
(2008) 01 MAD CK 0178

In the Madras High Court

Case No : O.S.A. No"s. 356 to 358 of 2006 and M.P. No"s. 1+1+1 of 2006

Dynasty Developers Private Limited

APPELLANT

Vs

Jumbo World Holdings Limited, A company incorporated and existing in accordance with the laws of British Virgin Islands, Dandvati Investments and Trading Company Pvt. Ltd., A Company incorporated and existing in accordance with the laws of India, Jerom Trading and Investment Limited, A company incorporated and existing in accordance with the laws of India and Gordon Woodroffe Limited, Now known as GWL Properties Limited, A Company incorporated and existing in accordance with the laws of India

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Arbitration Act, 1940 — Section 2, 20, 20(2), 3, 31
Arbitration and Conciliation Act, 1996 — Section 2(1), 42, 47, 9
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, 120, 16, 17, 18

Citation : AIR 2008 Mad 119 : (2008) 2 ARBLR 249 : (2008) 1 CTC 580 : (2008) 1 LW 557 : (2008) 2 MLJ 1

Hon'ble Judges : Ajit Prakash Shah, C.J.;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Vinod Bobde and P.S. Raman, s for Satish Parasaran, for the Appellant; A.L. Somayaji for R. Subramanian, for Respondents-1 to 3 and T.R. Rajagopalan for M. Venkatachalam, for Respondent-4, for the Respondent

Final Decision : Allowed

Judgement

Ajit Prakash Shah, C.J.—These are appeals from an order passed by S.Rajeswaran, J. The question at issue is whether leave under Clause

12 of the Letters Patent was at all necessary for filing an application before this Court u/s 9 of the Arbitration and Conciliation Act, 1996,

hereinafter for brevity"s sake referred as to as the ""Act"", where a part of the cause of action has arisen within the jurisdiction of this Court, but the

rest has arisen outside.

2. The facts are that respondents 1 to 3 are the majority shareholders of the fourth respondent-M/s. Gordon Woodroffe Limited. The fourth

respondent is the absolute owner of several immovable properties including the properties situate at Chennai. The fourth respondent, of which

respondents 1 to 3 are the majority shareholders, being desirous of disposing of its immovable properties, floated a proposal in the form of an

Information Memorandum in September, 2005 wherein the modality adopted for such disposal was by way of sale of shareholding of respondents

1 to 3 who held 93.47% shares in the fourth respondent. The appellant-M/s. Dynasty Developers Private Limited agreed to purchase the shares of

the fourth respondent and the terms of the agreement were reduced into writing under a Share Purchase Agreement dated 21.12.2005. As per the

Share Purchase Agreement, the total consideration to be paid was a sum of Rs. 238.05 crores. The appellant paid an advance of Rs. 34 crores

which includes a sum of Rs. 9 crores for the non-competing clause executed by the second respondent. The agreement contains an arbitration

clause that the disputes between the appellant and respondents 1 to 3 arising out of the contract would be decided by arbitration. Disputes arose

between the parties and a reference has been made to the arbitral tribunal in accordance with the agreement.

3. Apprehending that the respondents would act contrary to the Share Purchase Agreement and either deal with or alienate shares and/or

properties of the fourth respondent, the appellant preferred three separate applications being O.A. Nos. 452, 453 & 454 of 2006 u/s 9 of the Act

for various interim injunctions. The appellant has invoked the jurisdiction of this Court on the ground that the fourth respondent is registered within

the jurisdiction of this Court and the shares of the fourth respondent having situs within the jurisdiction of this Court. In short, the appellant alleged

that the contract was to be concluded within the jurisdiction of this Court and as such, part of cause of action arose within the local limits of this

Court. The respondents 1 to 3 raised a two fold objection to the jurisdiction of this Court. First, on the ground that none of the respondents has a

place of business within the local limits of this Court and since the agreement itself was entered into at Bangalore no cause of action arose in

Chennai, and therefore, this Court has no jurisdiction to entertain the applications filed against them. Secondly, it was contended that the jurisdiction of this Court has been invoked on the ground that part of cause of action has arisen within the jurisdiction of this Court and the rest has arisen outside. Therefore, these applications could not have made in this Court without obtaining the leave under Clause 12 of the Letters Patent and as such, these applications must be rejected in limine. The fourth respondent, who challenged the maintainability of the applications on the ground that it was not a party to the arbitration clause also raised a preliminary objection of absence of leave under Clause-12 of the Letters Patent.

4. The applications u/s 9 of the Act were decided by S.Rajeswaran, J, and he agreed with the appellant that a part of the cause of action arose within the jurisdiction of this Court. But he proceeded to hold that in order to maintain the applications, it was a pre-condition that leave under Clause-12 of the Letters Patent should have been obtained. As it had not been obtained, the learned Judge held that he had no jurisdiction to entertain the applications and accordingly dismissed them. Briefly speaking, the reasoning of the learned Judge was that an application for interim relief u/s 9 of the Act could only be made in a Court, which would have jurisdiction if the arbitration proceedings were to be considered as a suit and if such a suit lay in the Court. The learned Judge held that the jurisdiction to file such a suit could only be obtained in this High Court, if leave under Clause-12 of the Letters Patent was given. According to the learned Judge, no relief could be granted in an application u/s 9 of the Act, unless such prior leave has been obtained.

5. The point that arises for our consideration is of some importance. Leave under Clause-12 of the Letters Patent can only be given in the case of a suit. The Madras High Court Original Side rules prescribe the procedure for filing of application and obtaining of leave to institute a suit vide Order III Rule 1, the rules governing the proceedings under the Arbitration Act namely, Order XLIII does not require filing of any application for leave, but only an affidavit inter alia showing that this Court has jurisdiction to try the application. In so far as the practice of this Court is concerned, leave under Clause-12 of the Letters Patent was never insisted upon for application

under the Arbitration Act, 1940, and thereafter, under the Arbitration and Conciliation Act, 1996. This position stood reaffirmed by the fact that the applications filed by the appellant seeking leave under Clause-12 of the Letters Patent to move fresh applications u/s 9 of the Act were returned by the Registry with an endorsement to the effect that Clause-12 was inapplicable to the said applications. Therefore, it requires careful consideration as to whether such leave need be granted at all in the case of an application, where no suit has in fact been filed.

6. It is necessary to set out the following provisions of the Act in order to deal with this issue. Section 2(1)(e) of the Act which defines the term

"Court" runs as follows:

Section 2(1)(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.

Section 42 of the Act reads as follows:

Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration

agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all

subsequent application arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

7. Clause 12 of the Letters Patent deals expressly with the jurisdiction of the High Court in its ordinary Original Jurisdiction or Original Side to

receive, try and determine suits and suits only, for it states inter alia:

12. Original Jurisdiction as to Suits...that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be

empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immovable property, such land or

property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have

been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court: or if the defendant at the time of the

commencement of the suit shall....

8. Section 2(1)(e) of the Act defines court to mean the principal civil court of original jurisdiction in a district. The definition is both inclusive and

exclusive. It specifically includes the High Court in exercise of its ordinary original civil jurisdiction within the ambit of the definition of "court" and

excludes "civil courts of a grade inferior to such principal civil court" and Court of Small Causes. This definition includes High Court wherever the

High Court exercises original jurisdiction. The definition of court has thus been narrowed down to mean and include the district court and the High

Court in exercise of its ordinary original civil jurisdiction. The only condition is that it should have jurisdiction to decide the questions forming the

subject matter of the arbitration if the same would have been the subject matter of a suit. Further, on a conjoint reading of Section 2(1)(e) and 42

of the Act, it is seen that the Parliament intended to make only one court - the principal civil court of original jurisdiction, or as the case may be, the

High Court in exercise of its ordinary original jurisdiction, whichever court is approached earlier, as the venue for all matters connected with an

arbitration agreement and award and all arbitral proceedings. Admittedly, the principal civil court of original jurisdiction for Chennai is the High

Court of Judicature at Madras and not the City Civil Court. Undoubtedly, obtaining of leave under Clause 12 of the Letters Patent is a condition

precedent to the entertaining by this Court of a suit in which the cause of action has arisen, in part, outside the jurisdiction of this Court. The

question is whether the condition of obtaining of leave which is applicable to a suit will also apply to an application under the Arbitration Act. The

submission of Mr. Vinod Bobde and Mr. P.S.Raman, learned Senior Counsel appearing for the appellant is that the analogy of a "suit" given u/s

2(1)(e) of the Act is only for a limited purpose to find out the right court. According to them, the procedure for obtaining leave would apply only to

a suit and not to an application under the Arbitration Act. On the other hand Mr. A.L.Somayaji and Mr. T.R.Rajagopalan, learned Counsel

appearing for the respondents would contend that the condition of obtaining of leave under Clause 12 of the Letters Patent is a condition precedent

going to the root of the jurisdiction of the court and not a mere matter of procedure, and if the leave is not obtained, this Court cannot assume

jurisdiction where a part of cause of action has arisen outside its local limits, and therefore, the condition would also govern an application under

the Arbitration Act. Both sides referred to a large number of reported decisions.

9. Learned Counsel appearing for the appellant placed strong reliance on a Division Bench decision of the Calcutta High Court in *Rebati Ranjan*

Chakravarti Vs. Suranjan Chakravarti and Others, . In that case two questions arose before the Division Bench, namely., one relating to the

maintainability of the appeal and the other relating to the question whether leave under Clause 12 of the Letters Patent was at all necessary for filing

an application before the Court u/s 20 of the Arbitration Act, 1940. Of the two learned Judges constituting the Bench D.N.Sinha, J. (as he then

was) held that, as the impugned order was not one as enumerated in Section 39(1) of the Arbitration Act, 1940, no appeal lay under Clause 15 of

the Letters Patent. In that view of the matter D.N.Sinha, J. did not decide the other question as to whether leave under Clause-12 was at all

necessary or not. S.Datta, J., the other learned Judge, while agreeing with the conclusion arrived at by D.N.Sinha, J., decided the other question. It

was observed by S.Datta, J. as follows:

21. Section 2(c) of the Arbitration Act points out the Court which can have jurisdiction over the subject matter of a reference. It is that Court

which could entertain a suit if the subject matter of reference was the subject matter of a suit. Section 31 lays down the conditions requisite for

entertaining an Award and/or an application. In other words, Clause 12 of the Letters Patent does not determine the jurisdiction of the Court but

Section 2(c) read with Section 31 does it and in so doing Section 2(c) indirectly incorporates the provisions of the Letters Patent. To put it

differently, Clause 12 of the Letters Patent cannot determine the jurisdiction but for Section 2(c) read with Section 3. Hence jurisdiction of the

Court to entertain an application including an application for appointment of Receiver and/or an Award does not flow from the Letters Patent but

springs from Section 31 read with Section 2(c) which by reference attracts Clause 12 of the Letters Patent.

22. Hence the determination of the existence or non-existence of jurisdiction of a Court to entertain an application under the Arbitration Act is

conditioned by Section 2(c) and Section 31 of the Arbitration Act and is

consequently "under this Act", and therefore attracts Section 39(1) of the Arbitration Act.

23. In this view of the matter, it is immaterial to consider whether it is necessary in order to found jurisdiction in the High Court that a part of the cause of action should arise within the local limits of jurisdiction and further in such a case leave should be taken before filing the plaint or it is sufficient if a part of the cause of action only arises within the local limits of the jurisdiction.

10. Our attention was also drawn by the learned Counsel for the appellant to a decision in S.P. Consolidated Engineering Co. (P) Ltd. Vs. Union of India (UOI) and Another, , in which P.C.Mallick, J. rejected the argument that application u/s 20 of the Indian Arbitration Act, 1940 is a "suit"

within the meaning of Clause 12 of the Letters Patent and unless the whole of the cause of action arises within the jurisdiction of the Court, the

Court is not competent to entertain a suit unless leave is previously obtained. Learned Judge at paragraph -12 of the judgment observed as follows:

There is substance in the contention of Mr. Sen that the two kinds of suits referred to above should also be considered as suit even though it is not

initiated by the presentation of the plaint. But the question is not whether the proceeding u/s 20 is or is not a suit, but the question is whether it is a

suit within the meaning of Clause 12 of the Letters Patent. In my judgment the test to be applied for determining whether a proceeding is a suit

within the meaning of Clause 12 of the Letters Patent is not whether it is initiated by presentation of plaint, or by summons or by notice. The test is

whether the proceeding is intended to terminate in a final adjudication of the rights of the parties by a decree in that proceeding. An order passed

by a Judge in an originating summons suit is required to be drawn up under Chapter XIII, Rule 20 as "a decree of the Court" apparently because

the rights of the parties are finally adjudicated by the judgment or order. Because of this O.S. suits are treated as suits within the meaning of Clause

12 of the Letters Patent. In the case of an application u/s 20, however, all that the court is required to do is to pass an order filing the agreement

and making an order of reference. The proceedings comes to an end by the passing of the said order. The wording of Section 20(2) is the

"application shall be numbered and registered as a suit", does suggest that it is

not a suit in the fullest sense of the term. It seems to me that because of this that an application u/s 20 of the Arbitration Act has never been treated as a suit within the meaning of Clause 12 of the Letters Patent.

11. The above decision of P.C.Mallick, J was followed by the Bombay High Court in Standard Batteries Limited v. Casings (India) Pvt. Ltd.

1979 (81) B.L.R. 33. In that case, Bharucha, J (as His Lordship then was) while dealing with this very issue held that the phraseology of Section

20 of the Arbitration Act, 1940 makes it clear that an application for filing of an arbitration agreement in Court is required to be numbered and

registered as a suit, not that such application is a suit or even that is to be by way of a suit. The requirements that such application should be

numbered and registered as a suit is procedural. Therefore, the application or ""suit"" u/s 20 of the Arbitration Act, 1940 is not a suit within the

meaning of Clause 12 of the Letters Patent. Consequently, leave under Clause-12 cannot be granted in an application or ""suit"" filed u/s 20 of the

Arbitration Act, 1940.

12. Same was the view taken by another single Judge of the Bombay High Court namely, S.M.Jhunjhunwala, J in Harishankar Singhania v. Dr.

Gaur Hari Singhania 1997 (1) M.L.J. 9.

13. Learned Counsel appearing for the respondents, however, contended that the view taken by the Division Bench of the Calcutta High Court in

Rebati Ranjan Chakravarti Vs. Suranjan Chakravarti and Others, and that of P.C.Mallick, J. in S.P. Consolidated Engineering Co. (P) Ltd. Vs.

Union of India (UOI) and Another, is no longer good law in view of a subsequent Division Bench judgment of the Calcutta High Court in Tobu

Enterprises Pvt. Ltd. Vs. Camco Industries Ltd., . The facts of that case were that the learned single Judge granted leave under Clause 12 of the

Letters Patent to the respondents to make an application u/s 20 of the Arbitration Act, 1940. The said application was registered as Special Suit

No. 3A of 1983. Tobu Enterprises preferred an appeal against the order granting leave under Clause-12 of the Letters Patent. The respondent in

the appeal raised an objection that the appeal was not maintainable u/s 39(1) of the Arbitration Act, 1940, as the order granting leave under

Clause-12 of the Letters Patent must be treated as an order passed under the Arbitration Act on account of the provisions of Section 2(c) and

31(2) of the Act. The Bench rejected the contention of the respondent that the order was passed under the Arbitration Act and held that so long as

the leave is not granted there is no proceeding before the Court under the Arbitration Act and as such there can be no order under the Arbitration

Act. It was, further, argued on behalf of the respondents in that case that the jurisdiction of the High Court to entertain an application under the

Arbitration Act depended wholly on the provisions of Section 2(c) and Section 31(1) and (2) of the Arbitration Act and not on Clause 12 of the

Letters Patent and as such no leave is necessary to make an application under the Arbitration Act on the ground that only a part of the cause of

action arose within the jurisdiction. In support of this contention, the respondents' counsel relied upon the observation of Dutta, J in *Rebati Ranjan*

Chakravarti v. Suranjan Chakravarti (supra). Dealing with Dutta, J's observations the Bench observed in para 12 as follows:

While it is true that Section 2(c) read with Section 31 of the Arbitration Act determines the jurisdiction of the Court, most respectfully we beg to

differ with the observation of the learned Judge that Section 2(c) indirectly incorporates the provisions of the Letters Patent or that it attracts

Clause 12 of the Letters Patent. Consequently, we are unable to subscribe to the view of the learned Judge that it is immaterial whether a part of

the cause of action should arise within the jurisdiction of this Court or leave under Clause 12 should be taken or not.

14. The Division Bench also gave its reasons for differing with the view taken by Dutta, J by analyzing the scope and effect of Sections 2(c) and

31(1) and (2) of the Arbitration Act in the manner stated in para 13 of the report. The reasonings are as follows:

13. Let us consider the observations of Dutta, J. that Section 2(c) indirectly incorporates the provisions of the Letters Patent and attracts Clause

12 thereof. Section 2(c) defines Court, inter alia, as mentioning a civil court having jurisdiction to decide the questions forming the subject-matter of

a reference if the same had been the subject-matter of the suit. So, u/s 2(c), a court for the purpose of the Arbitration Act is a civil court having

jurisdiction to decide the questions forming the subject-matter of a reference. The word "questions" in Section 2(c) is significant to be noticed.

Section 2(c) enjoins that the civil court should have jurisdiction to decide the "questions", that is to say, all the questions forming the subject-matter

of a reference. It, therefore, follows that if, in a given case, the civil court has not the jurisdiction to decide all the questions, but only one or some of the questions forming the subject-matter of a reference, that particular civil court will not have jurisdiction in terms of Section 2(c). Similarly, under Sub-sections (1) and (2) of Section 31 of the Arbitration Act, a Court not having jurisdiction in the matter to which the reference relates in a particular case, will have no jurisdiction to decide the questions referred to in Sub-section (2). Here also the word "matter" in Sub-section (1) refers to the entire matter and not part of it. In view, however, of the provisions of Sections 17, 19 and 20 of the Civil Procedure Code, such a situation creates no difficulty in filing a suit in a civil court. u/s 17, suits for immovable property situate within the jurisdiction of different courts may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate. Section 19 relates to suits for compensation for wrong done to person or movables. Such a suit may be instituted in the court within the local limits of whose jurisdiction the wrong was done or the defendant resides, or carries on business, or personally works for gain. Section 20 deals with other suits and it provides, inter alia, the filing of such a suit in a court within the local limits of whose jurisdiction the defendant or if there are more than one, any of the defendants reside, or carries on business, etc., or the cause of action, wholly or in part, arises. Thus, a suit may be filed in a civil court where such court has jurisdiction in respect of a part and not the whole of the subject matter. Further, no leave is required to be taken for the institution of such a suit. The civil court, in such a case, will be competent to deal with the entire subject-matter of the suit and, consequently, it will be a court within the meaning of Section 2(c) of Section 31 of the Arbitration Act having jurisdiction in the matter to which the reference relates.

...

15. ...Any suit involving the subject matter of the instant case cannot be filed in this Court unless leave under Clause 12 is first obtained. Therefore, so long as such leave is not obtained, this Court will have no jurisdiction to entertain or try the suit and, consequently, in terms of Section 2(c) read with Section 31 of the Arbitration Act also an application u/s 20 of the Arbitration Act. Neither Section 2(c) nor Section 31 dispenses with the

obtaining of leave under Clause 12 of the Letters Patent. Indeed, no reference has been made to Clause 12 of the Letters Patent in either of the said Sections 2(c) and Section 31....

15. We hasten to add that in a later judgment in Hindustan Steel Works Construction Ltd. Vs. N.V. Chowdhury and Others, a learned single Judge of the Calcutta High Court (Pratibha Bannerjea, J.) has held that the Division Bench judgment in Tobu Enterprises Pvt. Ltd. Vs. Camco Industries Ltd., is per incuriam in as much as the provisions of Section 31(4) of the Arbitration Act, 1940 were not noticed by the Division Bench.

The learned Judge held:

The phrase "no other court" in Section 31(4) contemplates a situation where two or more courts have jurisdiction in respect of an application and when the application is made in any of such courts first in order of time, then that court will have exclusive jurisdiction and all other courts will be divested of their jurisdiction in the matter. Section 31(4) also provides that an application can be made in a court which has jurisdiction over part of the cause of action in the matter and such court is described as "competent court". When the Arbitration Act, itself has made provisions regarding jurisdiction of civil courts for trying applications under the Act, with overriding effect over all other laws in force, then there is no occasion for taking recourse to the provisions of the CPC or Clause 12 of the Letters Patent. The Calcutta High Court as a Civil Court having jurisdiction over part of cause of action in an application under the Act will be entitled to entertain such an application without taking recourse to Clause 12 of the Letters Patent because Clause 12 is subject to the provisions of Section 31(4) of the Act.

Assuming that leave under Clause 12 is necessary in Arbitration applications then once the High Court grants leave it will have exclusive jurisdiction u/s 31(4) and all other courts, having jurisdiction will lose the same. In such a case, even if the ex parte leave causes injustice to the respondent it will have no remedy as Section 31(4) does not provide that on revocation of the leave, the jurisdiction of the other courts will be revived.

Moreover, the legal incidents and consequence of leave under Clause 12 of the Letters Patent and the provisions of Section 31(4) are so conflicting and contradictory to each other that both cannot be made applicable

to the same case.

16. The learned Counsel for the respondents next referred to a decision of Rebello, J. of the Bombay High Court in Tata International Ltd.,

Mumbai Vs. Trisuns Chemical Industry Ltd., Kutch, . The question before the learned Judge was whether leave under Clause 12 of the Letters

Patent is required to maintain a petition u/s 47 of the Arbitration and Conciliation Act, 1996, to enforce a foreign award. The learned Judge held

that u/s 120 of the Code of Civil Procedure, provisions of Sections 16, 17 and 20 shall not apply to the High Court in exercise of its original civil

jurisdiction. Therefore, in respect of suits for immovable property such as land, the whole of the cause of action must have arisen within the

jurisdiction of the Court and if a part of cause of action has arisen, then the suit would be maintainable provided leave of the Court is first obtained

under Clause 12 of the Letters Patent. He observed, ""Once Clause is attracted, I see no reason why power conferred on this Court under Clause

12 to grant leave should not be available also in proceedings in Arbitration whether it be Part I or Part II in absence of any express exclusion

clause"". It is seen from the judgment that the decision of Bharucha, J. was not taken note of by the learned Judge.

17. Learned Counsel appearing for the respondents also referred to the decisions of the Supreme Court in Food Corporation of India Vs. M/s.

Evdomen Corporation, and Jindal Vijayanagar Steel (JSW Steel Ltd.) Vs. Jindal Praxair Oxygen Company Ltd., in support of their contention that

the provisions of Clause 12 of the Letters Patent alone are required to be considered to determine the jurisdiction of the Madras High Court and

the provisions of Sections 16 to 20 of the CPC have no application. In the first decision in Food Corporation of India v. Evdomen Corporation

(supra) the contention of the appellant was that the Bombay High Court has no jurisdiction to take the award on file or to issue any process in

connection with it. That was a case under the Arbitration Act, 1940. The High Court in its impugned judgment has upheld the jurisdiction of the

Bombay High Court on the ground that the appellant, who is in the position of a defendant, has one of its places of business at Bombay. The

submission of the appellant relying upon the explanation to Section 20(a) of the CPC was that in respect of any cause of action arising at any place

where it has also a subordinate office at such place, the Court at that place also got jurisdiction. Reliance was placed on the decision of the

Supreme Court in *Hakam Sing Vs. Gammon (India) Ltd.*, , where the Court observed that the CPC in its entirety applies to the proceedings under

the Arbitration Act by virtue of Section 41 of the Arbitration Act. The jurisdiction of the Court to entertain a proceeding in connection with

arbitration including taking on file an award is accordingly governed by the provisions of the Code of Civil Procedure. Repelling this submission of

the appellant the Bench held that u/s 120 of the Civil Procedure Code, Sections 16, 17 and 20 of the CPC do not apply to a High Court in the

exercise of its original civil jurisdiction. Jurisdiction of the Bombay High Court to entertain a suit under its ordinary original civil jurisdiction is

determined by Clause 12 of the Letters Patent of the Bombay High Court. Under Clause 12 of the Letters Patent, a place where the defendant, or

each of the defendants where there are more than one, at the commencement of the suit, carry on business would be a place where the Court has

jurisdiction. Therefore, it was held that under Clause 12 of the Letters Patent of the Bombay High Court, the Bombay High Court would have

jurisdiction over the subject matter of the dispute in that case because the appellant did carry on business in Bombay. In the second case, namely,,

Jindal Vijaynagar Steel (JSW Steel Ltd.) v. Jindal Praxair Oxygen Co. Ltd. (supra) the appellant sought reconsideration of the decision made in

Food Corporation of India (supra) on the ground that it was erroneous and contrary to the decision of a three Judge Bench in *M/s. Patel*

Roadways Limited, Bombay Vs. M/s. Prasad Trading Company, . Dismissing the appeal the Supreme Court held that for the purpose of

determining the original civil jurisdiction of the Bombay High Court, the provisions of Section 20 of the CPC have been specifically excluded and

have no application. Only the provisions of Clause 12 of the Letters Patent are required to be considered to determine the jurisdiction of the

Bombay High Court. Under Clause 12 of the Letters Patent, the Bombay High Court would have jurisdiction to entertain and try an arbitration

petition even if no cause of action has arisen within its jurisdiction, provided the respondent has an office at Bombay. It is clearly seen that the

question as to whether Clause 12 leave was necessary for filing an application under the Arbitration Act was not considered in either of these

cases.

18. Lastly, learned Counsel appearing for the respondents drew our attention to the judgment of a Division Bench of the Bombay High Court in

Devidatt Ramniranjandas Vs. Shriram Narayandas, where the Bench held that obtaining of leave under Clause 12 is a condition precedent to the

entertainment by Bombay High Court of a suit in which the cause of action arises in part outside the original jurisdiction and that the condition is not

one which it is competent for a Court to ignore or for the parties to waive. It was further held that the words ""empowered to receive"" in Clause 12

mean that the Court on the ordinary original civil jurisdiction has no jurisdiction even to receive a plaint where a part of the cause of action only

shall have arisen within the local limits of its jurisdiction unless leave of the Court shall have been first obtained.

19. We have given our anxious thought to the submissions made at the Bar and the decisions cited before us. We are unable to agree with the view

taken by the learned Judge that in order to maintain an application under the Act, it is a precondition that the leave under Clause 12 of the Letters

Patent should have been obtained. Learned Judge has followed the Division Bench judgment of the Calcutta High Court in Tobu Enterprises Pvt.

Ltd. Vs. Camco Industries Ltd., and the judgment of Rebello, J. in (2002) 2 BCR 88 . The attention of the learned Judge was not drawn to the

later decision of the Calcutta High Court in Hindustan Steel Works Construction Ltd. Vs. N.V. Chowdhury and Others, . Moreover, the learned

Judge was much concerned and swayed by the words "if the same had been the subject matter of the suit" appearing in Section 2(i)(e) of the Act.

According to the learned Judge the leave would be necessary in case this Court has jurisdiction over the part of the cause of action only and as no

suit could be filed without leave, no application under the Act under the similar circumstances could be entertained without leave under Clause 12

of the Letters Patent. The analogy of "suit" given in Section 2(i)(e) of the Act only gives us guideline to find out the right court. The word "suit" acts

as an indicator and points out which court will be competent court to entertain the application under the Act. Section 2(i)(e) does not treat an

"application" under the Act as a "suit" and the application under the Act remains an application. As a matter of fact, if a civil suit is filed covering

the subject matter of an arbitration agreement, the Act makes it obligatory for the Court to refer the parties to arbitration in terms of the arbitration

agreement. Therefore, it cannot be contended that the Act intended that an application under the Act and the civil suit should be treated on the

same footing. It has been consistently held that the applications under the Arbitration Act cannot be equated with civil suit. (See H.H. The

Maharana Sahib Shri Bhagwat Singh Bahadur of Udaipur Vs. The State of Rajasthan and Others, , Nawab Usmanali Khan Vs. Sagarmal, , Firm

Ashok Traders and Another etc. Vs. Gurumukh Das Saluja and Others etc., . The procedure for obtaining leave is applicable only to a suit and not

to an application under the Arbitration Act. In our opinion, if a part of the cause action has arisen within the jurisdiction of this Court, the

application under the Arbitration Act can be instituted in this Court and in that event leave under Clause 12 of the Letters Patent is not necessary.

20. The Division Bench in Tobu Enterprises Pvt. Ltd. Vs. Camco Industries Ltd., came to the conclusion that unless leave under Clause 12 of the

Letters Patent is obtained first as is done in case of a suit where the court had jurisdiction over a part of the cause of action only, an application

under the Arbitration Act would not be maintainable without leave if the same would be filed in that court on the basis that a part of the cause of

action arose within its local limits. It is no doubt true that leave is a condition precedent to the entertainment of a suit in which the cause of action

arises in part outside the original jurisdiction and the court will not receive a plaint where only a part of the cause of action has arisen within the

local limits of its jurisdiction unless leave of the court has been first obtained. In our opinion, however, leave cannot be the foundation of

jurisdiction. Unless this Court has inherent jurisdiction over part of the cause of action in the suit, this Court cannot grant leave under Clause 12 of

the Letters Patent. Therefore, existence of inherent jurisdiction of the Court over the suit must be admitted before leave is obtained. Certainly, it

cannot be contended that this Court by granting leave confers upon it the jurisdiction to try the suit and again by divesting itself of this jurisdiction

by revoking the leave. In our opinion, by granting the leave the Court only exercises its discretion to take up the whole suit. That does not mean

that the Court has no inherent jurisdiction to try the proceedings under the Arbitration Act, where a part of the cause of action has arisen outside its

local jurisdiction. We are in respectful agreement with the view taken by P.C.Mallick, J. in S.P. Consolidated Engineering Co. (P) Ltd. Vs. Union

of India (UOI) and Another, that a leave under Clause 12 of the Letters Patent is not necessary for filing an application under the Arbitration Act

and this view was also followed by the Bombay High Court in 1979 (81) Bom.L.R.33 and 1997 (1) MLJ 9 . Similar is the view taken by the

Calcutta Division Bench in Rebati Ranjan Chakravarti Vs. Suranjan Chakravarti and Others, and a learned Judge of the Calcutta High Court in

Hindustan Steel Works Construction Ltd. Vs. N.V. Chowdhury and Others, . We, therefore, hold that obtaining of leave under Clause 12 of the

Letters Patent is not a condition precedent for filing an application u/s 9 of the Act.

21. Learned Counsel appearing for the respondents contended that the agreement was entered into at Bangalore and therefore, no cause of action

arose in Chennai. According to the learned Counsel the finding of the learned single Judge that a part of the cause of action has arisen within the

local limits of this Court is erroneous and cannot be sustained. We find absolutely no merit in the said submission of the learned Counsel. Clause

3.2 of the Share Purchase Agreement entered into between the parties reads as follows:

3.2 - The Closing shall take place on the Closing Date in Chennai at a time to be mutually agreed to between the Parties.

It is thus seen that the agreement itself contemplated that it has to be performed at Chennai at a time mutually agreeable to the parties. In A.B.C.

Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, the Supreme Court has categorically held that the performance of a contract is part of

cause of action and a suit in respect of the breach can always be filed at the place where the contract should have been performed or its

performance completed. Therefore, there is no doubt that a part of cause of action arose within the jurisdiction of this Court.

22. In the result, the appeals are allowed. The impugned order of the learned single Judge is set aside and the matter is remitted back to the

learned single Judge for deciding the applications u/s 9 of the Act on merits. The interim injunction granted by this Court to continue till the disposal

of the applications. No costs. Consequently, connected miscellaneous petitions are closed.