

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

Present :

Hon'ble Justice Moushumi Bhattacharya

AP 826 of 2023

The Kuljian Corporation

(India) Pvt. Ltd.

vs

Sriniketan Santiniketan

Development Authority (SSDA)

For the petitioner : Mr. Nalin Kohli, Sr. Adv. (VC)
Mr. Gautam Mitra, Bar-at-Law
Mr. Rishad Medora, Adv.
Mr. Meghajit Mukherjee, Adv.
Ms. Vidisha Gupta, Adv.

For the respondent : Mr. Jaydip Kar, Sr. Adv.
Mr. Siddhartha Ghosh, Adv.

Last heard on : 04.12.2023

Delivered on : 08.12.2023

Moushumi Bhattacharya, J.

1. The petitioner seeks interim orders of protection by way of the present application filed under section 9 of The Arbitration and Conciliation Act, 1996.
2. The petitioner's grievance – and urgency – arises out of an impugned notice issued by the respondent, Sriniketan Santiniketan Development Authority (SSDA) on 1.11.2023 requesting the petitioner to hand over 3225 sq. mt of land to the respondent within 30 days from the date of issue of the letter. The impugned letter arises out of an agreement dated 5.7.2004 executed between the respondent and the petitioner for setting up of a museum with art gallery within the 'Gitanjali' Auditorium Complex, Bolpur. The petitioner was to finish the construction in two phases, namely, the Museum and Art Gallery as part of the construction of the first phase and the Hospitality Unit as the second. Each of these phases was again divided into two parts with the specific time frames stipulated in clause 2 of the agreement. The agreement was to be for an initial term of 30 years.
3. Learned counsel appearing for the petitioner submits that time was not of essence in the agreement and that parties did not communicate with each other from 2004 -2023 with regard to the alleged failure on the part of the petitioner to complete the second phase of project i.e., the Hospitality Unit. Counsel submits that the petitioner is in the process of the steps for issuing a notice of invocation of the arbitration clause in the agreement and for commencement of arbitration under Clause 17 of the Agreement.

4. Learned counsel appearing for the respondent takes a preliminary objection to the maintainability of the application on the absence of territorial jurisdiction. Counsel urges that the impugned letter merely requests the petitioner to hand over the land in question and is not a notice of termination. According to counsel, the cause of action arose in Bolpur / Santiniketan as the immovable property is situated at Bolpur. The respondent has its office at Bolpur and the petitioner caused breach of the Agreement in Bolpur. Counsel also relies on the principle of *forum conveniens* to say that the Commercial Court at Asansol or the District Courts in Bolpur would have jurisdiction to entertain the present application.

5. Counsel appearing for the petitioner seeks to deal with the objection of jurisdiction on the ground that the Agreement was signed within the jurisdiction of this Court, the parties accepted the agreement and the petitioner also received the impugned notice within jurisdiction. Counsel submits that the impugned letter threatens dispossession and the petitioner is hence entitled to approach the Court for interim protection.

6. The arguments made on behalf of the parties rest essentially on who has the better cause of action for approaching or, alternatively, divesting the Court of jurisdiction. An application under section 9 of The Arbitration and Conciliation Act, 1996 may be filed before any court wherein a part of the cause of action has arisen particularly where the arbitration agreement does not designate either a “seat” or a “venue”. Ref. *BBR (India) Private Limited vs. S.P. Singla Constructions Private Limited*; (2023) 1 SCC 693.

7. In the present case, while the respondent resists the application on the ground of the land/immovable property being situated at Bolpur as also the respondent having its office at Bolpur and the petitioner causing breach of the agreement in Bolpur, the petitioner raises equally compelling facts with regard to cause of action. Admittedly, the agreement executed between the parties containing the arbitration clause was signed at the office of the petitioner within the jurisdiction of this court, the petitioner accepted the respondent's offer with regard to the construction of the Museum / agreement in Kolkata and the petitioner also received the impugned notice (under challenge in this proceeding) at its office at Kolkata within the jurisdiction of this court.

8. In *A.B.C. Laminart Pvt. Ltd. vs. A.P. Agencies, Salem*; (1989) 2 SCC 163, the Supreme Court held that the situs of making of the contract would form part of the cause of action and that, acceptance of an offer would also confer jurisdiction on the Court to entertain the suit. The Supreme Court in *A.B.C Laminart* also held that a suit would lie in the Court within whose jurisdiction repudiation of the contract is received.

9. The classical definition of the expression "cause of action" can be found in *Cooke V. Gill*; (1873) LR 8 CP 107 as:

"cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court"

The logic being that the plaintiff can only approach a court with a cause pursuant to the defendant's action in repudiating a right of the plaintiff. The cause of action hence provides the foundation of the plaintiff's claim to relief.

10. Both the parties have thus presented compelling arguments on jurisdiction. The issue, however, is not about which side has the better cause to approach the Court but whether the cause of action which has arisen within the jurisdiction of this court can be discounted either for being insignificant or for the reason that no cause of action has arisen at all.

11. Considering the material placed by the parties, this court is of the view that the disqualification as to jurisdiction would not fall under any of the aforesaid heads.

12. The competence of a court to entertain an application under section 9 of the 1996 Act can only be questioned where the opponent is able to show that the cause of action pleaded is either insufficient or slender in the sense of the facts on which the jurisdiction rests not being an integral part of the cause of action. This was the situation before the Supreme Court in *State of Goa vs. Summit Online Trade Solutions Private Limited*; (2023)7 SCC 791 where the Court was of the view that the mere fact of the petitioner company having its office in Gangtok, Sikkim would not, by itself, form an integral part of the cause of action authorising the petitioning company to move the Sikkim High Court when the tax was levied by the Government of Goa in respect of the business of the petitioning company within the territory of Goa. Similarly, in *Ravi Ranjan Developers Pvt. Ltd. vs. Aditya Kumar*

Chatterjee; 2022 SCC OnLine SC 568 the Supreme Court found that the parties did not agree to submit to the jurisdiction of the Calcutta High Court at any point of time in respect of the disputes. The arbitration clause in *Ravi Ranjan*, in any event, designated a seat/venue.

13. Therefore, in the facts of the present case, namely, the execution of the agreement, acceptance of the terms of the agreement and receipt of the impugned letter, all of which took place within jurisdiction of this court, must be held to be integral to the cause of action. These are robust facts and are indefeasible to the petitioner's entitlement to interim protection. In the absence of a designation as to seat or venue in the arbitration agreement, the petitioner would be entitled to move any court vested with jurisdiction and the Calcutta High Court is one of such courts. The respondent has not shown any agreement between the parties divesting the Calcutta High Court of jurisdiction.

14. The argument that Calcutta High Court is not the "*forum conveniens*" is also not acceptable in view of the above reasons.

15. The other objection raised on behalf of the respondent that the impugned letter merely requests handing over of the land without any threat of termination is not a credible defence to the action. The impugned letter dispossesses the petitioner of the land which forms the crux of the arbitration agreement. It is also undisputed that there was no correspondence between the parties in the intervening period of 19 years, that is, from 2004-2023. The action of the respondent in seeking to re-

possess the land is therefore abrupt, to say the least. The principles of estoppel and acquiescence may also be applicable to the facts of the case.

16. The reach of a Court exercising powers under section 9 of The Arbitration and Conciliation Act, 1996 has been reinforced in several decisions : *Essar House Private Limited vs. Arcellor Mittal Nippon Steel India Limited*; 2022 SCC OnLine SC 1219 being one of them. There is little doubt that the Court can intervene to preserve the subject matter in the arbitration, pre-initiation. The petitioner's stated position of initiating steps for arbitration in terms of the arbitration agreement further persuades the court to grant the relief prayed for.

17. There shall accordingly be an order of stay of the impugned letter dated 1st November, 2023. The interim order shall be in place till 15th January, 2024 or until constitution of the arbitral tribunal, whichever is earlier.

18. Since parties have been heard at length on all points, nothing further remains of the application. AP 826 of 2023 is accordingly disposed of in terms of the above.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)