
(2013) 03 BOM CK 0244

In the Bombay High Court

Case No : Miscellaneous Civil Application No. 162 of 2012

Atlanta Limited a Public Limited

APPELLANT

Vs

Executive Engineer and State of Maharashtra

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Arbitration Act, 1940 — Section 31, 42
Arbitration and Conciliation Act, 1996 — Section 19, 2(e), 27, 31, 34
Civil Procedure Code, 1908 (CPC) — Section 141, 15, 24, 24(1)(a), 24(1)(b)
Criminal Procedure Code, 1973 (CrPC) — Section 146(1)

Citation : (2013) 3 ABR 484 : (2013) 3 ALLMR 699 : (2013) 4 ARBLR 84 :
(2013) 4 BomCR 305 : (2013) 4 MhLj 601

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : M.M. Vashi assisted with Mr. Abhishek Bharti and Ms. Aparna Devkar, for the Appellant; A.A. Kumbhakoni, Special Counsel a/w Mr. Shardul Singh and Mr. A.R. Patil for the Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

S.C. Dharmadhikari, J.—Rule. The Respondents waive service. By consent, rule is made returnable forthwith. By this Application u/s 24 of the Code of Civil Procedure, 1908, the Petitioner prays that Miscellaneous Application No. 229 of 2012 and Miscellaneous Application No. 230 of 2012 filed by the Respondents before the District Court, Thane on 7th August, 2012 u/s 34 of the Arbitration and Conciliation Act, 1996 be transferred to the Original Side of this Court for being heard with Arbitration Petition No. 115 of 2012.

2. This Application is filed on 30th November, 2012. It is the case of the Petitioners that it is a public limited company registered under the Indian Companies Act, 1956 having its registered office at the address mentioned in the cause title. Both Respondents are officials of the Public Works Department of the Government of Maharashtra.

3. In October, 1998, the Respondents invited tenders from the pre-qualified bidders on Build, Operate and Transfer basis (BOT) for the work of construction of Mumbra Bypass off Mumbai-Pune Road, National Highway No. 4 from K.m. 133/800 and joining existing Mumbai-Pune Road at K.m. 138/200 for a total length of 5.41 K.m. in Thane District. The Petitioner is carrying on business of infrastructure development. The Petitioner submitted its bid on 12th April, 1999, which was accepted by the Respondents on 26th May, 2000. On 12th July, 2000 an agreement was arrived at between the Petitioner and the Respondents at Mumbai which was executed at Mumbai. A supplementary agreement dated 11th May, 2005 was executed between parties at Panvel.

4. The Petitioner states that the disputes and differences arose between parties in respect of the works which were awarded to the Petitioner under the agreement. There were also disputes with regarding suspension of toll Collection for the period from 1st September, 2010 to 10th September, 2010 and 18th September, 2010 to 15th January, 2011. All the disputes and differences were referred to arbitration. After hearing both sides the Arbitrator passed two Awards, both dated 12th May, 2012 being Reference No. 1 and Reference No. 2. The Petitioner's case is that the arbitration proceedings were held at Mumbai as place of arbitration was Mumbai.

5. On 7th August, 2012, the Petitioner filed Arbitration Petition No. 1158 of 2012 u/s 34 of the Arbitration and Conciliation Act, 1996 challenging the directions given under clause (a) and (b) of the operative part of the award dated 12th May, 2012. The Petitioner prayed that the same be set aside u/s 34 of the Arbitration and Conciliation Act, 1996.

6. Similarly, the Respondents filed Miscellaneous Application No. 229 of 2012 and Miscellaneous Application No. 230 of 2012 before the District Court, Thane u/s 34 of the Arbitration and Conciliation Act, 1996 and even their Petitions were filed on 7th August, 2012.

7. It is urged by the Petitioners that when their Arbitration Petition was came up for admission, it was discovered that even the Respondents have filed Arbitration Petitions invoking identical powers in relation to the same award but, at the District Court at Thane. It is in these circumstances, that this application u/s 24 of the Code of Civil Procedure, 1908 is filed so as to avoid conflicting orders/ judgments and bearing in mind that the Arbitration and Conciliation Act, 1996 mandates that one civil Court should decide all matters pertaining to the arbitral reference.

8. It is in the above circumstances, that this Petition has been filed.

9. Mr. Vashi, learned counsel appearing on behalf of the Petitioner submitted that in the Affidavit-in-Reply which has been filed in this Petition, it is admitted by the Respondents that the place of arbitration in terms of the arbitration clause in the contract was Mumbai. It is also admitted that both, this Court on the Original Side and the District Court at Thane have jurisdiction in respect of the subject

matter in issue. It is urged that Section 2(e), 34 and 42 of the Arbitration and Conciliation Act, 1996 are relied upon by the Respondents. Therefore, Mr. Vashi submits that it is desirable that all proceedings in a reference shall be dealt with by one Court. Mr. Vashi submits that Section 31 of the Arbitration Act, 1940 and Section 42 of the Arbitration and Conciliation Act, 1996 deal with this aspect of the matter. Mr. Vashi submits that, both the Original Side of this Court and the District Court at Thane in this case are approached on the grounds that they are principal Court of original civil jurisdiction. They are Civil Courts. The proceeding u/s 34 of the Arbitration and Conciliation Act, 1996 is a proceeding within the meaning of Section 24(1)(a) and Section 24(1)(b) of the Code of Civil Procedure, 1908. Thus, it is a proceeding before a civil Court. In view thereof, this Application u/s 24 of the Code of Civil Procedure, 1908 is maintainable and this Court, therefore, should allow the Petition and transfer the proceedings from the District Court at Thane to the Original Side of this Court. There is no inconvenience to the parties as the Respondents are based at Mumbai.

10. In support of his submissions, Mr. Vashi has placed heavy reliance upon the Judgment of the Hon'ble Supreme Court in the case of Kumbha Mawji Vs. Union of India (UOI), . Mr. Vashi has also placed reliance on a Judgment of the learned Single Judge of the Allahabad High Court, reported in Shahab Uddin alias Munnar Vs. District Judge and Another, . Mr. Vashi has placed reliance on a Judgment of the Allahabad High Court, in the case of Nand Kishore and others Vs. Mool Chandra and others, . Finally, Mr. Vashi placed reliance on another Judgment of the Allahabad High Court in the case of Union of India (UOI) Vs. Rup Kishore and Another, .

11. Mr. Kumbhakoni, learned counsel appearing on behalf of the Respondents submits that there is no power in this Court to transfer the proceedings. He submits that Section 24 of the Code of Civil Procedure, 1908 has no application to proceedings u/s 34 of the Arbitration and Conciliation Act, 1996. Mr. Kumbhakoni has invited my attention to Section 2(e) which defines the term "Court" and, equally to Section 5 of the Arbitration and Conciliation Act, 1996 to urge that both these provisions rule out applicability of Section 24 of the Code of Civil Procedure, 1908. Mr. Kumbhakoni submits that the power to transfer arbitration proceedings must be found in the Arbitration Act and it should be conferred specifically thereunder. It is not possible to take assistance or recourse to Section 24 of the Code of Civil Procedure, 1908. No judicial intervention outside the purview of the Arbitration Act, is permissible. Mr. Kumbhakoni submits that the scheme of the old Act, namely, the Arbitration Act, 1940 and the new Act of 1996 is different. The new Act contains Section 42 but, that is not par with Section 34 of the old Act. In these circumstances, if a Court within the meaning of Section 2(e) of the Arbitration and Conciliation Act, 1996 comes to a conclusion that it has no jurisdiction to entertain and try the Arbitration Petition, it may by taking recourse to appropriate provisions of the Arbitration Act direct return of the Petition u/s 34 to the Petitioner's Advocate for presentation to proper Court. However, by no stretch of imagination, there is any power of

transfer which can be exercised by this Court u/s 24 of the Code of Civil Procedure, 1908.

12. Alternatively and assuming without admitting that Section 24 of the Code of Civil Procedure, 1908 applies, Mr. Kumbhakoni submits that the proceedings from the Original Side of this Court, namely, Arbitration Petition No. 1158 of 2012 should be transferred to the District Court, Thane in exercise of these powers by me. In the further alternative, Mr. Kumbhakoni submits that the present Petition should not be treated as one filed u/s 24 of the Code of Civil Procedure, 1908 but, this Court in exercise of its inherent powers should consolidate both applications so as to avoid conflicting Judgments and Orders and simultaneous trial. Mr. Kumbhakoni submits that in this case, the Civil Court can decide the question of jurisdiction by considering the subject matter of the arbitration and as if the same is a subject matter of a civil suit. If that test is applied, it is only the District Court at Thane which can be approached to challenge the Award. Mr. Kumbhakoni submits that his concession in the alternative is on the footing that only the procedural provisions of the CPC are applicable. Mr. Kumbhakoni also relies upon Section 15 of the CPC and submits that the Court at Thane is the lowest in terms of that provision and in such circumstances, the proceedings before the District Court need not be transferred.

13. Mr. Kumbhakoni has sought to distinguish the judgments relied upon by Mr. Vashi by urging that each one of them is delivered considering the provisions of old Arbitration Act. Now, in the new Act, there is no requirement to file award in a Civil Court and seek a decree in terms thereof. Therefore, the judgments under the old Act are of no assistance in deciding this controversy. In these circumstances, he submits that the Petition be dismissed.

14. In rejoinder, Mr. Vashi submits that all the arguments canvassed by Mr. Kumbhakoni are contrary to the stand taken by the Respondents in paragraph no. 8 of their Affidavit-in-Reply. These arguments, therefore, should not be accepted. In any event, the new Act and, particularly, Section 5 thereof does not rule out applicability of the CPC and, particularly, Section 24 thereof. For these reasons, he submits that this application be allowed.

15. With the assistance of Mr. Vashi and Mr. Kumbhakoni, I have perused the Petition and all annexures thereto including the Affidavit-in-Reply. I have also perused the relevant provisions of the Arbitration Act, 1940 and the new Arbitration and Conciliation Act, 1996. I have also perused Section 24 of the Code of Civil Procedure. 1908. Equally, I have perused the decisions brought to my notice. Section 24 of the CPC reads as under:

24. General power of transfer and withdrawal.-

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High court or the District Court may, at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and-

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under subsection (1), the Court which 1[is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.]

(4) the Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]

16. A bare perusal thereof would indicate that, the general power of transfer and withdraw can be exercised on the application of any of the parties or suo-moto. The High Court or the District Court may transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to and competent to try or dispose of the same and equally withdraw such Suit pending in any Court subordinate to it and try and dispose off the same. The term "proceeding" has been defined to include a proceeding in the execution of a decree or order. The Parliament while amending the CPC amended Section 24(2) so also Section 24(3) and introduced Section 24(5). Each of this amendment is with a purpose and that the power of transfer can be exercised in relation to any Suit, Appeal or other proceeding.

17. In the case of Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another, , the Hon"ble Supreme Court had an occasion to construe the words "or other proceedings" appearing in Section 24(1)(a) of the Code of Civil Procedure, 1908. The Supreme Court held as under:

It plainly speaks of "other proceeding pending in any court subordinate to it" and not only to the civil proceeding pending before a subordinate court. The decisions of the Privy Council and one decision of this Court which we have earlier quoted would warrant the application of the provisions of the CPC generally to a proceeding before a civil court arising out of a reference to it by a Magistrate under s. 146(1) of the Code of Criminal Procedure. The expression "proceeding" used in this section is not a term of art which has acquired a definite meaning. What its meaning is when it occurs in a particular statute or a provision of a statute will have to be ascertained by looking at the relevant statute. Looking to the context in which the word has been used in s. 24(1)(b) of the CPC it would appear to us to be something going on in a court in relation to the adjudication of a dispute other than a suit or an appeal. Bearing in mind that the term "proceeding" indicates something in which business, is conducted according to a prescribed mode it would be only right to give it, as used in the aforesaid provision, a comprehensive meaning so as to include within it all matters coming up for judicial adjudication and not to confine it to a civil proceeding alone. In a recent case *Kochadai Naidu v. Nagavasami Naidu*(1) *Ramachandra Iyer J.*, (as he then was) was called upon to consider the very question which arises before us. The learned Judge held (1) *Kochadai Naidu and Another Vs. Nagayasami Naidu and Others*, that a proceeding before a civil court arising out of a reference to it under S. 146(1), Cr.P.C. can be transferred by the High Court or District Court under S. 24, C.P.C. because it is in any case a proceeding. He has also considered this question from the angle of the nature of the proceeding and expressed the view that the proceeding was a civil proceeding to which the procedure for suits could, with the aid of s. 141, C.P.C. be applied. If indeed the term "proceeding" in s. 24 is not confined to a civil proceeding there is no need whatsoever of taking the aid of S. 141, C.P.C.

18. In the decision relied upon by Mr. Vashi, the Supreme Court was concerned with interpretation of Section 31 of the Arbitration Act, 1940. In paragraph 10 to 13 of this decision, the Supreme Court observed as under:

10. The third question which remains for consideration is whether sub-section (4) of section 31 of the Indian Arbitration Act of 1940 applies only where the first application under the Act was made during the course of pendency of a reference to arbitration or also to a case like the present one where such first application is made after the completion of the arbitration and on the making of an award. As already stated, the learned Judges on appeal did not deal with this question. The trial Judge, however, considered the matter, and held that the above provision related only to an application made during the pendency of a reference to arbitration. In the view of the learned Judge,

In order to attract sub-section (4) an application must have been made during the pendency of the reference, and if such an application had been made, all other applications arising out of that reference (whether made in the reference or not) must be made in that court.

Apparently, the learned Judge construed the phrase "in a reference " in section 31, sub-section (4), as meaning" in the course of a reference", and that is also the contention before us of the counsel for the appellant, which requires closer examination.

11. Section 31 of the Indian Arbitration Act of 1940 is in the following terms:

(1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained else wherein this Act or in any other law for the time being in force, where in any reference an application under the Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

12. Sub-section (1) relates to the question as to where a completed award has to be filed, and prescribes the local jurisdiction for that purpose. Sub-section (2) deals with the ambit of the exercise of that jurisdiction, and declares it to be exclusive by saying that

all questions regarding the validity, effect or existence of an award or arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed and by no other Court.

Sub-section (3) is intended to provide that all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings are to be made only in one court, and lays on the concerned party the obligation to do so. Then comes sub-section (4), the object of which apparently is to go further than sub-section (3), that is, not merely casting on the party concerned an obligation to file all applications in one court but vesting exclusive jurisdiction for such applications in the court in which the first application has been already made.

13. Thus it will be seen on a comprehensive view of section 31 that while the first sub-section determines the jurisdiction of the court in which an award can be filed, subsections (2), (3) and (4) are intended to make that jurisdiction

effective in three different ways, (1) by vesting in one court the authority to deal with all questions regarding the validity, effect or existence of an award or an arbitration agreement, (2) by casting on the persons concerned the obligation to file all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings in one court, and (3) by vesting exclusive jurisdiction in the court in which the first application relating to the matter is filed. The context, therefore, of subsection (4) would seem to indicate that the subsection was not meant to be confined to applications made during the pendency of an arbitration. The necessity for clothing a single court with effective and exclusive jurisdiction, and to bring about by the combined operation of these three provisions the avoidance of conflict and scramble is equally essential whether the question arises during the pendency of the arbitration or after the arbitration is completed or before the arbitration is commenced. There is no conceivable reason why the Legislature should have intended to confine the operation of subsection (4) only to applications made during the pendency of an arbitration, if as is contended, the phrase "in any reference" is to be taken as meaning "in the course of a reference".

19. Thus, whether under the old Act or new Act the terms "Court" is defined to mean a Civil Court. The Applications u/s 34 of the Arbitration and Conciliation Act, 1996 are "proceedings" before a Civil Court. They are instituted, as in this case, in a Court subordinate to this Court. It is not disputed that the Applications before the Thane District Court, which are filed by the Respondents, are on the footing that according to them that is a Court within the meaning of Section 2(e) of the Arbitration and Conciliation Act, 1996. If that is the case, then, Section 24 of the Code of Civil Procedure, 1908 is fully applicable in this case. This Court can transfer the Applications pending before the District Court, Thane provided it is satisfied that a simultaneous trial will result in conflicting orders and equally parties would be inconvenienced if they have to proceed and argue more or less similar issues twice over.

20. Mr. Kumbhakoni has submitted that the decision in Kumbha Mawji's case cannot be said to be applicable as the new Act rings about drastic changes in Arbitration Law. Mr. Kumbhakoni refers to the definition of the term "Court" appearing u/s 2(e) of the Arbitration and Conciliation Act, 1996. That definition reads as under:

2. Definitions.-

(e) "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.

21. Mr. Kumbhakoni then submits that Section 5 of the Act of 1996 deals with

the extent of judicial intervention. Mr. Kumbhakoni submits that in matters covered by Part-I of the Arbitration and Conciliation Act, 1996, no judicial authority shall intervene except where so provided in this part.

22. In *P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Died) and Others*, , the Supreme Court was considering the ambit and scope of Section 8 of the Arbitration and Conciliation Act, 1996. In that regard in paragraph 4, what the Supreme Court observed, is as under:

Part I of the new Act deals with domestic arbitrations. Section 5 which is contained in Part I of the new Act, defines the extent of judicial intervention in arbitration proceedings. It says that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I, no judicial authority shall intervene except where so provided in that Part. Section 5 brings out clearly the object of the new Act, namely, that of encouraging resolution of disputes expeditiously and less expensively and when there is an arbitration agreement, the Court's intervention should be minimal. Keeping the legislative intention in mind, Section 8 of the new Act may be construed.

23. Therefore, Section 5 has been construed to mean that the Courts intervention should be minimal when there is an arbitration agreement. However, when the provisions themselves provide for judicial intervention, then, that is not ruled out. There are several provisions in the 1996 Act and one need not advert to each one of them. Section 19 has been pressed into service by Mr. Kumbhakoni but that only provides for determination of rules of procedure by the Arbitral Tribunal. That provision cannot be of any assistance in determining whether Section 24 of the Code of Civil Procedure, 1908 can be applied for transfer of proceedings u/s 34 as prayed in this case. If Section 27 of the Arbitration Act is perused, it is clear that to facilitate the Arbitral Tribunal it can take assistance of the Court in taking evidence.

24. Section 34 of the Arbitration and Conciliation Act, 1996 falling in Chapter VII provides for application for setting aside arbitral award. That application has to be filed in the Court within the meaning of Section 2(e) of the Act. In these circumstances, to my mind without entering into any larger question or controversy about jurisdiction of the Courts in this case, it can safely be held that an application to set aside the award lies before the Court. If that Court is a Civil Court within the meaning of Section 2(e) of the Arbitration and Conciliation Act, 1996, then, powers of transfer u/s 24 of the Code of Civil Procedure, 1908 can be exercised so as to transfer them. These provisions in the Arbitration and Conciliation Act, 1996 do not rule out the applicability of Section 24 of the Code of Civil Procedure, 1908.

25. Mr. Vashi has relied on Section 31 of the old Act whereas Mr. Kumbhakoni relies on Section 42 of the new Arbitration Act. To my mind, it is not necessary to resolve this controversy as to whether there is any departure or deviation from the old act insofar as territorial jurisdiction of the Court is concerned. I am not

concerned in this case with that aspect as the fundamental and basic issue before me is applicability of Section 24 of the Code of Civil Procedure, 1908 to enable transfer of proceedings u/s 34 of the Arbitration and Conciliation Act, 1996. Once, the Supreme Court holds that the term "proceeding" is used in widest and comprehensive term and would include every adjudication before a Court, then, it is clear that proceedings u/s 34 of the Arbitration and Conciliation Act, 1996 being filed in the Civil Court, the power to transfer them are vested in terms of Section 24 of the Code of Civil Procedure, 1908 in the District Court or High Court. There is nothing in the 1996 Act which would rule out applicability of Section 24 of the CPC as urged by Mr. Kumbhakoni. On the other hand, in order to avoid conflicting Judgments and Orders, when the same parties challenged the same Award but in different Civil Courts, the power of transfer will only further the object of resolution of disputes by recourse to arbitration.

26. Once, the above conclusion is reached, then, reliance placed by Mr. Vashi on the Judgment of the learned Single Judge of the Allahabad High Court and of the Andhra Pradesh High Court is apposite. The learned Single Judge of the Allahabad High Court has, with respect, rightly held that an execution application would be covered by the word "proceeding" and if an execution application to enforce the award in terms of Section 36 of the Arbitration and Conciliation Act, 1996 is filed in a Civil Court, the District Judge has power and jurisdiction to transfer it from the Court which is subordinate to it to the Court of competent jurisdiction. The learned Judge has, with respect, rightly interpreted the word "proceeding" and widely. The Judgment of the learned Single Judge of the Allahabad High Court in *Rup Kumar* (supra) is also correctly pressed into service.

27. Applying the ratio therein to the present case, it is clear that the instant application is maintainable.

28. Mr. Kumbhakoni was unable to appoint out any provision in the new Arbitration Act which prohibits this Court from exercising the powers conferred by Section 24 of the Code of Civil Procedure. In fact, the indication is to the contrary and if Section 34, 36, 37 and 42 are perused, it is evident that the Civil Procedure Code, 1908 is applicable. This Court can transfer the proceedings from the Courts subordinate to it to itself. Section 24 of the Code of Civil Procedure, 1908, therefore, cannot be said to be running counter to the scheme of the new Act. The new Arbitration Act contains provisions which enable me to hold that to facilitate arbitration, to encourage it and to give finality to Awards, to enforce them the Court's intervention is not ruled out. Thus, the Court's substantive and procedural powers can be used to conclude the arbitral process expeditiously.

29. Once, the above view is taken and without determining and deciding any other controversy, this application can be allowed. It can be allowed also by clarifying that the issue of jurisdiction and competency of the Court to decide the applications u/s 34 of the Arbitration and Conciliation Act, 1996 is not concluded by this order. All contentions including the point that the Court within whose jurisdiction the Arbitral Tribunal conducted the proceedings, namely, place/venue

of the arbitration so also that if a suit was to be filed to decide the questions forming the subject matter of the arbitration, it is the Court at Thane or this Court on its Original Side are competent to entertain and try the respective proceedings, are kept open.

30. Once the above view is taken, then, none of the alternate contentions of Mr. Kumbhakoni need be decided. Mr. Kumbhakoni does not dispute that in terms of Section 24(1)(b), this Court can withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, at any stage and try and dispose of the same. If that power is available, then, in my view in the peculiar facts of this case, it would be proper to transfer the proceedings from the District Court, Thane to the Original Side of this Court.

31. In the light of the above conclusion, the argument that this Court can only direct consolidation of both Petitions without passing any order with regard to their transfer, need not be considered in this case. Apart therefrom, once I find that the Respondents have no objection to consolidation of the proceedings so as to avoid conflicting decisions or simultaneous trial/hearing, then, all the more, the powers to transfer needs to be exercised in this case. It is undisputed that the parties are common to both matters. In both matters the same Award is under scrutiny. In such circumstances, the argument that both Petitions need to be consolidated but before the District Court at Thane cannot be accepted. That would mean two Courts render decisions and more or less on the same issue and may be at the same time. The arbitration petition filed by the Petitioners in this Court is already placed before the Single Judge of this Court and is now adjourned. It would be proper if the proceedings before the District Court, Thane are brought and are heard alongwith the Petition filed by the Petitioners in this Court. As a result of the above discussion, this application succeeds. It is made absolute in terms of prayer clause (a) with no order as to costs.