

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 102 OF 2021

Mr. Saurabh Sharma

...Petitioner

Versus

Mr. Ravi Ranjan Chakravorty & Anr.

...Respondents

WITH

ARBITRATION APPEAL (ST.) NO. 16190 OF 2021

Mr. Ajinkya Udane a/w Mr. Shrirang Katneshwarkar for the
Petitioner.

Mr. Wasim Ansari i/by A. Karim Pathan for the Respondent
No.1 in ARP/102/21 and for Applicant in ARA(ST)/16190/21.

Mr. Unmesh Dindore a/w Mr. Amarjit Prasad, Mr. Ajinkya
Udane for the Respondent No. 1 in ARA(ST)/16190/21.

CORAM : R.I. CHAGLA J

DATE : 8 April 2022

ORDER :

1. Heard learned Advocates for the parties.
2. A preliminary objection is taken by the learned
Advocate appearing for the Respondents. He has submitted
that the Arbitration Petition has been wrongly filed on the Civil

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Side and it pertains to the Commercial Division of this Court, though the Registry confirms otherwise.

3. The Arbitration Petition is for appointment of arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. He has referred to the Commercial Courts Act, 2015 and in particular Section 10(3) of the Act, which provides that where Arbitration is other than international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 which would ordinarily lie before any Principal Civil Court of original jurisdiction in a District, shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Courts are constituted. He has further submitted that one would have to determine the specified value of the claim made by the Petitioner in considering whether the dispute is a commercial dispute, falling under the Commercial Courts Act.

4. The learned Advocate for the Respondents has referred to the definition of specified value provided for in

Section 2(i) of the Commercial Courts Act, which in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with Section 12 thereof which shall not be less than three lakh rupees or such higher value, as may be notified by the Central Government.

5. The learned Advocate for the Respondents has submitted that from a mere perusal of the Section 9 Application preferred by the Petitioner and in particular paragraphs 20 and 21 thereof, the claim has been quantified in an amount of more than Rs. 4 Crores. He has accordingly, submitted that the dispute is a commercial dispute under Section 2(i) of the Commercial Courts Act and would therefore, be required to be filed before the Commercial Division. He has submitted that Section 12(2) provides that aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be. He has submitted that as per the claim

made by the Petitioner reflected in the Section 9 Petition, the Arbitration Petition should have been filed as Commercial Arbitration Petition before the Commercial Division.

6. The learned Advocate for the Respondents has placed reliance on the decision of this Court in **Government of India, Ministry of Shipping, Road and Highways, Department of Road Transport and Highways Vs. M/s. Jaiswal Ashoka Infrastructure Pvt.Ltd.**¹, where the Application filed under Section 34 of the Arbitration and Conciliation Act before the Principal District Judge was not transferred before the Commercial Court, once the Commercial Courts Act came into force. A challenge had been raised to the impugned judgment that the learned Principal District Judge had no jurisdiction to entertain the proceedings under Section 34 of the Arbitration and Conciliation Act, in view of Section 15(2) of the Commercial Courts Act. The Commercial Courts Act, 2015 was considered and it was further considered that the Appellants had not taken steps whatsoever to have the proceedings transferred as the dispute pertained to a commercial dispute under the Commercial Courts Act. Thus, the Court did not have

¹ ARA/14/2018 Jt.dt. 26.09.2019

jurisdiction and accordingly, the judgment under Section 34 of the Arbitration and Conciliation Act was set aside. The pending Section 9 Petition, was vulnerable on the aspect of jurisdiction and the Respondent therein was granted liberty to apply before the Commercial Court.

7. The learned Advocate for the Respondent by placing reliance on the aforementioned decision has sought rejection of the Arbitration Petition filed under Section 11 of the Arbitration and Conciliation Act as he contends that it should have been filed before the Commercial Division.

8. Having considered the preliminary objection, in my view, the reliance placed by the Respondents upon the decision of this Court in **Government of India, Ministry of Shipping, Road and Highways, Department of Road Transport and Highways** (supra) is misconceived. That case was regarding a challenge to the impugned judgment passed by the Civil Court under Section 34 of the Arbitration and Conciliation Act, 1996. The pending Petition under Section 9 of the Arbitration and Conciliation Act, 1996 before the Civil Court was also considered. In that context, it was held that if the dispute is a

commercial dispute, it should be filed before the Commercial Court. Since, the Petition under Section 34 was decided by the Court of Principal District Judge i.e. Civil Court and not Commercial Court, it was held that the Court had no jurisdiction and accordingly, the impugned judgment under Section 34 of the Arbitration and Conciliation Act was set aside on this ground. The Applicant was granted liberty to apply before the Commercial Court in so far as the pending Section 9 Petition was concerned.

9. This decision certainly cannot apply to Arbitration Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, which is for appointment of an Arbitrator. The reference to applications or appeals arising out of arbitration in Section 10(3) of the Commercial Courts Act, 2015 would be to those application or appeals filed under the provisions of the Arbitration and Conciliation Act, 1996 other than applications under Section 11 for appointment of arbitrators. This would be so as in an application for appointment of an arbitrator, there is no occasion for determining whether the dispute is a commercial dispute and thereby to be heard and disposed of by the Commercial Court

exercising territorial jurisdiction over such arbitration where such Commercial Court is constituted. Further, it is not for this Court considering an application for appointment of an arbitrator to go into the specified value of the claim made by the Petitioner, as the claim is still to be referred to arbitration. Thus, the present Arbitration Petition filed under Section 11 of the Arbitration Act for appointment of Arbitrator lies before this Court exercising Civil Appellate Jurisdiction and accordingly, the preliminary objection raised by the Respondents is rejected.

10. In view of the rejection of the preliminary objection raised, the Arbitration Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 is to be considered.

11. By this Arbitration Petition, the Petitioner is seeking appointment of a sole Arbitrator from Pune to conduct the proceedings between the Petitioner and Respondent No. 1 and to adjudicate the disputes between the Petitioner and Respondent No. 1.

12. The learned Counsel appearing for the parties have agreed for the appointment of a sole Arbitrator. Hence the following order :-

- (i) Mr. Yuvraj Narvankar, Advocate of this Court is appointed as a Sole Arbitrator to adjudicate the disputes between the Applicant and the Respondent No. 1.
- (ii) The venue of arbitration shall be in Pune.
- (iii) Office to inform the Sole Arbitrator regarding appointment.
- (iv) The Sole Arbitrator is requested to file the Disclosure Affidavit of Arbitration under Section 11(8)(i) of the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.

- (v) Parties to appear before the Sole Arbitrator on the date fixed.
- (vi) Fees of the Sole Arbitrator will be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.
- (vii) Arbitration Petition is disposed of in the above terms.
- (viii) No costs.

[R.I. CHAGLA J.]