
(2000) 05 CAL CK 0017
In the Calcutta High Court
Case No : A.P. No. 513 of 1998

Daynand Prosad Sinha and Co.

APPELLANT

Vs

Hindustan Steel Works Construction Ltd.

RESPONDENT

Date of Decision : 17-05-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : AIR 2001 Cal 71

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Hiranmoy Dutta and Kumkum Das, for the Appellant; Shanti Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This is an application u/s 11 of the Arbitration and Conciliation Act, 1996.

2. By making this application, the petitioner wanted intervention of this Court to get an appointment of the Arbitrator.

3. According to the petitioner, a letter was written by the petitioner to the respondent on 20th August, 1998 being Annexure "C" to the petition asking the respondent to appoint an Arbitrator within 30 days failing which the appropriate jurisdiction of the Competent Court of law will be invoked.

4. Now, the question arose before this Court, which should be Competent-Court of law?

5. The respondent company has its office at 1, Shakespeare Sarani, Calcutta - 700 071, within the jurisdiction of this Court. No leave under Clause 12 of the letters patent was sought for by the petitioner possibly on the basis of the fact that the sole respondent carrying on business within the jurisdiction of this Court. However, cause title does not say as to whether the respondent is carrying

out business within the jurisdiction or not but simply describe that the respondent company has its office within the jurisdiction. Therefore, a relevant question arose before invoking the jurisdiction of this Court as to whether such office has any nexus or connection with the cause of action in between the parties herein or not.

6. There is no averment in the petition about place of execution of the contract.

7. There is an averment that performance by way of construction is to be made by the petitioner at Rajgir, District Nalanda in the State of Bihar.

8. As per Annexure "B" to the petition correspondence were executed by or between the petitioner at Patna and the respondent at Rajgir (Bihar) for the purpose of payment. Therefore, the same implies that money is also due and payable at Bihar.

9. Mr. Hiranmoy Dutta, learned Senior Counsel, appearing for the petitioner has given emphasis on an unreported judgment delivered by this Court on 17th June, 1999 In A.P. No. 117 of 1999 (Inland Construction Company v. Union of India (CPWD) to establish that cause of action of the application is refusal or failure on the part of the authority to give concurrence as to notice of appointment of Arbitrator within 30 days from the date of notice. Since there is a failure at Calcutta on notice, this Court has jurisdiction to entertain, try and determine the application.

10. He further relied upon a judgment reported in State of Orissa and another etc. Vs. Sri Damodar Das, to state that cause of arbitration arises, like cause of action in civil suit, as soon as dispute or differences arise in an unequivocal denial of claim of one party by the other party as a result of which claimant acquires right to refer the dispute to arbitration.

11. Such proposition of law is inapplicable herein. For the purpose of application of such principle, as clear and unequivocal denial must be present there which is not available herein. At best a deeming provision might be applicable by necessary implication herein provided 30 days period as given in the notice is over. Moreover, it is crystal clear from the notice of the petitioner dated 20th August, 1998, that in case of failure to take appropriate steps within 30 days, the reference to arbitration will be routed through the Competent Court of law. Therefore, the question arose before the Court whether this Court is competent enough to entertain, try and determine the proceedings or not. Unless such aspect is clear from the averment in the petition Court cannot suo moto assume it's jurisdiction.

12. "Failure" means failure in a particular place where it has properly communicated. Such communication in the particular place can be construed as place of denial to the claimant either unequivocal or by necessary implication. But such place ought to be the place of the petitioner not the place of respondent in this respect and the petitioner's place of carrying on business at Janta Path,

Kankarbagh Road, Patna-800 020, outside the jurisdiction of this Court.

13. In further a judgment has been cited by the petitioner as reported in Food Corporation of India Vs. M/s. Evdomen Corporation, to establish that civil Court's jurisdiction is to be construed, as the Court of Arbitration, u/s 20 of the Code of Civil Procedure. But by virtue of Section 120, such Section 20 of the CPC cannot be applicable in the Original Side. Therefore, only remedy is open under Clause 12 of the letters patent admittedly. Clause 12 of the letters patent has three parts which runs thus :

(I) Place where the land or immovable properties situate;

(ii) Respondent having residence or carrying on business;

(iii) Proceeding with leave when part of the cause of action is arising within the jurisdiction.

14. Therefore, this Court has jurisdiction.

15. I respectfully disagree with such submissions made by the learned Counsel appearing for the petitioner. I have already decided in earlier occasion that if there is a conflict in between the place of residence or carrying on business and the place where cause of action is arising, the Court has to accept the place in respect of cause of action because the same has an over-riding value over and in respect of the place of residence/ business by applying the test of forum convenience. Therefore, if the cause of action has nexus or connection with the place of residence or business such place is appropriate in all respect for invocation of jurisdiction. Without any averment as to the nexus or connection of cause of action in the jurisdiction where the place of residence or business of the respondent is available has got no meaning whatsoever.

16. In the instant case the petitioner was so sure that it has not prayed any leave under Clause 12 of the Letters Patent for the purpose of invocation of the jurisdiction of this Court not made any averment in the respect as above.

17. Under such circumstances, this Court has no other alternative but to dismiss this application for want of jurisdiction.

18. There will be no order as to costs.

19. However, dismissal of this application will not prevent the petitioner from taking out any application afresh in accordance with law before the appropriate Court for the purpose of similar relief when such application will not be treated as barred by limitation, res judicata or principles analogous there to.

20. Xeroxed certified copy of this judgment will be supplied to the parties within seven days from the date of putting requisition.

21. All parties are to act on a signed copy of the minute of the operative part of this judgment on the usual undertaking and subject to satisfaction of the Officer of the Court in respect as above.