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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)No.529 of 2020

and

C.M.P.(MD).Nos.3364, 3365 and 3539 of 2020

P.Raju ... Petitioner / Respondent
Vs.
Muthulakshmi ... Respondent / Petitioner

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to strike off Ar.O.P.No.32 of 2020 on the file of the Principal District Court, Theni, as lack of jurisdiction.

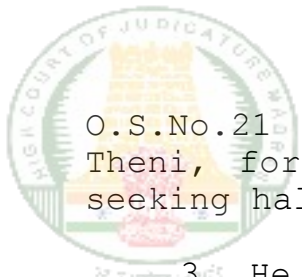
For petitioner : Mr.A.Sivaji

For respondent : Mr.M.A.M.Raja

ORDER

This Civil Revision Petition has been filed by the petitioner praying to strike off the petition in Ar.O.P.No.32 of 2020 on the file of the Principal District Court, Theni, on the ground of lack of jurisdiction.

2. The learned counsel for the petitioner submitted that the petitioner and the respondent entered into a partnership real estate business in the name and style of "PRV Properties", in the year 2012 and the partnership firm had purchased many properties for the business and sold out some of the properties by converting into plots. Stating that the petitioner has not given proper accounts, the respondent herein had filed O.S.No.1 of 2016 on the file of the District Munsif Court, Periyakulam, in which the petitioner had filed an application in I.A.No.78 of 2016 for referring the matter to the arbitration. But, the said I.A. was dismissed, against which C.R.P.(MD).No.49 of 2017 was filed and this Court, by order dated 13.02.2017, allowed the said Civil Revision Petition with a direction to the District Munsif, Periyakulam to consider the matter afresh. Pursuant to the said order, the learned District Munsif closed the suit with a direction to the parties to invoke the arbitration clause. Thereafter, the respondent filed O.P.No.348 of 2019 on the file of this Court at Principal Seat (Original side jurisdiction), under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the Act") praying to appoint an Arbitrator to resolve the dispute. A learned Single Judge of this Court, by order dated 12.06.2019, appointed a retired Principal District Judge as Arbitrator holding that the proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. In the meantime, the respondent had filed



O.S.No.21 of 2017 on the file of the Principal District Judge, Theni, for declaration of dissolution of partnership deed and for seeking half of the share in the properties and it is still pending.

3. He would further submit that the Arbitrator has taken the application on file as Claim Petition No.145 of 2019 and after hearing both sides, on 20.03.2020 the Arbitrator closed the claim petition on the ground that the arbitration proceeding is barred by limitation. Aggrieved by the same, the respondent preferred a petition in Ar.O.P.No.32 of 2020 on the file of the Principal District Judge, Theni. Questioning the maintainability of the said Ar.O.P., the petitioner has presented an application on the file of the Principal District Court, Theni, but, it was returned by the Court below without assigning any reason. Hence, the petitioner has come up with this civil revision petition for the aforesaid prayer.

4. The learned counsel for the petitioner would next submit that since the Arbitrator was appointed by the Principal Bench of this Court (original side jurisdiction) on the O.P. filed by the respondent herein, no other Court has jurisdiction to entertain the O.P. under Section 42 of the Act. As the respondent is bound by the order in O.P.No.348 of 2019 and the Arbitration only conducted at Chennai as the venue of arbitration, the respondent cannot legally approach any other Court and seek for setting aside the award before any other Court, except the said Court. On this sole ground alone, the entire proceedings in Ar.O.P.No.32 of 2020 is liable to be struck off. He would further submit that before filing Ar.O.P. the respondent has not issued any notice to the petitioner and therefore, as per Section 34(5) of the Act, the Court below ought to have rejected the Ar.O.P. on the ground of non compliance of statutory provision. But, the Court below has failed to do so and therefore, on this ground also, the entire proceedings in Ar.O.P. is liable to be struck off. Thus, he prayed to allow this revision petition.

5. The learned counsel appearing for the respondent submitted that the original jurisdiction for appointment of Arbitrator is only vested with this Court and for that reason only, the respondent approached this Court for appointment of Arbitrator, but the jurisdiction for challenging the Arbitration award is the place of execution of Arbitration deed and as the Arbitration deed was executed only at Theni, the Principal District Court, Theni is the competent Court to set aside the award passed by the Arbitrator and hence, the petitioner is totally wrong to say that Ar.O.P. is liable to be dismissed for want of jurisdiction. He would further submit that the issuance of notice before filing Ar.O.P. for setting aside the Arbitration award under Section 34(5) of the Arbitration and Conciliation Act, is only directory and not mandatory as per the decision of the Hon'ble Supreme Court in the case of the **State of Bihar and others Vs. Bihar Rajya Bhumi Vikas Bank Samiti (Civil Appeal No.7314 of 2018, dated 30.07.2018)**. Thus, he prayed to dismiss this revision petition.



6. Heard the learned counsel appearing for both sides and perused the records carefully.

7. Admittedly, it is not in dispute that there is an arbitration clause in the partnership deed and the respondent filed O.P.No.348 of 2019 on the file of the Principal seat of this Court praying to appoint an Arbitrator and accordingly, an Arbitrator was appointed, as per the order of this Court dated 12.06.2019. The parties have not filed any application aggrieved by the appointment of Arbitrator. Both the parties appeared before Arbitrator and argued the matter. The Arbitrator passed award and thereby terminated the arbitration proceedings on the ground of limitation. Aggrieved by the same, the respondent preferred Ar.O.P. on the file of the Principal District Court, Theni. While so, the petitioner herein preferred this revision petition questioning the jurisdiction of the Principal District Court, Theni in entertaining the Ar.O.P.

8. The main ground on which the petitioner wanted to strike off the proceedings in Ar.O.P. on the file of the Principal District Court, Theni is the jurisdiction point. According to the petitioner, as the application for appointment of Arbitrator was filed before this Court, there is a specific bar under Section 42 of the Act in entertaining Ar.O.P. by the Principal District Court.

9. Section 42 of the Act reads as follows:

" Notwithstanding anything contained elsewhere in this part or in any other law for the time being in force, where with respect to any arbitration agreement, any application under this part has been made in a Court, that Court alone have jurisdiction over the Arbitral Proceedings and all subsequent applications arising out of that agreement and the arbitration proceedings shall be made in that Court and in no other Court."

10. Section 42 of the Act clearly says that the Court to which any application under this Act had been first filed would alone be the Court to which all subsequent applications has to be moved. Here, in this case, the respondent moved Original Petition in O.P.No.348 of 2019 for appointment of Arbitrator before the Principal Seat of this Court and the same was allowed by this Court on 12.06.2019 and thereby, an Arbitrator was appointed. The Arbitrator passed an award on 20.03.2020, against which the respondent filed Ar.O.P.No.32 of 2020 on the file of the Principal District Court, Theni. As the respondent moved the first petition under the Act ie., Original Petition No.348 of 2019 under Section 11 (6) of the Act, before the Principal Seat of this Court, the Ar.O.P. is to be filed before the Principal Bench of this Court (original side jurisdiction). But, the respondent has erroneously filed the petition on the file of the Principal District Court and the same is barred under Section 42 of the Act.



11. In the decision in **BGS SGS Soma JV Vs. NHPC Ltd., reported in [2019] 0 Supreme (SC) 1350**, the Hon'ble Supreme Court has held as follows:

"61. Equally incorrect is the finding in Antrix Corporation Ltd. (Supra) that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one Court exclusively. This is why the section begins with a non-obstante clause, and then goes on to state "... where with respect to an arbitration agreement any application under this Part has been made in a Court..." It is obvious that the application made under this part to a Court must be a Court which has jurisdiction to decide such application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the Courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the Court where the seat is located and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent application arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so-called "seat" is only a convenient "venue" then there may be several Courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of Arbitration Act, 1996 may be preferred before a Court in which part of the cause of action arises in a case where parties have not agreed on the "seat of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a Court in which a part of cause of action arises would then be the exclusive Court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts, in this regard, is incorrect and is overruled."

12. In similar circumstances, in the case of **Damayanti Builders Vs. Union of India**, reported in **2004 (1) RAJ 300**, the Hon'ble Delhi High Court has held in paragraph No.3 as follows:

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"3. The appellant had made an application under Section 11 and the Arbitrator was appointed in those



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proceedings in this Court under Section 11 of the Act. In view of the application having been made under Section 11 of the Act all subsequent applications arising out of the agreement or the arbitral proceedings were required to be made only in Delhi High Court and in no other Court. The application under Section 34, therefore, filed by the respondent for setting aside the award was not maintainable before the Additional District Judge and he had no jurisdiction to entertain such an application. Since the learned Additional District Judge did not have jurisdiction to entertain the application, in my view, the order passed by him on the application of the respondent under Section 34 of the Act cannot be sustained and is, accordingly, set aside. I, accordingly, allow this appeal and direct the application under Section 34 of the Arbitration Act filed by the respondent to be returned to it for presentation in Court."

13. Here, in this case, it is not in dispute that the Principal seat of this Court (original side jurisdiction) has exclusive jurisdiction to deal with the case. As stated earlier, as the first application under the Act has been filed before the Principal seat of this Court, no other Court can entertain or deal with any subsequent application and hence, the petition in Ar.O.P.No.32 of 2020 filed by the respondent on the file of the Principal District Court, Theni is liable to be struck off. In view of the above, this Court is not inclined to deal with the other ground raised by the petitioner.

14. In the result, this Civil Revision Petition is allowed and the petition filed by the respondent under Section 34 of the Act in Ar.O.P.No.32 of 2020 on the file of the Principal District Court, Theni is hereby struck off for want of jurisdiction and it is open to the respondent to approach the Principal Seat of this Court (original side jurisdiction) challenging the award passed by the Arbitrator. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

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Sub Assistant Registrar(CS)

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To

The Principal District and Sessions Judge,
Theni.

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