, no part of the cause of action has reason at Yavatmal. The fact that the registered office of the appellant is situated at Yavatmal would not be a part of action as would confer jurisdiction on the court at Yavatmal. In this view of the matter, it would not be necessary to deal with the submissions which are based on the provisions of the Act, particularly the submission that the parties did not agree on the seat of arbitration.

14. The appeal is sans substance and is dismissed.

JUDGE

NSN