



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.351 OF 2024

Shivshakti Enterprises through
proprietor-Vinod Kumar Sharma

...Petitioner

V/s.

Nuclear Power Corporation of India

...Respondent

WITH
ARBITRATION PETITION NO.346 OF 2024

Vinod Kumar Sharma

...Petitioner

V/s.

Nuclear Power Corporation of India

...Respondent

Mr. Hussain Dholkawala *for the Petitioners.*

Mr. Rohit P. Karhadkar *for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATED: 22 DECEMBER 2025.

P.C.:

1) Heard Mr. Dholkawala, the learned counsel appearing for the Petitioners and Mr. Rohit P. Karhadkar, the learned counsel appearing for the Respondent in both the Petitions.

2) An objection of territorial jurisdiction of this Court to entertain the present Arbitration Petitions is raised on behalf the Respondent- Nuclear Power Corporation of India Ltd.(NPCL).

3) The learned counsel appearing for the Petitioners, at the outset raised a preliminary objection that the Respondent cannot be permitted to raise the objection of territorial jurisdiction since the Arbitration Petitions were partly heard by the previous Bench after being listed on as many as 16 different occasions. He relies upon judgment of this Court in ***Naresh Kanayalal Rajwani and Others V/s.Kotak Mahindra Bank Limited and Another***¹

4) Careful perusal of the judgment in ***Naresh Kanayalal Rajwani*** (supra) would indicate that, there was first round of arbitration in that case, which has led to an arbitral Award being challenged before Section 34 Court in which, objection of territorial jurisdiction was not raised by the Respondent therein. After Award was set aside, fresh arbitration proceedings were initiated culminating into second arbitral Award, which was challenged before this Court. Objection of territorial jurisdiction was raised before this Court for the first time in second round. It is in these peculiar circumstances, this Court held that objection of territorial jurisdiction was not raised at the earliest point of time and that the same could not be raised in subsequent proceedings. Thus, judgment in ***Naresh Kanayalal Rajwani*** (supra) cannot be relied upon in support of an abstract proposition that in every case the Court must ignore the objection of lack of territorial jurisdiction on the ground that the same was not raised at initial hearing of the Petition. It is well settled position of law that a judgment is an authority for what it decides and not what can be logically deduced therefrom. The facts in ***Naresh Kanayalal Rajwani*** are thus

¹ Com. Arb. Petition (L) No.1444 of 2019, decided on 23 November 2020

clearly distinguishable, where this Court held that objection of territorial jurisdiction could not have been raised in subsequent Arbitration Petition as it was not raised in the previous arbitration proceedings. In the present case, the Respondent has raised the objection of territorial jurisdiction by filing additional affidavit dated 13 November 2025. Thus, the judgment in ***Naresh Kanayalal Rajwani*** is clearly distinguishable.

5) There is no dispute to the position that arbitral Awards involved in both the Petitions are made at Boisar (District -Palghar). The place of arbitration was at Boisar. The learned counsel appearing for the Petitioners submits that arbitration clause is silent about the seat of arbitration and relies on judgment of the Apex Court in ***Jindal Vijayanagar Steel (JSW Steel Ltd.) V/s. Jindal Praxair Oxygen Co. Ltd.***² in support of his contention that under clause 12 of the Letters Patent, this Court has jurisdiction to entertain the Suit if one of the Respondents resides within the territorial jurisdiction of this Court irrespective of the fact whether cause of action arises in the territorial jurisdiction of this Court or not. He would submit that since the Suit is maintainable in the territorial jurisdiction of this Court, Petition filed under Section 34 would also be maintainable considering the peculiar definition of the term 'Court' under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996. However, much water has flown after the judgment of the Apex Court in ***Jindal Vijayanagar Steel*** (supra). Learned Single Judge of this Court has taken note of development of law on the subject in ***Omprakash Ramnivas Varma and Others V/s. Vijay Dwarkada Varma***³. After taking into consideration the

² (2006) 11 SCC 521

³ 2020 DGLS(Bom.) 147

judgments of the Apex Court in *Bharat Aluminum Co. v. Kaiser Aluminium Technical Services Inc.*, (Balco Judgment)⁴ and *BGS SGS SOMA JV v. NHPC Ltd.*,⁵ this Court has held in paragraph 26 as under:-

26. The aforesaid submission made on behalf of the petitioners cannot be accepted for the simple reason that the arbitrator would have to undertake the exercise of “determination” only if there was failure of agreement between the parties on the place of arbitration or that there was a dispute or controversy between the parties on the said question. **Merely, because there was no specific place of arbitration specified in the arbitration clause in the present case, it did not follow that the learned arbitrator was first required to determine the place of arbitration and in the absence of such exercise, the place where the arbitration proceedings actually took place and the award was rendered could not be said to be the place of arbitration under section 20 of the aforesaid Act.** Sub-section (1) of section 20 of the said Act specifies that the parties are free to agree on the place of arbitration. This does not mean that the **place of arbitration must necessarily be specified only in the arbitration clause.** The parties could clearly agree to a place of arbitration even in the absence of such a place being specified in the arbitration clause. This could be ascertained from the **conduct of the parties** also. In the present case, it is an admitted position that there was no dispute or controversy between the parties as regards **Nagpur being the place of arbitration.** Both parties appeared before the learned arbitrator appointed by this Court, at Nagpur and when the proceedings were initiated before the learned Arbitrator at Nagpur, neither of the parties raised any objection or dispute or controversy with regard to the place of arbitration being Nagpur.

(Emphasis added)

6) Therefore, even if the arbitration clause is silent about seat of arbitration, parties can agree for the place of arbitration even by their conduct. In the present case, there is no dispute to the position that place of arbitration /seat of arbitration was at Boisar (District-Palghar). In that view of the matter, this Court would lack territorial

⁴ (2012) 9 SCC 552

⁵ SCC OnLine SC 1585

jurisdiction to try and entertain the present Petitions. Arbitration Petitions are accordingly **rejected**. Petitioners would be at liberty to present the Arbitration Petitions before the Court having territorial jurisdiction.

[SANDEEP V. MARNE, J.]