

KHALEEL AHMED DAKHANI
v.
THE HATTI GOLD MINES CO. LTD.

MARCH 27, 2000

[D.P. WADHWA AND DORAISWAMY RAJU, JJ.]

Arbitration and Conciliation Act, 1996 :

Ss. 11, 34—Government Company—Awarding contract for construction of building in Raichur district—Dispute between parties—Arbitration—Award—Application by company to set aside award filed in Civil Court at Bangalore—Thereafter contractor filing execution application in District Court, Raichur—Raichur court holding that Bangalore court had no jurisdiction, and ordering attachment of properties of company—Held, Raichur court erred in holding that Bangalore court had no jurisdiction—Application u/s. 34 having been filed earlier, Raichur court should not have entertained the execution application.

The appellant, a building contractor, was awarded a contract by the respondent, Government a company in Karnataka, for construction of a school building in District Raichur. Clause 35 of the agreement constituting the arbitration clause provided that only courts at Bangalore would have jurisdiction in the matter. Since there arose some disputes, an arbitrator was appointed under S.11 of the Arbitration and Conciliation Act, 1996. Arbitration proceedings were held at Bangalore and an award was made. The company filed in the Court of Principal City Civil Judge, Bangalore an application under S.34 of the Act for setting aside the award. Thereafter the contractor filed an application for execution of the award in the Court of Principal District Judge, Raichur. On this application, orders for attachment of movable properties of the company were issued. The company filed an application before Principal District Judge, Raichur for lifting the attachment, and brought to his notice that an application under S.34 of the Act was already pending before the City Civil Judge, Bangalore. The Principal District Judge held that the Bangalore court had no jurisdiction in the matter and dismissed the application. The revision filed by the company was allowed by the High Court. Aggrieved, the contractor filed the present appeal.

Dismissing the appeal, this Court

A **HELD :** The Principal District Judge, Raichur should not have entertained the application for execution and ordered attachment of movable properties of the respondents. Though he had jurisdiction in the matter, he erred in holding that the Principal City Civil Judge, Bangalore had no jurisdiction. It can always be said, in view of S.20 of the Code of
B Civil Procedure, 1908, that only one court will have jurisdiction to try the suit. It is not that the Principal City Civil Court, Bangalore is not a court within the meaning of S.2(e) of the Arbitration and Conciliation Act, 1996. The question whether the Principal City Civil Judge, Bangalore has jurisdiction in the matter or not is still pending with him in the proceedings
C under S.34 of the Act which were filed earlier in time than the execution application filed by the appellant in District Court at Raichur. The award had not attained finality. Besides, the Principal District Judge, Raichur also did not take notice of clause 35 of the contract which constituted arbitration agreement between the parties which specifically provided that only the courts in Bangalore would have jurisdiction to entertain any claim for
D enforcement of the award. The High Court took a correct view of the matter and rightly set aside the impugned orders. [582-B, 581-B-C, 582-C]

Patel Roadways Limited, Bombay v. Prasad Trading Company, [1991] 4 SCC 270, referred to.

E **CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 2232 of 2000.

From the Judgment and Order dated 29/30.7.99 of the Karnataka High Court in C.R.P. No. 1876 of 1999.

F Rajiv Dutta and Ms. Enakshi Kulshrestha for the Appellant.

Ms. Indu Malhotra and Ms. Monika Arora for the Respondent.

The Judgment of the Court was delivered by

G **D.P. WADHWA, J.** We grant leave to appeal.

H This appeal is directed against judgment dated 29/30.7.1999 of the High Court of Karnataka given in revision filed by the respondent whereby High Court set aside the orders dated 24.5.1999 and 21.6.1999 of the Principal District Judge, Raichur. By order dated 24.5.1999 the Principal District Judge, Raichur issued warrants of attachment of moveable properties of the respondent as described in the application for execution filed by the

appellant. By order dated 21.6.1999 the learned Principal District Judge dismissed the application of the respondent praying for lifting of the attachment already issued against it.

Appellant is a building contractor. Respondent is a Government company of the Government of Karnataka under the Companies Act, 1956. Respondent awarded the contract for construction of a school building at Hatti in District Raichur to the appellant. An agreement dated 9.3.1995 was duly entered into. Clause 35 of the agreement contained the arbitration clause. Disputes and differences having arisen appellant moved the Chief Justice of the High Court of Karnataka under Section 11 of the Arbitration and Conciliation Act, 1996 (for short the 'Act') for appointment of an arbitrator. The application was allowed and Mr. H.S. Bhat, Chief Engineer (retired), who was resident of Bangalore was appointed as an arbitrator with a direction to complete the arbitration proceedings and to submit his Award within four months. Arbitration proceedings were held at Bangalore where also the Award dated 28.8.1998 was made. Arbitrator awarded some of the claims of the appellant while disallowing a few others. Respondent filed application for setting aside the Award by making an application under Section 34* of the

34. Application for setting aside arbitral award. (1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if -

- (a) the party making the application furnishes proof that -
- (i) a party was under some incapacity; or
 - (ii) the arbitration agreement is not valid under law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration :

Provided that, if the decisions on matters submitted to arbitration, can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this part; or
- (b) the court finds that -
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

A Act in the court of Principal City Civil Judge, Bangalore. While this application was pending appellant as decree-holder filed an application for execution of the Award in the court of Principal District Judge, Raichur. It was on this application that orders for attachment of properties of the respondent were issued. When respondent sought lifting of its attachment by filing an application, the same was dismissed. Aggrieved respondent went to the High Court in revision. High Court allowed the revision of the respondent and set aside the two orders of the Principal District Judge, Raichur which we have mentioned above. Now it is the appellant who has come to this Court.

C It would appear that by filing the execution application in the court at Raichur appellant wanted to enforce the Award under Section 36** of the Act. When the court at Raichur issued warrants of attachment it was not aware of pendency of the application of the respondent under Section 34 of the Act in the court at Bangalore. Appellant had made no mention in his application about the pendency of the proceedings at Bangalore. However, when the respondent filed application before the Principal District Judge, Raichur for lifting of the order of attachment it was brought to his notice the pendency of the application under Section 34 of the Act for setting aside the Award. Now, the learned Principal District Judge, Raichur held that Principal City Civil Court, Bangalore had no jurisdiction to entertain the application under

E (ii) the arbitral award is in conflict with the public policy of India.

Explanation. - Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

F (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal :

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

G (4) On receipt of an application under sub-section (1), the court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

H ** 36. *Enforcement.* - Where the time for making an application to set aside the arbitral award under section 34 has expired of such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the court.

Section 34 of the Act. On this premise he dismissed the application of the respondent and confirmed the order of attachment. A

In support of his argument that court at Bangalore would have no jurisdiction Mr. Rajiv Dutta, learned counsel for the appellant, referred to a decision of this Court in *Patel Roadways Limited, Bombay v. Prasad Trading Company*, [1991] 4 SCC 270. In this case Patel Roadways Limited had its principal office at Bombay and branch offices at various other places. Prasad Trading Company entrusted certain consignments of goods to Patel Roadways Limited at its subordinate office in the State of Tamil Nadu for delivery at Delhi. The goods reached Delhi but in damaged conditions. Prasad Trading Company instituted a suit for damages in the court at Madras within whose jurisdiction the subordinate offices of Patel Roadways Limited were situated and where the goods were entrusted for transport. A plea was raised by the Patel Roadways Limited in its defence that when the contract was entered into between the parties it was agreed that only Bombay court would have jurisdiction and as such court in Madras had no jurisdiction. It was in this context that this Court considered clause (a) of Section 20 and explanation thereto in Code of Civil Procedure (for short 'Code')*. The question which was before this Court was as to whether in view of the relevant clause in the contract between the parties the court at Bombay alone had jurisdiction and the jurisdiction of the courts at Madras where the suit was instituted was barred. It was submitted by the Patel Roadways that apart from the courts within whose territorial jurisdiction the goods were delivered to the appellant for transport, the courts at Bombay also had jurisdiction to entertain a suit arising out of the contract between the parties in view of the Explanation to B C D E

* 20 Other suits to be instituted where defendants reside or cause of action arises. - Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction - F

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises. G

Explanation. A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. H

A Section 20 of the Code inasmuch as the principal office of the appellant was situated in Bombay. According to it since courts at two places namely Madras and Bombay had jurisdiction in the matter, the jurisdiction of the courts in Madras was ousted by the clause in the contract whereunder the parties had agreed that jurisdiction to decide any dispute under the contract would be only in the courts at Bombay. Consequently the courts where the suit was instituted had no jurisdiction to entertain it. This Court said that “the explanation is really an Explanation to clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive “or” will not be there. Instead, the second part of the Explanation would have read “and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place”. It, therefore, held that the explanation provides an alternative locus for the Corporation’s place of business, not an additional one. Thus, this Court was of the view that clause (c) was not attracted to confer jurisdiction on courts at Bombay and the appellant has admittedly its subordinate offices at Madras where the goods in the case were delivered to it for the purpose of transport the Court at Bombay had no jurisdiction at all to entertain the suit and that the parties could not confer jurisdiction on the courts at Bombay by an agreement.

In view of the decision of this Court in *Patel Roadways Limited, Bombay v. Prasad Trading Company*, [1991] 4 SCC 270, it cannot be said that the Principal District Judge, Raichur had no jurisdiction to entertain the matter. But then the question arises, as rightly posed by the High Court, if in the given facts and circumstances of the case, could the Principal District Judge,

Raichur had made to orders which are impugned, particularly, when it was brought to his notice pendency of the proceedings under Section 34 of the Act in the Court of Principal City Civil Judge, Bangalore where the appellant itself had filed a CAVEAT under Section 148A of the Code and also an application under Section 9* of the Act seeking interim relief. Learned Principal District Judge, Raichur also did not take notice of clause 35 of the contract which constituted arbitration agreement between the parties which specifically provided that only the courts in Bangalore would have jurisdiction to entertain any claim for enforcement of the award. Principal District Judge, Raichur had no doubt jurisdiction in the matter but his holding that the Principal City Civil Judge, Bangalore would have no jurisdiction does not commend to us. It cannot always be said, in view of Section 20 of the Code, that only one court will have jurisdiction to try the suit. It is not that the Principal City Civil Court, Bangalore is not a court within the meaning of Section 2(e)** of the Act. Whether Principal City Civil Judge, Bangalore has jurisdiction in the matter or not is still pending with him which proceedings were filed earlier in time than the execution application by the appellant in the

* 9. *Interim measures, etc. by court.* - A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-

- (i) for the appointment of a guardian for a minor or a person of unsound mind for the purpose of arbitral proceedings, or
- (ii) for an interim measures of protection in respect of any of the following matters, namely-
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - (b) securing the amount in dispute in the arbitration;
 - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
 - (d) interim injunction or the appointment of a receiver;
 - (e) such other interim measure of protection as may appear to the court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it

** "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes"

- A** District Court at Raichur. The award had not attained finality. In these circumstances we are of the view that the Principal District Judge, Raichur should not have entertained the application for execution and order attachment of movable properties of the respondents. The High Court referred to the concession by both the parties that all the applications under the Act had to be treated as original suits and if the court finds that it had no jurisdiction to entertain, it cannot dismiss the suit but has to return the same for the presentation to the proper Court. Whatever may be the concession of the parties, we are of the view in the circumstances of the present case Principal District Judge, Raichur should have stayed his hands and should not have entertained the execution application by the appellant. High Court took a correct view of the matter and rightly set aside the impugned orders.
- B**
- C**

We, therefore, find no merit in the appeal. It is dismissed with costs.

R.P.

Appeal dismissed.