
(2009) 12 JH CK 0003
In the Jharkhand High Court

Central Coalfields Ltd.

APPELLANT

Vs

A.B. Singh

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37
Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 104, 115, 141, 20
Constitution of India, 1950 — Article 227

Citation : AIR 2009 Jhar 96

Hon'ble Judges : Ramesh Kumar Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kumar Merathia, J.—All the four miscellaneous appeals were heard together.

About maintainability:

2. The registry has raised doubts about the maintainability of the appeals.

3. Mr. Biren Poddar, appearing for the respondent; also submitted that the appeals are not maintainable for the following reasons.

Section 37 of the Arbitration and Conciliation Act, 1996 (for short "the Act") does not provide for appeal against the orders in question by which the application (filed on behalf of the appellant u/s 34 of the Act, challenging the award) has been returned on the ground that the District Court at Ranchi has no territorial jurisdiction. He further submitted that the Act being Special Act, the provisions of the CPC are not applicable, and in any event, such appeal is not contemplated even u/s 104 read with Order XLIII, Rule 1 (a) of the CPC as it speaks of "plaint" and not "application".

4. Mr. A. K. Srivastav, learned Counsel appearing for the appellant submitted that Section 141 of the CPC provides that the procedure provided in the Code in

regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction and, therefore, the application filed by the appellant u/s 34 of the Act registered as miscellaneous case, is like plaint in terms of Order XLIII, Rule 1(a) of the Code of Civil Procedure, under which, these appeals have been filed. He relied on the judgment of the Supreme Court in I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd., .

5. I find force in the submission of Mr. Srivastav. In view of the judgment of ITI Limited, it cannot be said that the CPC is not applicable to the proceedings under the Act. u/s 141 of the Code of Civil Procedure, the procedure governing suit is made applicable in all proceedings in any Court of civil jurisdiction. Present appeals arise from the orders returning the applications filed on behalf of the appellant u/s 34 of the Act on the ground of not having territorial jurisdiction. Mr. Poddar could not dispute that against the orders in question, an application u/s 115 of the CPC or a writ petition under Article 227 of the Constitution of India was/is maintainable, and the appellant can convert these appeals into a revision or writ petition.

Accordingly, in order to avoid further delay in this litigation, the parties were heard on the merits at length, ignoring the technical question of maintainability, raised in this case.

On merits:

6. Mr. Srivastav, appearing for the appellant, challenging the impugned orders dated 15-12-2007, submitted that the learned Sub Judge has wrongly returned the applications; and that Ranchi Court has territorial jurisdiction as the appellant has its registered office at Ranchi, the tenders were invited, submitted, processed and the work was awarded from Ranchi office, that the respondent raised claims arising out of the contracts, and also invoked arbitration clause before the Chair-man-cum-Managing Director who sits at Ranchi. He further submitted that the question of territorial jurisdiction should have been decided along with other issues. He further submitted that the learned Court below should not have relied on Clause 96 of the "General Terms and Conditions Governing Contractual Transportation & Loading, in the Areas of Central Coalfields Limited" and moreover only in two cases, out of these four cases, the agreements contained the said Clause 96. Further, he submitted that this clause is not qualified by the words like -"only" "exclusively" etc.

7. On the other hand, Mr. Poddar, appearing for the respondent, supported the impugned orders, submitted that the cause of action substantially arose in "Kathara" i.e. within the territory of the district of Bokaro; as the office of the respondent is situated at Kathara; quotation was sent from Kathara; the agreements were signed and the work commenced at Kathara, bills were submitted at Kathara and payment from time to time were also received at Kathara. He further submitted that in terms of the contract, the respondent was required to make the claim and invoke arbitration clause before the Chairman-

cum-Managing Director sitting at Ranchi. He also relied on Clause 96 of the "General Term and Conditions Governing Contractual Transportation & Loading in the Areas of Central Coalfields Limited" which reads as under:

96. The contract is subject to the jurisdiction of the District Court having jurisdiction over the colliery in which the contractor is working or has worked under this contract.

He, therefore, submitted that the intention of the parties is clear that the contract is subject to the jurisdiction of the District Court having jurisdiction over the colliery in which the contractor is working or has worked. He further submitted that all the four cases arise from the four contracts of transporting coal in the collieries situated within the Bokaro District and, therefore, even if the said Clause 96 is contained only in two contracts, and not in other two contracts awarded to the respondent at local level by the area offices of the appellant, it has to be taken that Clause 96 is part of all the contracts. He further submitted that moreover at the time of appointment of the arbitrator by this Court, such objections were not raised by the appellant. He lastly submitted that even if Clause 96 is kept aside, in view of Section 20(a) of the Code of Civil Procedure, the applications in question were required to be filed at Bermo at Tenuhat within the jurisdiction of Bokaro Judgeship, within which the defendant-respondent carried on business, and the appellant has also there area offices in that jurisdiction. He referred to the statements made in paragraphs 4 and 5 of the counter affidavit, to show that the cause of action substantially arose within Bokaro district.

8. I find force in the submission of Mr. Poddar that the applications filed by the appellant has been rightly returned for presenting them before the proper Court i.e. the Court of Bermo at Tenuhat within the jurisdiction of Bokaro Judgeship.

It is not disputed that all the four contracts awarded by the appellants to the respondents relate to transportation of coal in the collieries situated within the district of Bokaro. It also appears that when this Court appointed arbitrator in all the four cases after hearing the parties, no such objection was raised on behalf of the appellant that in two cases, there was no arbitration agreement. It is not disputed that in the other two cases, the respondent has been awarded contract by the local/ area office of the appellant.

Then there appears to be some purpose behind stipulating Clause 96 in the "General Terms and Conditions Governing Contractual Transportation & Loading in the Areas of Central Coalfields Limited". The tender might have been invited and processed from the registered office of the appellant at Ranchi but the actual work is done in the respective areas/collieries.

Further the respondent carried on business within Bokaro District; from where quotations were sent; where the agreements were signed, from where the bills were sent, and where payments were received. Only because the tendering process was done at registered office of the appellant at Ranchi; the claims were

raised and arbitration clause invoked before the CMD sitting at Ranchi - in terms of the contract; and the arbitrator held sitting at Ranchi; it cannot be said that only Ranchi Court has jurisdiction to entertain the applications in question. At best, it can be said that part of cause of action arose at Ranchi but it cannot be disputed that cause of action substantially arose within Bokaro. Further not only the respondent carried on business within Bokaro, the appellant has also its area office in that jurisdiction.

The order passed in the case of AVN Tubes Ltd. Vs. Shishir Mehta, is of no help to the appellant in the facts and circumstances of the case, whereas the judgments relied on behalf of the respondent i.e. M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company, , South East Asia Shipping Co. Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd. and Others, ; Hanil Era Textiles Ltd. Vs. Puromatic Filters (P) Ltd., , B.S. Viridi Electric Works Vs. Union of India and Another, and B.S. Viridi Electric Works support the contentions of the respondent.

9. Keeping in view the facts and circumstances of this case, as noticed above, it has to be held that the learned Court below has rightly returned the applications to the appellants for presenting before the proper Court.

10. In the result, I do not find any reason to interfere with the impugned order. Accordingly, all the four appeals are dismissed. However, no costs.