



2025:DHC:1806



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 17.02.2025
Pronounced on : 20.03.2025

+ **ARB.P. 1318/2024**

FAITH CONSTRUCTIONSPetitioner
Through: Mr. Rajeev M. Roy, and Mr. P.
Srinivasan, Advocates.

versus

N.W.G.E.L CHURCHRespondent
Through: Ms. Susmita Mahala, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present petition filed under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of an Arbitral Tribunal comprising of a Sole Arbitrator, to adjudicate upon the disputes that have arisen between the parties.
2. The parties entered into an Agreement dated 06.07.2022 (hereinafter, 'subject agreement') for construction work for *Bishop's Residence Ground Floor Building for N.W.G.E.L Church, Dakshini Diocese, Jatratoli, Dudukabahal, PO- Garvana, PS Rajgangpur, District Sundergarh* (hereinafter, 'subject property') located in Odisha. Clause 9 of the subject agreement stipulates resolution of disputes through Arbitration.
3. Petitioner alleges breach of subject agreement by the respondent



inasmuch as not only the respondent failed to complete the work within the stipulated time period, but also defaulted in making payments. The petitioner invoked arbitration by issuing notice dated 08.07.2024 under Section 21 of the A&C Act.

4. Learned counsel for the respondent, at the outset, raises a preliminary objection as to the jurisdiction of this Court to entertain the present matter. It is the case of the respondent that the arbitration clause being silent as to the seat/venue of arbitration, the seat/place for arbitration ought to be in Rajgangpur and not Delhi. *Firstly*, construction work under the subject agreement was to be carried in the subject property which is located in the area of Rajgangpur, Odisha. *Secondly*, the subject agreement itself was executed and notarized in Rajgangpur, Odisha. *Thirdly*, even the payments, in fact, were received by the petitioner in proportion to the construction work carried out by it from time to time in the state of Odisha. *Fourthly*, the respondent is based in Odisha. *Lastly*, reference is made to the arbitration clause itself, as per which, the Sole Arbitrator was to be appointed by the owner of the subject property, i.e., the respondent. In light of the above and upon receiving the petitioner's notice dated 08.07.2024, the respondent has appointed the Sole Arbitrator.

Learned counsel submits that when the arbitration clause does not stipulate any seat or venue of arbitration, the jurisdiction shall be decided in accordance with Section 2(1)(e) of the A&C Act read with Sections 16 to 20 of Civil Procedure Code, 1908 (CPC), that is to say that the Court within whose jurisdiction the respondent actually or voluntarily resides or carries on business, or where any part of cause of action has arisen, would essentially have the territorial jurisdiction to entertain the matter.



5. In Rejoinder, petitioner claims jurisdiction of this Court by contending that part of cause of action has arisen in Delhi. Not only the petitioner's place of business is in Delhi, but also part payment was admittedly received by it in its bank account which is maintained with Delhi branch. Further, the bills and invoices towards the Works were raised from the petitioner's office in Delhi.

Insofar as appointment of the Sole Arbitrator in Odisha by the respondent is concerned, it is submitted that the same was unilateral in nature and the petitioner is not bound by it. Learned counsel submits that the law on this point is no longer *res integra* and in line with decisions of the Supreme Court in TRF Limited v. Energo Engineering Projects Ltd., reported as **(2017) 8 SCC 377** and Perkins Eastman Architects DPC v. HSCC (India) Limited, reported as **2019 (9) SCC OnLine SC 1517**, unilateral appointment of arbitrator by one of the parties to the dispute is of no consequence.

6. I have heard learned counsels for the parties and gone through the material placed on record.

7. As regards the primary objection taken by the respondent vis-à-vis territorial jurisdiction of this Court to entertain the present petition, the same warrants a factual and legal analysis. It is a settled position in law that when the arbitration agreement is silent on the aspect of 'seat', 'venue' or 'place' of arbitration, the determining factor will be where the cause of action arises as well as where the defendant/respondent actually or voluntarily resides or carries on their business. In other words, Section 2(1)(e) of the A&C Act has to be read in light with Sections 16 to 20 of CPC to determine the territorial jurisdiction of the Court at the stage of considering referral to arbitration in a



Section 11 A&C Act petition.

A gainful reference may be made to the decisions of the Supreme Court in BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd., (2023) 1 SCC 693, and Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee, reported as **2022 SCC OnLine SC 568**. In the latter, it was held, as under:

*“27. At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial jurisdiction. **Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act.***

28. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent.”

(Emphasis supplied)

8. A perusal of the aforementioned legal position makes it amply clear that at the stage of determining the jurisdiction of the Court to entertain a petition under Section 11 A&C Act, in case of lack of consent between the parties as to the seat/venue of arbitration, which is reflected from the arbitration clause of the subject agreement, the Court must determine jurisdiction by taking the aid of Sections 16 to 20 of the CPC. In such a case, two factors are of relevance— (i) where the respondent actually or voluntarily resides or carries on their business, and (ii) where the cause of action, wholly or in part, arises. As regards the first factor, it is undisputed that the respondent resides and carries on its business in the state of Odisha.



Therefore, the discussion becomes predominantly centred around examining the second factor, i.e., where the cause of action arises.

9. A catena of Supreme Court decisions have clarified that while determining territorial jurisdiction of a Court, what is decisive is the accrual of cause of action. In other words, cause of action is a bundle of facts which create rights and obligations and gives rise to the right to sue to a party. Moreover, cause of action is made up of material and integral facts. This implies that not every insignificant or inconsequential fact becomes a part of cause of action. In fact, for a fact to be considered material enough to lead to the conclusion as to accrual of cause of action, it must be proved that the said fact has a nexus with *lis* between the parties and that it is integral to the dispute at hand. Reference may be made to the decision of the Apex Court in Alchemist Ltd. & Anr. v. State Bank of Sikkim & Ors., reported as (2007) 11 SCC 335. Relevant part of it is reproduced herein:

*“25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. **In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action.** It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.”*

(Emphasis supplied)

10. Territorial jurisdiction of a Court is ascertained having regard to the place of accrual of cause of action. Some of the relevant principles that have developed in this area of jurisprudence are, including but not limited to, that making and signing of a contract constitutes cause of action; that



facts which are necessary to decide the *lis* between the parties must have wholly or at least in part, arisen within the territorial jurisdiction of the Court; that each fact pleaded in the petition would not *ipso facto* be considered relevant while determining cause of action and that they must have a nexus with the issues involved in the matter; and importantly, that an insignificant or trivial part of cause of action would not be sufficient to confer territorial jurisdiction, even if incidentally forming a part of cause of action.

11. Having discussed the prevalent legal position as to determination of accrual of cause of action, it is evident that for a fact to form part of the cause of action, it must be material and substantial in nature, in such a way that it effects the rights or obligations of the parties, and not incidental or remote thereto. Keeping in view the above, the factual position of the present case may be analysed.

12. In the present case, the subject agreement was indisputably executed and notarized in Odisha. The construction work under the said agreement also took place in Odisha. In fact, as noted before, even the respondent's principal place of business is in Odisha. Considering the aforesaid, this Court is of the considered opinion that the material part of cause of action has arisen outside the territorial jurisdiction of this Court.

Insofar as the petitioner's contention as to the part payment being received in Delhi is concerned, it is noted that merely having its bank account branch in Delhi wherein part payment might be received, is not sufficient cause of action to give rise to this Court's jurisdiction. In fact, the payments so received are through cheques issued by the respondent from its bank account having its branch in Rajgangpur, Odisha. Mere depositing



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of said cheques in an account in Delhi cannot amount to payment being made in Delhi, especially in the absence of any 'payment clause' specifying where the payment is to be made and received, within the subject agreement. Notably, even though the bill may have been generated from the petitioner's address in Delhi, neither does it expressly or implicitly provide for place of payment, nor does it subject the disputes arising out of lack of payments regarding the said bills to the jurisdiction of Delhi. There is nothing to indicate, nor is it averred by the petitioner, that payment had to necessarily be made/received in Delhi. In such a case, having a bank account in Delhi where the petitioner may deposit the cheque issued to make payments, is a factum of no material consideration so as to justify accrual of cause of action. Therefore, it is wholly misconceived to rest the argument of accrual of cause of action on the strength of this singular fact, when the entire bundle of facts constituting the substantial and integral cause of action rests in Odisha.

13. In light of the aforesaid facts and considering the aforementioned legal position, it is held that no part of cause of action can be said to have arisen within Delhi, ousting this Court's territorial jurisdiction to entertain the present petition. Accordingly, the same is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 20, 2025/ik