

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.26613 Of 2019
(Through hybrid mode)

Ranjan Kumar Dash and another ***Petitioners***

Ms. P.P.Mohanty, Advocate

-versus-

Sole Arbitrator and another ***Opposite parties***

Mr. Sudipto Panda, Advocate

Mr. J.P.Behera, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
07.03.2022

Order No.
05.

1. Ms. Mohanty, learned advocate appears on behalf of petitioners and with reference to record of submissions in order dated 6th January, 2022 submits, the reference itself is not maintainable on declaration of law by the Supreme Court in **Perkins Eastman Architects DPC vs HSCC (India) Limited**, reported in **AIR 2020 SC 59**, paragraphs 15 and 16. Mr. Behera, learned advocate appears on behalf of opposite party no.2 and points out scope of prayers in the writ petition.

2. Petitioners have, in the writ petition, impugned order dated 3rd October, 2019 made by the arbitrator, directing possession of the vehicle be taken from petitioners. The order is appealable under section 37, Arbitration and Conciliation Act, 1996. On 6th January,

2022 petitioner had submitted that everything happened here in Orissa while opposite party no.2 had asserted exclusive jurisdiction clause in the agreement, to confer exclusive jurisdiction on the Courts in Chennai.

3. Ms. Mohanty draws attention to the agreement dated 30th April, 2019, clause 29 reproduced below.

*“29. **ARBITRATION:** All disputes, differences and/or claims arising out of this Agreement whether during its subsistence or there after shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the Sole Arbitration of an Arbitrator nominated by the Company. The award given by such Arbitrator shall be final and binding on all parties to this Agreement. In the event of an appointed arbitrator dying or being unable or unwilling to act as arbitrator for any reason, the Company, on such death of the arbitrator or his inability or unwillingness to act as arbitrator, shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with the reference from the stage left by his predecessor. The venue of arbitration proceedings shall be at Chennai or such other place/ location/city which the Company at its discretion may decide from time to time.”*

She relies on **Perkins Eastman Architects DPC** (supra) to assert that the reference is itself bad.

4. The Supreme Court in **Perkins Eastman Architects DPC**

(supra) declared the law to be also that a party to the arbitration agreement would be disentitled to make any appointment of an arbitrator on its own. Said Court, in that case, went on to appoint arbitrator under sub-section (6) in section 11.

5. The writ petition is dismissed as not maintainable. Petitioners must find their remedy.

Prasant

