

(2015) 02 SC CK 0098

In the Supreme Court Of India

Case No : Civil Appeal No. 2077 of 2015 (Arising out of SLP (C) No. 8675 of 2014)

Bhandari Udyog Limited

APPELLANT

Vs

Industrial Facilitation Council and Others

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Arbitration Act, 1940 — Section 31(4)
Arbitration and Conciliation Act, 1996 — Section 11, 34, 42
Civil Procedure Code, 1908 (CPC) — Section 15, 16, 17, 18, 19
Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 — Section 3, 4

Citation : (2015) 2 ABR 831 : (2015) 10 AD (SC) 161 : AIR 2015 SC 1320 : (2015) 2 ARBLR 7 : (2015) 2 AWC 1961 : (2015) 3 CDR 640 : (2015) 2 JLJR 332 : (2015) 4 LW 203 : (2015) 2 MLJ 621 : (2015) 2 PLJR 431 : (2015) 2 RCR(Civil) 918 : (2015) 2 SCALE 608 : (2015) 3 SC

Hon'ble Judges : Kurian Joseph, J.; M. Yusuf Eqbal, J.

Bench : Division Bench

Advocate : Jayant Bhushan, Senior Advocate, Nirnimesh Dube, Ankur S. Kulkarni, Anand Srivastava, Shubham Jaiswal, Advocates for Lex Regis Law Offices, for the Appellant; Shirish K. Deshpande, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Yusuf Eqbal, J.—Leave granted.

2. The short question that falls for consideration in this appeal is as to whether the Bombay High Court has correctly decided the jurisdiction of a Court to entertain application Under Section 34 of the Arbitration and Conciliation Act, 1996?

3. The facts of the case lie in a narrow compass.

4. The Appellant Company is running a small scale industry at Raichur in the State of Karnataka and is engaged in the business of cotton ginning, pressing

while extraction and in marketing the finished products. Whereas Respondent No. 2 is running a cotton spinning mill at Latur in the State of Maharashtra. Respondent No. 2 purchased 750 bales of cotton from the Appellant-company and made part payment to the Appellant. The balance amount was not paid which led to a dispute between the parties.

5. It further appears that the Appellant filed an application Under Sections 3 and 4 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short "IDP Act") before Respondent No. 1, the Industrial Facilitation Council (for short "IFC") to arbitrate the dispute between the Appellant and Respondent No. 2. The Appellant thereafter filed a petition before the Karnataka High Court Under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "Act of 1996") for appointment of Arbitrator. The said petition was allowed by the Chief Justice Designate and directed Respondent No. 1 (IFC) to decide the dispute between the parties. The Respondent No. 1 passed an Award on 16.8.2010 directing Respondent No. 2 to pay a sum of Rs. 20,25,213.54 with interest.

6. The Respondent No. 2 challenged the Award by filing an application Under Section 34 of 1996 Act before the District Court at Latur, Maharashtra for setting aside the Award. The Appellant opposed the said application by challenging the jurisdiction of the District Court in Latur. The Appellant contended that the District Court at Raichur has jurisdiction to hear the application Under Section 34 of the Act. The District Judge proceeded to decide the jurisdiction by referring various provisions including Sections 15 to 20 of the Code of Civil Procedure and held that since Respondent No. 2 resides at Latur, delivery of cotton bales was taken at Latur and the place of business of Respondent No. 2 was at Latur, it is the District Judge, Latur, who has jurisdiction to entertain the application Under Section 34 of the Act.

7. As against the aforesaid order passed by the District Judge, Latur, Appellant preferred a revision before the Bombay High Court. The Bombay High Court dismissed the revision holding that since the Chief Justice of the High Court dealing with an application Under Section 11 of the Act is not a court, and that no application was filed in any court prior to the filing of application Under Section 34 of the Act and further the bales were supplied at Latur, it is the Latur Court which has jurisdiction to entertain the application Under Section 34 of the Act.

8. We have heard Mr. Jayant Bhushan, learned senior Counsel appearing for the Appellant and Mr. Shrish K. Deshpande, learned Counsel appearing for Respondent No. 2. It is not in dispute that pursuant to the order passed by Respondent No. 2, the cotton bales were dispatched by the Appellant from Raichur supported by all bills/invoices specifically mentioning that "subject to Raichur jurisdiction". The dispute arose and the matter was referred to Respondent No. 1, IFC Bangalore. Respondent No. 2 participated in the arbitration proceedings in Bangalore without raising objection with regard to the

jurisdiction of the Karnataka High Court referring the matter to arbitration or the jurisdiction of IFC to decide the dispute. Admittedly, the arbitration proceeding was concluded within the jurisdiction of Raichur Court. The only forum available to Respondent No. 2 was to make an application Under Section 34 of the Act before the Civil Court of original jurisdiction at Raichur, since the Karnataka High Court has no original jurisdiction.

9. Recently, when a similar question for consideration arose before three Judges Bench of this Court in the case of State of West Bengal Vs. Associated Contractors, , this Court held:

22. One more question that may arise Under Section 42 is whether Section 42 would apply in cases where an application made in a court is found to be without jurisdiction. Under Section 31(4) of the old Act, it has been held in F.C.I. represented by Managing Director and Another Vs. A.M. Ahmed and Co. through MD and Another, and Neycer India Ltd. Vs. GMB Ceramics Ltd., that Section 31(4) of the 1940 Act would not be applicable if it were found that an application was to be made before a court which had no jurisdiction. In Jatinder Nath Vs. Chopra Land Developers Pvt. Ltd. and Another, and Rajasthan SEB v. Universal Petro Chemicals Ltd. (2009) 2 SCC 107 at p. 116, paras 33 to 36 and Swastik Gases P. Ltd. Vs. Indian Oil Corporation Ltd., , it was held that where the agreement between the parties restricted jurisdiction to only one particular court, that court alone would have jurisdiction as neither Section 31(4) nor Section 42 contains a non obstante clause wiping out a contrary agreement between the parties. It has thus been held that applications preferred to courts outside the exclusive court agreed to by parties would also be without jurisdiction.

10. Indisputably, the Arbitration proceeding has been conducted within the jurisdiction of Raichur court, which has jurisdiction as per Section 20 of the Code of Civil Procedure and is subordinate to the High Court of Karnataka which entertained Section 11 Application. Hence, the Award cannot be challenged before a Court subordinate to the High Court of Bombay. Exercise of jurisdiction by such court shall be against the provision of Section 42 of the Act.

11. We, after giving our anxious consideration to the matter, are of the view that the District Court at Latur and High Court of Bombay have committed error of law in entertaining the application Under Section 34 of the Act and dismissing the revision petition.

12. We, therefore, allow this appeal and set aside the order passed by the High Court. There shall be no order as to costs.

13. Hon''ble Mr. Justice M.Y. Eqbal pronounced the judgment of the Bench comprising His Lordship and Hon''ble Mr. Justice Kurian Joseph.

14. Leave granted.

15. Appeal is allowed in terms of signed reportable judgment. No costs.