

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBA No.17 of 2022
(Through hybrid mode)

M/s. Manikeswari Gems Pvt. Ltd. Appellant

Mr. B.S. Tripathy, Advocate

-versus-

M/s. Zam Engg. and Pvt. Ltd. Respondent

Ms. Mitalee Jesti, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
06.07.2022

Order No.

3.

1. Mr. Tripathy, learned advocate appears on behalf of appellant and submits, impugned is order dated 11th February, 2021 passed by the Court below, rejecting his client's petition for interim measure, made under section 9 in Arbitration and Conciliation Act, 1996. He submits, the Court below found lack of jurisdiction and directed his client to take necessary steps under section 9 in the Court situate within the agreed exclusive jurisdiction.

2. He refers to agreement dated 5th February, 2019 between his client and respondent. Clause 13 therein is the arbitration agreement. It is reproduced below.

“13. Arbitration: If at all there arise any dispute/disputes relating to the interpretation of the terms of this agreement or in exercising the terms of this agreement, the same shall be resolved as per the provisions of the Arbitration Act applicable as on that day and the territorial jurisdiction of all such proceedings are limited to the city of Visakhapatnam alone.”

He submits, the petition for interim measure was filed before commencement of reference. As such, the Court below erred holding lack of territorial jurisdiction. The subject matter and working out of the agreement are all located in Odisha. He seeks interference in appeal.

3. Ms. Jesthi, learned advocate appears on behalf of respondent. She submits, it is a good exclusive jurisdiction clause and the Court below correctly found lack of jurisdiction on limitation, imposed by the arbitration agreement between parties.

4. On perusal of the arbitration agreement Court finds that it is a good agreement, in limiting territorial jurisdiction of resolution of disputes as per provisions of the Act, to the city of Visakhapatnam alone. This is because the Arbitration Act provides, inter alia, for interim measure before commencement

of the reference, the reference itself, approach to Court for appointment of arbitrator, setting aside award and appeal provisions. Parties appear to have agreed that all these proceedings, if necessary to be resorted to, would be limited to the city of Visakhapatnam alone. Such a limitation on jurisdiction is permissible under the law and enforceable. The arbitration agreement does not provide separately for fixation of seat of arbitration. The petition for interim measure was filed before commencement of the reference. As such there was no subsequent conduct of parties in having a seat of arbitration, for contributing to adjudication of the exclusive jurisdiction clause in the arbitration agreement.

5. Mr. Tripathy submits, by impugned order his client was given up to 15th March, 2021 to move the appropriate Court. His client, however, was advised to and preferred this appeal. It is clarified that this order will not prevent appellant to pursue remedy of interim measure, as available in law.

6. Impugned order is confirmed and the appeal disposed of.

(Arindam Sinha)
Judge