



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4869 OF 2023

1. M/s Hotel Four Seasons LLP through its Partners Mr. Mohan Kanhaiyalal Gaud R/o Near Shiv Mandir, Dahisath Road, Amravati Tq. & Dist. Amravati
2. Mr. Mohan Kanhaiyalal Gaud,
Aged about 68 years, Occ. Business,
R/o Near Shiv Mandir, Dahisath Road,
Amravati Tq. & Dist. Amravati
3. Mr. Rakeshkumar Ravichandra Agrawal,
Aged about 55 years, Occ. Business,
R/o Paranjape Colony, Camp Amravati
4. Mr. Prashant Rameshchandra Agrawal
Aged about 56 Years, Occ. Business,
R/o G-53, Mahendra Park, LBS Marg,
Narayan Nagar, Ghatkopal (W), Mumbai
5. Mr. Pramod Rameshchandra Deodiya
Aged about 55 Years, Occ. Business
R/o 19, Prabhat Colony, Amravati

...Petitioners

// VERSUS //

Mr. Sumeet Shriram Agrawal
Aged about 38 years, Occ. Business
R/o Old Cotton Market Road, Amravati, Tq.
and Dist. Amravati

... Respondent

Ms. Venkaraman, Advocate for the petitioners.
Shri K.P.Mahalle, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

Reserved on : 10th November, 2023.

Pronounced on : 30th January, 2024.

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. This writ petition takes exception to the judgment and order dated 15th July, 2023 passed by the learned District Judge-1, Amravati, in Commercial Appeal No. 2 of 2022, partly allowing the appeal and thereby quashing and setting aside the order dated 23rd August, 2022 passed by the learned Arbitrator Shri A.D.Babrekar in Arbitration Case No. 2 of 2022, dismissing the interim application filed by the respondent herein under Section 17 of the Arbitration and Conciliation Act, 1996 (in short hereinafter referred as “Arbitration Act, 1996”).

3. The Petitioner No.1 M/s Hotel Four Seasons Infra LLP is a body corporate under Section 12(1) of Limited Liability Partnership Act, 2008. The petitioner nos. 2 to 5 are partners of petitioner no.1. The respondent is a erstwhile partner of the petitioner no.1 who has allegedly been expelled by the petitioner no.1 vide resolution dated 1st September, 2020 on the ground that the respondent was unable to contribute the capital since October 2019 and has hampered the object of limited liability partnership among other grounds as mentioned in the resolution.

4. The said expulsion gave cause to the respondent to file application under Section 9 of the Arbitration Act, 1996 before the learned Commercial Court, Amravati. During the pendency of the

aforesaid application, the respondent filed an application for appointment of arbitrator, before this Court under Section 11(5) of Arbitration Act, 1996. This Court, thereupon vide order dated 29th November, 2021 appointed one Shri Ashok Babrekar, Principal District and Sessions Judge (Retired) as Arbitrator.

5. The respondent thereafter filed an application under Section 17 of the Arbitration Act, 1996 for interim relief which came to be rejected vide order dated 23rd August, 2022.

6. The same was the subject matter of the challenge before the learned District Judge-1, Amravati by way of an appeal under Section 37 of the Arbitration Act, 1996. The said appeal came to be partly allowed vide impugned order dated 15th July, 2023 and thereby the learned District Judge-1 stayed the effect operation and implementation of the resolution dated 1st September, 2020 and further restrained the petitioners from creating third party interest under the land and building of the petitioner no.1 to the extent of 20% share of the respondent till the decision of the arbitration proceedings. Hence, this petition.

7. I have heard learned counsel for the respective parties.

8. At the outset, Shri Mahalle, learned counsel for the respondent has raised a preliminary objection to the tenability of the present writ petition in view of the alternate remedy by way of appeal is available. Accordingly, learned counsel for the respondent prays for dismissal of the present writ petition.

9. Ms. Venkatraman, learned counsel for the petitioners in reply submits that since there is lack of inherent jurisdiction to decide the appeal by the learned District Judge-I, in view of the notification dated 3rd July, 2019 constituting and appointing the Court of District Judge-2 at District Head Quarter as well as the Court of District Judge-2, if available at Taluka place for deciding the commercial disputes of specified value of above Rs.1 crore, therefore, the writ petition is maintainable.

10. Shri Mahalle, learned counsel for the respondent while countering the reply of the petitioners, submits that once the petitioners have participated in the proceedings and as no objection was raised to decide the appeal by the learned District Judge-1, now subsequently on passing of an adverse order against the petitioners, they cannot raise a grievance in respect of jurisdiction. Hence, the petitioners are estopped from raising such objection. In support of his submission, learned counsel for the respondent has replied upon the following judgments.

i. *Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited and another* reported in 2020 (15) SCC 706

ii. *State of Punjab Vs. Sarabdeep Singh Virk, IPS S/o late Kuldeep Singh Virk and others* reported in 2009(5) ALL MR 908.

iii. *Union of India Vs. Arun Kumar Deedwania* reported in 2017(4) Mh.L.J. 130

11. In the above referred backdrop, since the issue of lack of jurisdiction of the learned District Judge to decide the appeal is raised and it goes to the root of the matter, it would be appropriate to first decide the issue of jurisdiction first, which consequentially would decide the tenability of the present writ petition.

12. The Hon'ble Supreme Court of India in the case of *Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited and another* (supra) has held thus : (Para 17)

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

13. What is lack of inherent jurisdiction is defined by the Division Bench of this Court in a case of *State of Punjab Vs. Sh. Sarabdeep Singh Virk, IPS* (supra) wherein the Division Bench of this Court has held thus:

16. Another very important aspect which we need to clarify before dealing with the questions raised before us is that the law provides a

clear distinction between lack of inherent jurisdiction and jurisdictional error. Where the proceedings are instituted before the Court or Tribunal which have no jurisdiction, decision of such Court or Tribunal suffer from defect of lack of inherent jurisdiction. The former is primarily a question relating to law while the later may be an error of fact. Besides the above distinction, exercise of jurisdiction may be improper or it may be a case of excess of jurisdiction. In other words, lack of inherent jurisdiction would normally render the judgment a nullity while in other cases it may render the judgment as irregular. Jurisdictional error could both be without or excess of jurisdiction. Even under the English law in relation to Courts and/or Tribunals, the crucial distinction between error on face of record and those which do not has governed this field. To simply it further, cases would fall in three different categories i.e. excess of jurisdiction; improper exercise of jurisdiction and significant error of law. The consequences and result of each of such error can be different and distinct in law. (Ref.: Administrative Law Outline of Lecture: Jurisdiction by Glen Gibbons).

14. In the case of Kiran Singh and others Vs. Chessana Paswan and others reported in AIR 1954 SC 340, the Hon'ble Supreme Court of India has held that it is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced and relied upon, even at the stage of execution and even in a collateral proceeding.

15. Similarly, in the case of Sunder Dass Vs. Ram Prakash reported in 1977(2) SCC 662, the Hon'ble the Supreme Court of India while reiterating the above referred observations has observed that where there is a lack of inherent jurisdiction, it goes to the root of the competence of the Court to try the case and a decree which is nullity is void and it can be declared to be void by any Court in which it is

presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in a collateral proceedings.

16. In light of above referred observations, I revert back to the facts of the present case.

17. In the matter at hands, it was argued by the learned counsel for the respondent that the appeal was listed before the learned District Judge-2. However, the petitioners requested to the learned Principal District Judge to transfer the matter to the learned District Judge-1 and accordingly it was transferred on recusal by the learned District Judge-2. It is therefore, submitted that since the appeal was transferred to the learned District Judge-1 on a request of petitioners, they cannot now raise the objection to the jurisdiction of the District Judge-1 in deciding the appeal. He submits that it would amount to abrogate and reprobate.

18. However, the learned counsel for the petitioners denied the fact that District Judge-2 recused.

19. In light of the said dispute to find out the correct position, a report was called from learned Principal District Judge, vide order dated 6th October, 2023. Accordingly, the learned Principal District Judge submitted his report dated 17th October, 2023.

20. From the report and the documents enclosed with the said report, it is evident that the petitioner no.1 moved Civil Misc. Application

No. 210 of 2022 under Section 24 of the Code of Civil Procedure for transferring of the case in other competent Commercial Appellate Court on 2nd September, 2022 which was not pressed by the petitioner no.1 and accordingly it was disposed of vide order dated 17th September, 2022, passed by the learned Principal District Judge, Amravati.

21. Another Civil Misc. Application No. 211 of 2022 was filed by the petitioner no.1, on 5th September, 2022 under Section 24 of the Code of Civil Procedure, for transferring of case in competent Commercial Court under Section 10(III) of Commercial Court Act. The said prayer was made and based on the notification dated 3rd July, 2019 issued by Law and Judiciary Department in exercise of the power conferred by sub-section (1) and (3) of Section 3 of the Commercial Court Act, 2015. The Government of Maharashtra after consultation and with the concurrence of the Hon'ble the Chief Justice of Bombay High Court, constituted and appointed the Court of District Judge-2 at District Head Quarter to decide the commercial of specified value above Rs.1 crore.

22. The learned Principal District Judge therefore, passed a detailed order on the said application in Civil Misc. Application No. 211 of 2022 on 17th September, 2022 which read thus:

“1. This application is filed u/s 24 of Code of Civil Procedure for transfer of Commercial Appeal. No. 2/2022 from the Court of D.J.-1, Amravati to the court of D.J.-2, Amravati.

2. Applicant herein is respondent in Commercial Appeal No. 2/2022 which is filed by respondent against order dt. 23-8-2022

passed by Arbitral Tribunal u/s 17 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Arbitration Act'). Present application is filed with the contention that in view of section 10(3) of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, (hereinafter referred to as 'Commercial Court Act'), Commercial Court has jurisdiction to entertain appeal arising out of arbitration under Arbitration Act.

3. Respondent opposed the said contention with submissions that appeal filed u/s 37 of the Arbitration Act is rightly assigned to the Commercial Appellate Court and only D.J.-1, Amravati has powers as Appellate Court.

4. Ld. Advocate for applicant submitted that in view of provision of Sec. 10(3) of Commercial Court Act, the appeal in question can be entertained only by Commercial Court established under the said Act. He further canvassed that Hon'ble High Court has constituted Commercial Appellate Court for the purpose of entertaining appeal arising out of order passed by Commercial Court having specified value before Rs. One Crore.

5. Ld. Advocate for respondent submitted that this court has no jurisdiction u/s 24 of CPC to entertain objection as raised by the applicant and the same could have been raised before D.J.-1, Amravati. Without prejudice to this submission it is argued that only Commercial Appellate Court can entertain appeal u/s 37 of Arbitration Act and in the instant case the appeal in question cannot lie before D.J.-2, it not being appellate court.

6. At this stage there is no dispute made by parties about applicability of Arbitration Act as well as Commercial Court Act to the present case. Sec. 10 of Commercial Court Act deals with the jurisdiction in respect of arbitration matters. Subsection 3 provides as under;

“(3) if such arbitration is other than an international commercial arbitration, all applications or appeals arising

out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996(26 of 1996) that would ordinarily lie before any principle civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted”.

7. The aforesaid provision makes is abundantly clear that where Commercial Court exercising territorial jurisdiction over the arbitration has been constituted, all applications or appeals arising of such arbitration that would ordinarily lie before any principle civil court of original jurisdiction in a district shall be filed in and heard and disposed of by Commercial Court. There is no dispute about the fact that D.J.-2 at district head quarter is constituted as Commercial Court. The territorial jurisdiction of Commercial Court is as per the respective jurisdiction of the said court. Since Commercial Court is constituted at head quarter District-Amravati, the said Court only shall have jurisdiction to entertain any application or appeal arising out of arbitration as contemplated by section 10(3) of Commercial Courts Act.

8. Hon'ble High Court vide communication dt. 27.8.2019 has specified pecuniary value for the whole State of Maharashtra and constituted and appointed Commercial Courts and Commercial Appellate Courts in the State. The said communication shows that D.J.-1 at district headquarter is designated as Commercial Appellate Court for entertaining appeals against judgment and order of the court of Civil Judge (Sr.Dn.) which are constituted as Commercial Courts. Thus, it is clear that D.J.-1 is Commercial Appellate Court for the purpose of entertaining challenge in appeal to the order and judgment passed by Civil Judge (Sr. Dn.) in the capacity of Commercial Court. The said notification cannot be applied to the arbitration matters and Section 10 of the Commercial Court Act in this regard is clear and will prevail for the purpose of deciding jurisdiction of the Commercial Court in arbitration matters.

9. Since the challenge to the order passed by arbitral tribunal is arising out of Commercial dispute, the same is required to be heard and disposed of by Commercial Court itself. Thus, there is substance in the contention of the applicant raising challenge to the jurisdiction of D.J.-1 to entertain appeal in question.

10. It is sought to be canvassed on behalf of respondent that this court has no jurisdiction u/s 24 of CPC to decide the said issue and it can be agitated before D.J.-1 itself. There is no dispute about the fact that Principal District Judge has the authority to assign the matters to the other District Judges. The said power also includes authority to withdraw any matter wrongly/inadvertently assigned to any Ld. Judge. Hence, the objection can not sustain.

11. In the view of above discussion, following order.

ORDER

1. Application is allowed.
2. Commercial Appeal No. 2/2022 pending on the file of District Judge-1, Amravati (Commercial Appellate Court) is hereby withdrawn and transferred to the file of District Judge-2, Amravati (Commercial Court) for disposal in accordance with law.
3. Inform concerned court accordingly.
4. Dictated and pronounced in open court.”

23. Thus, it is evident that in view of the notification dated 3rd July, 2019, the learned Principal District Judge, withdrawn the appeal from the District Judge-1 and transferred the same to the file of the District Judge-2 for disposal in accordance with law.

24. The report of the learned Principal District Judge dated 17th October, 2023 shows that despite the said order dated 17th September, 2022 due to mistake of the office staff and due to oversight, the matter was wrongly listed before the District Judge-1.

25. From the above referred facts, it is evident that the petitioners had raised an objection as regards the jurisdiction of District Judge-1 to entertain the appeal in view of the notification dated 3rd July, 2019 and the said objection was upheld by the Principal District Judge vide detailed order on such application and transferred the said matter from the file of District Judge-1 to the file of District Judge-2 and despite the same because of the mistake of the office staff, it was listed before the District Judge-1.

26. In the above referred backdrop, the judgments cited by the respondent in the cases of *Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited* (supra) and *Union of India Vs. Arun Kumar Deedwania* (supra) are not of any help to the respondent for the reason that the said judgments were passed prior to the notification dated 3rd July, 2019.

27. Having held so, I find substance in the contention of the learned counsel for the petitioners that the judgment and order suffer from lack of inherent jurisdiction. Hence, it is held that the writ petition is maintainable.

28. Having held that the District Judge-1, Amravati has decided the appeal without jurisdiction, consequently the impugned judgment and order vitiates. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The judgment and order dated dated 15th July, 2023 passed by the learned District Judge-1, Amravati, in Commercial Appeal No. 2 of 2022 is hereby quashed and set aside.
- iii. The appeal is remitted back to the District Judge-2 Amravati to decide the same afresh after hearing both the parties.
- iv. The parties shall appear before the District Judge-2, Amravati on **8th February, 2024**. Thereupon, the District Judge-2, Amravati shall hear and decide the appeal within two months from the date of appearance of the parties.

[ANIL S. KILOR, J.]