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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-540-2025(O&M)

Date of Decision: 25.02.2026

PARSVNATH DEVELOPERS LIMITED

....Petitioner(s)

Versus

BRIG. DEVENDRA SINGH YADAV AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sanjay Kaushal, Senior Advocate with
Mr. Arjun Kaushal, Advocate,
Mr. Deepanshu Jain, Advocate,
Mr. T.S. Khaira, Advocate,
Ms. Ojasaini Gagneja, Advocate, for the petitioner.

Mr. Sidharth Yadav, Senior Advocate with
Mr. Manav Bajaj, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India seeking setting aside the order dated 06.08.2022 (Annexure P-15) passed by the learned District Judge (Commercial), Rewari in arbitration petition No.8 of 2021, titled 'Parsvnath Developers Ltd. versus Brig. Devender Singh and others'.

FACTUAL MATRIX

2. The petitioner and the respondents entered into a collaboration agreement vide Annexure P-2 dated 27.10.2005 and in the aforesaid collaboration agreement, there is an arbitration clause i.e Clause 23 and also a



clause pertaining to jurisdiction i.e. Clause 24. The aforesaid Clauses 23 and 24 are reproduced as under:-

“23. Arbitration

*23.1 Disputes, if any, which may arise between the parties with respect to this Agreement, or interpretation of terms, or its performance or execution unless resolved mutually, shall be referred to Arbitration under the provisions of Arbitration & Conciliation Act, 1996. **The venue of arbitration shall be New Delhi.***

24. Jurisdiction

*24.1 This Agreement shall be **subject to the jurisdiction of Courts at Rewari and High Court at Chandigarh.***

(emphasis supplied)

3. In the aforesaid arbitration clause 23, it has been clearly provided that the venue of arbitration shall be New Delhi and in a separate clause i.e. Clause 24 as reproduced above, it has been provided that the agreement shall be subject to the jurisdiction of Courts at Rewari and the High Court at Chandigarh. In this way, both venue as well as the jurisdiction of the Courts have been specifically provided in the aforesaid two clauses.

4. A dispute arose between the parties and the respondents filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') at Rewari on 14.05.2015, which was decided on 04.11.2015 vide Annexure P-5. Thereafter, the respondents filed an application under Section 11 of the Act before this Court in arbitration case No. 176 of 2015, which was decided on 05.02.2016 vide Annexure P-7, whereby a Coordinate Bench of this Court appointed a former Chief Justice of India as a Sole Arbitrator. Thereafter, learned Sole Arbitrator initiated the arbitral proceedings and during the pendency of the proceedings before the Sole Arbitrator since the statutory period had expired, the respondents filed



an application under Section 29-A of the Act before this Court and vide order dated 29.09.2017 (Annexure P-8), an extension was granted by a Coordinate Bench of this Court on the basis of consent of both the parties. Thereafter, the arbitral proceedings could not be concluded within the aforesaid extended period of time and another application for further extension was filed by the respondents before this Court which was withdrawn vide order dated 26.10.2018 (Annexure P-9) with liberty to take such appropriate remedy as may be available in law. Both the aforesaid orders i.e. Annexure P-8 and Annexure P-9 are reproduced as under:-

“Annexure P-8

*Present:- Mr. Siddharth Yadav, Advocate,
Mr. Pankaj Gupta, Advocate,
for the applicants-petitioners.*

*Mr. Praveen Gupta, Advocate,
for the respondent.*

** * * **

The application is allowed as prayed for.

*By consent, the time to make the award is extended
upto and including 11.03.2018.”*

“Annexure P-9

*Present: Mr. Siddharth Yadav, Advocate,
for the applicants.*

** * * **

*After the matter was heard at some length, learned
counsel for the applicants made a request to permit withdrawal
of this application with liberty to take such appropriate remedy
as may be available in law.*

Prayer made is allowed.

*Application stands dismissed as withdrawn with the aforesaid
liberty.”*



5. Thereafter, respondents filed another application under Section 29-A of the Act before Delhi High Court, which was the third application filed by them and vide order 18.12.2018 (Annexure P-10), the same was allowed and the time for concluding the arbitral proceedings was extended. In the aforesaid application which was so filed, the petitioner who was the respondent in the aforesaid application before Delhi High Court did not oppose the prayer for extension of time which was so recorded by the court in paragraph No.1 of the order. Delhi High Court also noted that earlier the parties were engaged in negotiations with a view to have their dispute settled amicably and since the parties could not arrive at a settlement, the respondents of the present petition had moved an application before this Court for extension of time and it was argued by the petitioner of the present petition that since the respondents had, on an earlier occasion moved the application before this Court this time also, they should have approached the same Court i.e High Court at Chandigarh but then it was observed by Delhi High Court that it would be a complete wastage of time to consider as to where the application could have been moved and ultimately allowed the application for extension of time. The aforesaid order passed by Delhi High Court is also reproduced as under:-

“1. Notice in this petition was issued on 03.12.2018. Mr. Rahul Malhotra has entered appearance on behalf of the respondent. Learned counsel says that he does not wish to file a reply as he does not oppose the prayer for extension of time, which has been made in the present petition.

2. The record shows that upon the petitioners approaching the Punjab & Haryana High Court under Section 11 of the Arbitration and Conciliation Act, 1996



(in short '1996 Act'), an order dated 05.02.2016 was passed for appointment of an Arbitrator.

3. Consequently, learned Arbitrator entered upon reference on 11.03.2016. Since both the statutory period of 12 months and the extended period of six months, as mutually agreed to between the parties came to an end, an application was made, once again, to the Punjab & Haryana High Court for extension of time under Section 29-A of the 1996 Act.

3.1 The Punjab & Haryana High Court, vide order dated 29.09.2017, extended time up till 11.03.2018.

4. I am informed by the learned counsel for the parties that thereafter, parties engaged in negotiations with a view to having their disputes settled amicably. Since the parties could not arrive at a settlement, the petitioners moved the Punjab and Haryana High Court, once again for extension of time. This time around the petitioners were not entertained. Counsel for the petitioners says that the reason for this was that the Court was not convinced that the petitioners had moved the appropriate Court.

5. It appears that it is for this reason that the instant application has been filed.

6. I must indicate that it was argued on behalf of the respondent that since the petitioners had, on an earlier occasion, as noted above, moved Punjab & Haryana High Court for extension of time, perhaps, this time around also, the petitioners should approach the same Court.

6.1 In my view, this would be a complete waste of time since as alluded to above, the petitioners did move the Punjab & Haryana High Court when on 26.10.2018, they had to withdraw the petition for extension of time.



6.2 Furthermore, according to Mr. Yadav, learned counsel for the petitioners, all hearings have been held by the learned Arbitrator in Delhi.

6.3 Moreover, the mere fact that a Section 11 petition was filed in Punjab & Haryana High Court, to my mind, would not trigger the provisions of Section 42 of the 1996 Act and, thus, in a sense, confine the choice of forum to Punjab & Haryana High Court.

*[See: **State of West Bengal Vs. Associated Contractors, (2015) 1 SCC 32]***

6.4 Furthermore, having regard to the fact that the petitioners did approach the Punjab & Haryana High Court and had to withdraw their petition, the petitioners cannot be left remediless by turning them away even from this Court.

7. I am informed by the learned counsel for the parties that the matter is at the stage of evidence.

8. Having regard to the time and money invested by the parties, I am inclined to extend the period for concluding the arbitration proceedings. Accordingly, time for concluding the arbitration proceedings is extended till 30.06.2019. The period between 12.03.2018 and today shall stand regularized.

9. Petition is disposed of in the aforesaid terms.

10. Dasti.”

6. Thereafter, on two occasions, application for extension of time was moved by the respondents before Delhi High Court regarding which the orders are attached as Annexures R-3 and R-4.

7. Learned Sole Arbitrator passed the award on 21.09.2020 (Annexure P-11), after taking extension of time on four occasions under Section 29-A of the Act initially from this Court and subsequently from the Delhi High Court. The aforesaid award was passed against the petitioner and



the claim of the respondents was allowed. The petitioner assailed the aforesaid award by preferring objections under Section 34 of the Act at Rewari, which falls in the State of Haryana. However, the respondents filed an application under Order VII Rule 10 CPC for returning of the objections under Section 34 of the Act before the Court of learned District Judge, Rewari and by way of the impugned order dated 06.08.2022 (Annexure P-15), the aforesaid application was allowed returning the objections under Section 34 for being presented before competent Court on the ground of want of territorial jurisdiction, which according to the learned District Judge, Court at Rewari had no territorial jurisdiction.

8. The aforesaid impugned order dated 06.08.2022 (Annexure P-15) was assailed by the petitioner by filing first appeal before this Court and the aforesaid appeal was dismissed by a Division Bench of this Court vide order dated 20.01.2025 (Annexure P-17) only on the ground of maintainability. The Division Bench of this Court observed that when an order passed on an application under Order VII Rule 10 CPC returning the objections under Section 34 of the Act was assailed, no appeal under Section 37 of the Act read with Section 13(1) of the Commercial Courts Act, 2015 (hereinafter referred to as 'the 2015 Act') would be maintainable. It was therefore held that the appeal would not be maintainable before the Commercial Appellate Authority, either under Section 37 of the Act or under the provisions of the Commercial Courts Act and in this way, the appeal was dismissed as not being maintainable and it was also observed that the Court has not gone into the merits of the case and the petitioner was given liberty to avail any other remedy, as admissible in law, if so advised. The operative



part of the aforesaid judgment contained in paragraph No.18 is reproduced as under:-

“18. In view of the clear cut finding arrived at by the Supreme Court of India on the issue of maintainability, we find that the present appeal is not maintainable. Accordingly, the same is dismissed on the ground of maintainability. For, the appeal is being dismissed on the ground of maintainability, we do not intend to go into the merits of the case. Still further, the petitioner would be at liberty to avail any other remedy, as admissible in law, if so advised.”

9. It was thereafter that the present revision petition was filed by the petitioner invoking Article 227 of the Constitution of India challenging the same order by which the objections under Section 34 were returned by way of the impugned order dated 06.08.2022 (Annexure P-15).

SUBMISSIONS BY LEARNED SENIOR COUNSEL FOR PETITIONER

10. Mr. Sanjay Kaushal, learned Senior Counsel appearing on behalf of the petitioner submitted that the impugned order which has been passed by learned District Judge by which application under Order VII Rule 10 CPC was allowed and the objections were returned for being presented before the competent Court is erroneous and contrary to the settled law. He referred to the provisions of the agreement which contains the arbitration as well as jurisdiction clause i.e. clause 23 and clause 24 respectively, which have been reproduced above. While referring to the aforesaid Clause 23, he submitted that it was mutually agreed between the parties that the venue of arbitration shall be New Delhi, which would mean that it is only the venue which was agreed upon between the parties and there was no seat of arbitration mentioned or designated in the aforesaid agreement (Annexure P-2). He further submitted that so far as the jurisdiction clause is concerned,



it was specifically agreed between the parties that jurisdiction of the Courts shall be at Rewari and the High Court at Chandigarh, which would mean that New Delhi was only the venue where the proceedings were to be held but it cannot be construed to be the seat of arbitration because the seat would be as mentioned in the jurisdiction clause, which provides that the jurisdiction of Courts would be at Rewari and this was the precise reason that the objections under Section 34 were filed at Rewari and not at New Delhi. In this regard, he submitted that the aforesaid expressions “venue” and “seat” cannot be used interchangeably and these are two different expressions that are to be construed independently. It is only when there is absence of *contrary indicia* that the “venue” can be construed to be “seat” but in the presence of such *contrary indicia*, the same cannot be construed to be the seat of arbitration.

11. Learned Senior Counsel referred to a judgment of Hon'ble Supreme Court in **BGS SGS Soma JV versus NHPC Ltd., (2020) 4 SCC 234** to contend that law with regard to the meaning and scope of the expression “venue” or “seat” of arbitration is elaborately discussed by Hon'ble Supreme Court in the aforesaid judgment and it was so held that when the venue or place of arbitration has been decided by mutual consent of the parties and there is no *contrary indicia*, then in that case the venue would become the seat of arbitration. He submitted that however in the present case, there is in fact presence of *contrary indicia* and the same can be inferred from the conduct of the parties as well as from a bare perusal of Clause 24. Firstly, the aforesaid jurisdiction clause i.e. Clause No.24 suggests that the agreement shall be subject to the jurisdiction of Courts at Rewari, which would constitute a *contrary indicia* and therefore, the



aforesaid expression “venue” cannot be construed as “seat”. Secondly, it is an admitted position that the respondents themselves filed an application under Section 9 of the Act before the Courts at Rewari, which was decided on 04.11.2015 vide Annexure P-5 and since the respondents themselves filed such an application under Section 9 of the Act, that itself constitutes a *contrary indicia* and therefore, the aforesaid venue cannot be construed to be the seat of arbitration because the seat would be at Rewari and not at New Delhi. He also referred to the provision of Section 2(i)(e) of the Act in this regard, where the term “Court” has been defined.

12. Learned Senior Counsel also submitted that one of the methods of ascertaining whether there exists a *contrary indicia* or not is to see the conduct of the parties. In this regard, he referred to Section 42 of the Act and contended that it is a mandatory provision. The Section has been enacted to prevent the parties from being dragged into proceedings in different Courts, when more than one Court has jurisdiction. Where with respect to any arbitration agreement, any application under Part I of the Act has been made in a Court, that Court alone would have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement, and the arbitral proceedings, would have to be made in that Court and in no other Court, unless, of course, the Court in which the first application had been instituted, inherently lacked jurisdiction to entertain that application. The Section which starts with a non-obstante clause is binding irrespective of any other law for the time being in force, and irrespective of any other provision in Part I of the Act. He further submitted that therefore, when the respondents filed an application under Section 9 of the Act before the



Courts at Rewari, the seat of the arbitration by conduct of the parties was fixed at Rewari and not at New Delhi.

13. Learned Senior Counsel while further substantiating his arguments submitted that not only the respondents themselves filed an application under Section 9 of the Act at Rewari but they also thereafter filed an application for appointment of an Arbitrator before this Court under Section 11 of the Act, which was allowed vide Annexure P-7 on 05.02.2016, whereby a former Chief Justice of India was appointed as a Sole Arbitrator and therefore, this would also constitute a *contrary indicia*.

14. Learned Senior Counsel further submitted that after the aforesaid application was moved by the respondents under Section 11 of the Act before this Court, the respondents again moved an application before this Court under Section 29-A of the Act and on 29.09.2017 vide Annexure P-8, the application was allowed and an extension was granted to the learned Arbitrator for continuation of the arbitral proceedings. Thereafter, the respondents again filed a second application for extension of time under Section 29-A of the Act, which was however withdrawn. He submitted that in this way, for four times the respondents have themselves filed different applications under different provisions within the territorial jurisdiction of this Court. It was thereafter that a third application under Section 29-A of the Act was filed by the respondents for further extension of time but this time before the Delhi High Court, which also granted extension of time on three different occasions but that would not mean that there was any shift or change of seat of arbitration which can be drawn from this conduct of the parties. He submitted that in this way, on the principle of party autonomy, once there is a mutual agreement between the parties by ascertaining a venue



and also ascertaining of jurisdiction of the Courts at Rewari and the High Court at Chandigarh, then the aforesaid “venue” cannot become “seat” and therefore, the impugned order is liable to be set aside and the objections filed by the petitioner before the learned District Judge, Rewari, which falls in the State of Haryana be directed to proceed with deciding of the aforesaid objections in accordance with law.

SUBMISSIONS BY LEARNED SENIOR COUNSEL FOR RESPONDENTS

15. Mr. Sidharth Yadav, learned Senior Counsel appearing on behalf of the respondents submitted that the present petition filed by the petitioner under Article 227 of the Constitution of India is not maintainable and raised objection with regard to the maintainability of the present petition. He submitted that once there is a decision by the learned District Judge, Rewari by way of the impugned order, then the petitioner could have invoked the remedy of revision under Section 115 CPC but could not have invoked the provisions of Article 227 of the Constitution of India before this Court. In this regard, he referred to a judgment of Hon’ble Supreme Court in *Sadhana Lodh versus National Insurance Co. Ltd. and another, 2003(3) SCC 524* and submitted that where there is a statutory remedy available under the Code of Civil Procedure, then the extraordinary power of the Court under Article 227 of the Constitution of India cannot be resorted to. It was submitted that where the remedy for filing a revision before the High Court exists under Section 115 CPC, then unless it is barred by a State enactment, the provisions of Article 227 of the Constitution of India cannot be invoked and therefore, the present revision petition under Article 227 of the Constitution of India would not lie. He submitted that in other words, where there is a



statutory remedy available, the extraordinary power under Article 227 of the Constitution of India should not be invoked.

16. He also referred to another judgment of Hon'ble Supreme Court in **Deep Industries Limited versus Oil and Natural Gas Corporation Limited and another, 2020(15) SCC 706** and submitted that legislative policy qua the general revisional jurisdiction under Section 115 CPC should be kept in mind when the High Courts dispose of petitions filed under Article 227 of the Constitution of India. The legislative policy is that no revision lies if an alternative remedy of appeal is available. Further, even when a revision does lie, it lies only against a final disposal of the entire matter and not against interlocutory orders.

17. He also referred to another judgment of Hon'ble Supreme Court in **Estralla Rubber versus Dass Estate (P) Ltd, 2001(8) SCC 97** and submitted that the scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of Hon'ble Supreme Court and it has been observed that the exercise of power under Article 227 involves a duty on the High Court to keep inferior Courts and Tribunals within the bounds of their authority and to see that they do the duty expected or required to be performed by them in a legal manner and it does not vest any unlimited prerogative to correct all kinds of hardship and is to be used sparingly. He also referred to a judgment of Madras High Court in **V. K. John versus S.Mukanchand Bothra and others, CRP No.676 of 2013 dated 03.02.2023** to contend that where a statutory right to file an appeal has been provided for, it is not open to the petitioner to challenge the arbitral award under Article 227 of the Constitution of India. Further reference was made to a



judgment of Hon'ble Supreme Court in **State of Maharashtra versus Atlanta Limited, 2014 (11) SCC 619** to contend that it is settled law that in cases where there is a choice to file a case before the Principal Civil Court of Original Jurisdiction or before the High Court, then it should be filed before the High Court.

18. Learned Senior Counsel also argued on the merits of the case and advanced his submissions. He also referred to a judgment of Hon'ble Supreme Court in **BGS SGS Soma JV's case (Supra)** and submitted that the position of law that has emerged from the aforesaid judgment of Hon'ble Supreme Court is that when venue is defined and seat is not defined by way of mutual agreement between the parties on the basis of the principle of party autonomy, then the "venue" is to be construed as the "seat" and in the present case, the seat has not been defined anywhere in the agreement itself and therefore, as per the law laid down by Hon'ble Supreme Court in **BGS SGS Soma JV's case (Supra)**, the venue will be converted into seat for the purpose of supervisory jurisdiction including filing of objections under Section 34 of the Act.

19. Learned Senior Counsel thereafter contended that on the basis of aforesaid principle of law once the venue which has been designated is construed to be the seat of arbitration reference can be made to a judgment of Hon'ble Supreme Court in **Indus Mobile Distribution Private Limited versus Datawind Innovations Private Limited and others, 2017(7) SCC 678** wherein it was held that once a seat of arbitration is designated, the clause designating the seat of arbitration becomes an exclusive jurisdiction clause, as a result of which, only the Courts within whose territorial limits, the seat is located would have jurisdiction to exclusion of all other Courts and the mere fact that an application was filed under Section 9 of the Act would not mean that the seat



can be changed from the place of venue which was mutually agreed upon between the parties. In this regard, he also referred to another judgment of Hon'ble Supreme Court in **Inox Renewables Limited versus Jayesh Electrical Limited, 2023(3) SCC 733** and contended on the same lines. Further reference was made to judgments of Hon'ble Supreme Court in **Bharat Aluminium Company versus Kaiser Aluminium Technical Services Inc., 2012 (9) SCC 552, Mankastu Impex Private Limited versus Airvisual Limited, 2020(5) SCC 399, Zapdor-Ubc-Abnjv, Delhi versus UOI and others, 2022 SCC Online All 594.**

ISSUES FOR DETERMINATION

20. Having heard the learned Senior Counsels for the parties at length, the following questions fall for consideration:-

- (i) Whether the present revision petition is maintainable under Article 227 of the Constitution of India or not ?
- (ii) Whether the Court at Rewari would have territorial jurisdiction to decide the objections under Section 34 of the Act or not ?

ANALYSIS OF SUBMISSIONS

21. Since learned Senior Counsel for the respondents has raised a preliminary issue pertaining to the maintainability of the present petition, this Court would first of all take up the aforesaid objection for consideration.

22. The objection which was raised by the learned Senior Counsel for the respondents was that the present petition under Article 227 of the Constitution of India is not maintainable because at the most, the remedy available to the petitioner was to file a revision petition under Section 115 of the Code of Civil Procedure. In this regard, he referred to a judgment of

Hon'ble Supreme Court in **Sadhana Lodh versus National Insurance Co. Ltd.**



and another(supra). By way of the impugned order passed by learned District Judge, the application under Order VII Rule 10 CPC was allowed on the ground of want of territorial jurisdiction and the objections under Section 34 of the Act were returned to be filed before the appropriate Court. In this way, there was no final adjudication of the *lis* on merits but the objections were only returned by the learned District Judge. The petitioner had assailed the aforesaid impugned order by filing an appeal before the Division Bench of this Court under Section 37 of the Act read with Section 13(1) of 2015 Act but the same was dismissed vide Annexure P-17 on the ground of maintainability and liberty was granted to the petitioner to avail any other remedy as admissible in law, if so advised and in this way, the petitioner has filed the present petition under Article 227 of the Constitution of India. So far as the judgment referred to by learned Senior Counsel for the respondents in **Sadhana Lodh's case (supra)** is concerned, a perusal of the same would show that it was observed by Hon'ble Supreme Court that where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution of India, which has been so observed in paragraph No.6 of the aforesaid judgment, whereby it is clearly observed that even if a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. In this way, the aforesaid judgment referred to by the learned Senior Counsel for the respondents would be distinguishable and not applicable to the present case because here is not a case where the petitioner was required to invoke any statutory appeal but he has invoked the provisions of Article 227 of the Constitution of India because earlier he had filed an appeal which was dismissed by a Division Bench of this Court for not being maintainable vide



Annexure P-18.

23. While dealing with the aforesaid objections raised by the learned Senior Counsel for the respondents with regard to maintainability, it will be useful to refer to a Division Bench judgment of Bombay High Court in **Accent Construction and Contractors Pvt. Ltd. And others versus M/s Shah Nagindas Mancharam and sons and others, 20202 (2) ALL MR 195**, wherein while relying upon the decision of the Hon'ble Supreme Court in **Shiv Shakti Coop. Housing Society, Nagpur versus M/s Swaraj Developers and others, 2003(6) SCC 659**, it was observed that in cases where plaint has been returned under Order VII Rule 10 CPC, the remedy would be a petition Article 227 of the Constitution of India. The Hon'ble Supreme Court in aforesaid Shiv Shakti case observed that a plain reading of Section 115 makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding and if the answer is “yes” then a revision is maintainable but on the contrary, if the answer is “no” then a revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the *lis*, the revision under Section 115 CPC will not be maintainable. It was further observed that the legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Section 115 of CPC. The Division Bench of the Bombay High Court following the law laid down by the Hon'ble Supreme Court in **Shiv Shakti's case (supra)**, answered the reference by holding that an order rejecting an application filed by a party in a suit praying that the Court having no territorial jurisdiction should return the plaint as not a revisable order and challenge to such order has to be by way of a proceeding under Article 227 of the Constitution of India.



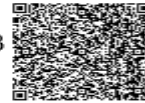
24. So far as reference made to another judgment of Hon'ble Supreme Court in this regard in **Deep Industries Limited's case (supra)**, it would not be applicable to the facts and circumstances of the present case as in that case, the issue was with regard to maintainability of a revision petition under Article 227 of the Constitution of India against interlocutory orders passed by an Arbitral Tribunal, whereas in the present case, the challenge is to the order passed by the learned Court returning the objections under Section 34 of the Act for want of territorial jurisdiction.

25. Further reliance placed by the learned Senior Counsel for the respondents on the judgments passed by Hon'ble Supreme Court in **Estralla Rubber's case (supra)** and **Atlanta Limited's case (supra)** and another judgment of Madras High Court in **V. K. John's case (supra)** are distinguishable on facts.

26. In view of the aforesaid settled position of law, the objection raised by the learned Senior Counsel for the respondents with regard to maintainability is hereby rejected.

27. The second issue involved in the present case is based upon Clause No.23 and Clause No.24 of the agreement, which have been reproduced in the earlier part of this judgment.

28. The issue involved would therefore be as to whether in terms of the aforesaid clauses, the expression “venue” of arbitration is to be construed to also mean the “seat” of arbitration or not. It is a settled position of law that when a contract contains an arbitration clause that specifies a “venue”, thereby anchoring the arbitral proceedings thereto, then the said “venue” is really the seat of arbitration. In such a situation, the Courts having supervisory jurisdiction over the said “seat” shall exercise supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to

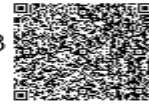


confer “exclusive jurisdiction” on a different Court. The venue of arbitration has been provided as New Delhi but there is no seat defined or designated in the agreement. However, in the jurisdiction clause, it is so provided that the jurisdiction of the Court shall be at Rewari, which falls in the State of Haryana and the High Court at Chandigarh. Therefore, it is very clear that the seat has not been expressly defined or designated in the agreement. It is only the venue of the arbitration which has been defined and the jurisdiction of the Court is also defined to be at Rewari.

29. Under the scheme of the Arbitration Act, party autonomy is to be given primacy and the party may expressly agree to choose any venue and any seat of arbitration. However, when the parties do not define any seat in the arbitration agreement but the venue is defined, then it has to be seen in the facts and circumstances as to whether the venue is to be read as seat or not.

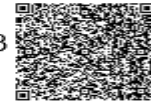
30. In this regard, the relevant portion of the judgment Hon'ble Supreme Court in **BGS SGS Soma JV's case (Supra)** is required to be considered which is reproduced as under:-

“82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor



arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an International context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration."

31. The law with regard to the aforesaid proposition was therefore concluded in paragraph No.82 of the aforesaid judgment. It was held that whenever there is a designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing but the arbitration proceedings as a whole, including the making of an award at that place. It was observed that this language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place at the “venue” which may lead to the conclusion that other things being equal that the venue so stated is not the “seat” of arbitral proceedings but only a convenient place of meeting. It was further observed that coupled with there being no other significant *contrary indicia* that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In this way, it was held by Hon'ble Supreme Court that in the absence of any designated seat in the agreement, the venue would become the seat. In the



aforesaid judgment, there was no seat defined. However, the aforesaid proposition with regard to the conversion of the venue into seat in absence of the seat being so defined in the arbitration agreement itself is subject to a rider which is so specifically elaborated by Hon'ble Supreme Court in the aforesaid paragraph No.82. According to the aforesaid rider, if there is a *contrary indicia*, then the mere fact that the venue has been decided but the seat has not been decided but the contrary indicia so suggests that seat lies elsewhere, then in that situation "venue" will not be converted into "seat" of arbitration. In other words, in the absence of any seat being defined and the venue being stated in the arbitration agreement, then normally a "venue" will be converted into "seat" subject to a rider that in the presence of any *contrary indicia* being available from the facts and circumstances of the case, then the venue will not be converted into seat and the contrary indicia will prevail owing to the reason that the seat is not defined. This is the crux of the aforesaid judgment of the Hon'ble Supreme Court in **BGS SGS Soma JV's case (Supra)**.

32. In a later judgment of the Hon'ble Supreme Court in **M/s Ravi Ranjan Developers Pvt. Ltd. versus Aditya Kumar Chatterjee, 2022 SCC OnLine SC 568** a similar set of facts and circumstances came before the Hon'ble Supreme Court as that of the present case. In that case, the property was situated at Muzaffarpur in Bihar but the petition under Section 11 of the Act was filed before the Calcutta High Court. This was because of the reason that in Clause 37 in the agreement therein, it was so provided that the sittings of the Arbitral Tribunal shall be at Kolkata. However, an application under Section 9 of the Act was filed before the Court of District Judge, Muzaffarpur seeking interim protection of the property. Hon'ble Supreme Court dealt with this issue in detail and framed a question that whether the Calcutta High Court had jurisdiction to entertain the application filed by the respondents and to



appoint an Arbitrator or not. It was thereafter answered in paragraph No.20 of the judgment in negative for the reason that the development agreement was admittedly executed and registered outside the jurisdiction of Calcutta High Court and the agreement pertains to the development of property located at Muzaffarnagar outside the jurisdiction of the Calcutta High Court. The appellant had its registered office in Patna outside the jurisdiction of the Calcutta High Court and the appellant had no establishment and does not carry on any business within the jurisdiction of the Calcutta High Court.

33. It was thereafter held that it is well settled that a judgment is a precedent for the issue of law that is raised and decided. The judgment has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Words, phrases and sentences in a judgment can neither be read out of context nor a judgment is to be read and interpreted in the manner of a statute. It is only the law as interpreted by an earlier judgment which constitutes a binding precedent and not everything that the Judges say. It was observed that it can never be an absolute general proposition of law that where an arbitration agreement says that the place of arbitration is Faridabad/Delhi and proceedings under Part I of the Arbitration and Conciliation Act are also validly initiated in Faridabad, the Court in Faridabad would notwithstanding Section 42 of the Arbitration and Conciliation Act, lose its jurisdiction just because arbitration is later conducted in Delhi and award is made in Delhi. It was finally concluded that it is well settled that “seat of arbitration” and “venue of arbitration” cannot be used interchangeably. It has also been established that mere expression “place of arbitration” cannot be the basis to determine the intention of the parties that they have intended that place as the “seat” of arbitration. The intention of the parties as to the “seat” should be determined from other clauses in the agreement and the conduct of the



parties. In the aforesaid judgment and in the facts and circumstances of that case, it was further observed by Hon'ble Supreme Court that the respondent of that case himself had approached the District Court at Muzaffarpur and not the Court of Kolkata for interim protection under Section 9 of the Act and therefore, the respondent having himself invoked the jurisdiction of the District Court at Muzaffarpur is estopped from contending that the parties had agreed to confer exclusive jurisdiction upon the Calcutta High Court to the exclusion of other Courts.

34. In the present case also, the venue has been defined but the seat has not been defined and this Court in the light of the aforesaid judgment of Hon'ble Supreme Court in **BGS SGS Soma JV's case (Supra)** and **M/s Ravi Ranjan Developers Pvt. Ltd.'s case (Supra)** has to see the conduct of the parties, the effect of filing of a petition under Section 9 of the Act by the respondents themselves and also the effect of Section 42 of the Act.

35. The conduct of the parties in the present case was as so stated in the earlier part of the judgment that the respondents themselves filed an application under Section 9 of the Act before the Court at Rewari, which was decided on 04.11.2015 vide Annexure P-5, which clearly suggests the conduct of the parties pertaining to the territorial jurisdiction of the Court. Not only an application under Section 9 of the Act was filed by the respondents but even thereafter a petition under Section 11 of the Act was filed for appointment of an Arbitrator before this Court and thereafter, two times applications were filed by the respondents themselves under Section 29A of the Act for the purpose of extension of time. Although later on for three times, the respondents themselves filed different applications before Delhi High Court for extension of time but that would not mean that the respondents were having any vested right to



change their conduct with regard to the filing of the application under Section 9 of the Act.

36. In the judgment of Hon'ble Supreme Court in **M/s Ravi Ranjan Developers Pvt. Ltd.'s case (Supra)**, the primary basis for arriving at a conclusion was based upon filing of an application under Section 9 of the Act and in the present case as well, it is an admitted position that the respondents themselves had filed an application under Section 9 of the Act before the Court at Rewari and not at Delhi much prior to objections under Section 34.

37. The effect of Section 42 of the Act also has great significance in the facts and circumstances of the present case. Section 42 of the Act, which is in the nature of a non-obstante clause, provides that where with respect to an arbitration agreement any application under this Part has been made in the Court, then that Court alone has jurisdiction over the arbitral proceedings and all subsequent application arising out of that agreement and the arbitration proceedings shall be made in that Court and in no other Court. Hon'ble Supreme Court in **M/s Ravi Ranjan Developers Pvt. Ltd.'s case (Supra)** also referred to the aforesaid provisions of Section 42 of the Act, which pertain to jurisdiction and also provide for a non-obstante clause. Therefore, pressing into service of the aforesaid provision of Section 42 of the Act by the learned Senior Counsel for the petitioner has force and carries weight in the light of the judgment of the Hon'ble Supreme Court. There is no dispute on the fact that it was the respondents themselves who filed an application under Section 9 of the Act before the Court at Rewari and thereafter filed subsequent applications both under Section 11 and Section 29-A of the Act. Reference was made by the learned Senior Counsel for the respondents on other judgments of Hon'ble Supreme Court as well including **Inox Renewables Limited's case (supra)** and **Indus Mobile Distribution Private Limited's case (supra)** and the said



judgments are distinguishable on facts as seat was mentioned and designated in the arbitration agreement in those cases whereas in the present case, there is no designation of any seat.

38. In *Mankastu Impex Private Limited v. Airvisual Limited* (*supra*) a three Judge Bench of Hon'ble Supreme Court held:

"19. The seat of arbitration is a vital aspect of any arbitration proceedings. Significance of the seat of arbitration is that it determines the applicable law when deciding the arbitration proceedings and arbitration procedure as well as judicial review over the arbitration award. The situs is not just about where an institution is based or where the hearings will be held. But it is all about which court would have the supervisory power over the arbitration proceedings. In Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , the Supreme Court held that : (SCC pp. 43 & 46, paras 97 & 107)

"The location of the seat will determine the courts that will have exclusive jurisdiction to oversee the arbitration proceedings. It was further held that the seat normally carries with it the choice of that country's arbitration/curial law."

20. It is well settled that "seat of arbitration" and "venue of arbitration" cannot be used interchangeably. It has also been established that mere expression "place of arbitration" cannot be the basis to determine the intention of the parties that they have intended that place as the "seat" of arbitration. The intention of the parties as to the "seat" should be determined from other clauses in the agreement and the conduct of the parties."

(Emphasis supplied)

CONCLUSION

39. Therefore, this Court is of the considered view that in the facts and circumstances of the present case, there is a clear *contrary indicia*.

Although the seat has not been specifically defined or designated in the agreement but the conduct of the parties i.e. the filing of an application under Section 9 of the Act by the respondents themselves before the Court at Rewari is a clear contrary indicia and therefore, the venue cannot be construed as seat.

40. Consequently, the present petition is allowed. The impugned order dated 06.08.2022 (Annexure P-15) is hereby set aside. The learned District Judge, Rewari shall now restore the aforesaid case and continue to hear the proceedings under Section 34 of the Act in accordance with law.

25.02.2026

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No