
(2011) 09 KAR CK 0028
In the Karnataka High Court
Case No : M.F.A. No.1735 of 2011 (AA)

Ferrostaal A.G. (formerly MAN Ferrostaal AG)	APPELLANT
Vs	
Bharati Shipyard Ltd. and State Bank of India	RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 44, 9

Citation : (2011) 09 KAR CK 0028

Hon'ble Judges : Mohan Shantanagoudar, J;K. Govindarajulu, J

Bench : Division Bench

Advocate : K.G. Raghavan for M/s. Amarchand and Mangaldas and Suresh A Shroof, for the Appellant; Udaya Holla for M/s. Holla and Holla, for R1, for the Respondent

Judgement

1. These appeals are filed against the judgment and order dated 14.1.2011 passed in AA.Nos.6/2010 and 7 2010 by the District Judge, Dakshina Kannda, Mangalore.

2. The facts in brief are as under:

Appellant is a company incorporated under the laws of Germany and was formerly known as MAN Ferrostaal AG. It has its Principal Office at Hohenzollernstrabe, Germany. The appellant is engaged in project development, project management, etc., in particular, it is acting as a General Contractor and is responsible for construction of special-purpose ships at shipyards.

3. Respondent No.1 is a company incorporated under the Companies Act, 1956, having its registered office at No.302, Wakefield House, Sprott Road, Ballard Estate, Mumbai, having its Branch Office and Shipyard at Thaneer Bhavi, Mangalore. Respondent No.1 is a privately operated shipyard and s(sic)engaged in the business of construction of vessels,

4. Respondent No.2 is State Bank of India, having its industrial finance Branch at World Trade Centre, Colaba, Mumbai.

5. The appellant and respondent No.1 entered into two shipbuilding contracts dated 16.2.2007 for construction of vessels, Builders Hull Nos.379 and 380. Contracts were executed at Essen, Germany. These appeals concern both the shipbuilding contracts under which respondent No.1 agreed to build and deliver to the appellant, the vessels, Contracts were subsequently amended by Addendum Nos.1 to 3, dated 16.2.2007, 30.3.2007 and 29.11.2007 respectively. The date of presenting the vessels for delivery and acceptance in Singapore was 15.1.2010. However, the date of presenting the vessels for delivery was further extended to 14.7.2010.

6. In the month of December, 2008, it was agreed by the parties, after discussions, that the vessels would be fabricated and constructed in the shipyard at Mangalore. Finally, a memorandum of understanding dated 18.6.2010 was entered into by the parties and the date of delivery of vessels is extended finally to 30.6.2011. The appellant herein paid a sum of Euros 42,75,400 as the first instalment to the first respondent herein and prior to receipt of the said amount, respondent No.1 furnished the refund bank guarantee drawn on 2nd Respondent bank, dated 26.5.2007 for the aforementioned amount of the second respondent-bank. The bank guarantee, dated 26.5.2007 was extended from time to time till 30.6.2011. In the month of August, 2008, another sum of Euros 16,62,000 was paid to the first respondent by the appellant as second instalment. Consequently, the first respondent furnished a refund bank guarantee, dated 12.8.2008 for the above said amount and the validity of the second bank guarantee was extended from time to time till 30.6.2011. In the month of October, 2008, another sum of Euros 44,53,550 was paid by the appellant to the first respondent as 3rd instalment and consequently, the first respondent furnished refund bank guarantee dated 17.10.2008, which was extended from time to time till 30.6.2011. In the month of December, 2009, the appellant herein paid further sum of Euros 22,27,275 to respondent No.1 as 4th instalment and the first respondent furnished refund bank guarantee dated 14.12.2009 which was extended till 30.6.2011.

7. Subsequently, the disputes have arisen between the appellant and the first respondent. The first respondent received a letter dated 25.10.2010 addressed by the appellant, wherein the appellant terminated the contract pursuant to Clause 1(d) of Article IV of the Contracts and called upon the first respondent to repay a sum of Euros 1,40,97,075,20. The appellant also called upon the first respondent to hand over all the drawings, data sheets, diagrams, specifications, calculations, model test reports, etc. The first respondent gave reply on 4.11.2010 to the appellant and stated the reasons for the delay attributable to the appellant. When the facts stood thus, the appellant herein addressed a letter to the second respondent herein seeking encashment of bank guarantees, on 2.11.2010. However, the second respondent did not honour the demand till this date. Both the contracts contained an arbitration agreement in Clause 2 of Article XIX, which reads thus:-

2. Expert and Arbitration

Expert Procedure

In the event of any dispute related to the technical issues out of or in connection with this Contract, either Party shall be entitled to submit the matter to administered expertise proceedings in accordance with rules of the Classification Society. The findings/decisions of the expert shall be binding upon the Parties. But within thirty days after Expert decision each Party has the right to submit the matter to arbitration.

All other disputes arising out of or in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with the said Rules.

Arbitration place shall be Paris

Language to be used in arbitration proceedings shall be English

The substantive law applicable to the contracts is English Law as expressly provided in Clause 1 of Article XIX of the contracts, which reads thus:

2. Governing Law

The parties hereto agree that the validity and interpretation of the Contract of each Article and part thereof shall be governed by the laws England.

8. Though the parties initially agreed to get their disputes settled through arbitral process under the Rules of Arbitration of the International Chamber of Commerce (ICC) at Paris, subsequently mutually agreed on 29.11.2010 to arbitration under the Rules of London Maritime Arbitrators Association (LMAA) in London. This agreement is said to have been reached between the parties in the interest of saving costs and time. Prior to agreement dated 29.11.2010 relating to arbitration under LMAA Rules, respondent No.1 herein had filed two requests for arbitration in relation to both the contracts under Article 4 of ICC Rules on 12.11.2010 recognizing that the seat of arbitration is in Paris and the substantive law applicable is English Law. In its requests for arbitration, respondent No.1 herein has pleaded in paragraphs-25 and 30, as under:

Applicable Law

25. The Contract Clause "Governing Law, Dispute and Arbitration Miscellaneous" provides that the Contract "Shall be governed by the Laws of England." The rights and obligations of the parties are therefore to be interpreted in light of English law (the Applicable Law).

26. In summary;

a) disputes arising out of the Contract between the parties are to be resolved by arbitration under the ICC Rules;

b) the seat of arbitration is Paris; and

c) the substantive law to be applied in the arbitration shall be English law.

9. Subsequently, in view of the agreement dated 29.11.2010, the first respondent herein submitted two requests for arbitration under LMAA Rules in London on 4.2.2011. The said requests are pending consideration.

10. On 10.11.2010, the first respondent herein filed two applications u/s 9 the Arbitration and Conciliation Act, 1996 (for short hereinafter referred as the "Act"), which are numbered as AA.No.6/2010 and AA.No.7/2010 seeking the orders of injunction against the encashment of refund bank guarantees issued under the contracts. Learned District Judge granted an ex parte ad interim injunction in both the applications restraining the appellant herein from encashing the bank guarantees on 16.11.2010. Subsequently, the appellant herein appeared and filed its statement of objections. After hearing, the learned District Judge passed the impugned judgments and orders on 14.1.2011 allowing the applications filed by respondent No.1 herein u/s 9 of the Act. These appeals are filed questioning the orders passed by the District Judge in AA.No.6/2010 and AA.No.7/2010.

11. Sri K.G.Raghavan, learned senior counsel appearing on behalf of the appellant submits that the Indian Courts have no jurisdiction to entertain the applications u/s 9 of the Act, inasmuch as the applicability of Part I of the Act is impliedly excluded having regard to the specific clause contained in the contracts; the governing law of the contract is English law and the law applicable to arbitration agreement is also English law. The seat of arbitration is in London. Therefore, the parties have impliedly excluded the applicability of Part I of the Act and consequently, the jurisdiction of Indian Courts stood excluded in the matters relating to arbitration and only the Court in England has supervisory jurisdiction over the arbitration; that an agreement as to the seat of arbitration brings in the law of that country as the curial law and is analogous to exclusive jurisdiction clause. He relies upon the judgments of the Apex Court in the case of Bhatia International Vs. Bulk Trading S.A. and Another, , in the case of Dozco India P. Ltd. Vs. Doosan Infracore Co. Ltd., So also he relies on an unreported judgment of the Apex Court in the case of Videocon Industries Limited vs. Union of India and another, passed in Civil Appeal No.4269/2011, disposed of on 11.5.2011. He further submits that the District Judge has failed to consider the settled law that the relief u/s 9 of the Act can be invoked only in the aid of arbitration; therefore in the absence of any fraud no relief based on the allegation of fraud could be granted and no allegation of fraud could have been entertained by the Court; the request of respondent No.1 before the District Judge u/s 9 of the Act clearly establishes that the entire case of respondent No 1. is on an alleged breach of contract by the appellant and not on fraud. In other words, the appellant attacks the order of the District Judge on merits also. He further submits that the District Judge has failed to consider that the first respondent has made deliberate attempt to mislead the Court by alleging that

the refund bank guarantees were conditional by inserting the word "only", which does not find place in the terms of refund bank guarantees. According to him, in any event in so far as refund guarantees are concerned, once the appellant decided to terminate the contract and sought demand of refund guarantees, then it is not the matter that could be contested and the appellant is entitled to proceeds of the refund guarantees.

12. Per contra, Sri Uday Holla, learned senior counsel appearing on behalf of the first respondent submits that the District Judge is justified in concluding that the Courts in India are not barred to entertain the applications u/s 9 of the Act under the facts and circumstances of these cases, inasmuch as the applicability of Part I of the Act is not excluded either expressly or impliedly by the parties; if the bank guarantees are encashed by the appellant herein then the first respondent would be left with no remedy, inasmuch as it would be very much difficult for the first respondent to recover any of the amounts from the appellant in case if the first respondent succeeds before the Arbitral Tribunal; in order to secure the amount in dispute and in order to preserve the money, which is the subject matter of the dispute in arbitration, the District Judge has passed the impugned orders restraining the appellant from encashing the bank guarantees. He further submits that because of the inaction on the part of the appellant in not providing the designs/specifications or the details which are needed for building up the vessels from time to time, there is a delay in completion of the contracts. As the delay is caused by the appellant itself, it cannot be allowed to take advantage of its own fault and therefore the appellant is not justified in invoking the refund bank guarantees, inasmuch as the action of the first respondent is fraudulent and in case if the bank guarantees are allowed to be encashed, then the first respondent would be put to irretrievable injustice. He further submits that the bank guarantees can be invoked only if the builder is unable to perform the contracts. Since there is nothing on record to show that the builder was unable to perform the contracts, the bank guarantees cannot be allowed to be encashed. Sri Uday Holla, relied upon the decisions of the Apex Court in the case of Batiya International vs. Bulk Trading S.A. and another (cited supra), in the case of Citation Infowares Limited Vs. Equinox Corporation, , and in the case of INDTEL Technical Services Pvt. Ltd. Vs. W.S. Atkins PLC., , to contend that Part I of the Act is applicable even to the arbitration held as per ICC Rules in a foreign country.

13. From the aforementioned rival contentions, the points which arise for our consideration in these appeals are:

1. Whether the applicability of Part I of Arbitration and Conciliation Act, 1996 is impliedly excluded under the facts and circumstances of the case and consequently the Indian Courts are barred from exercising jurisdiction u/s 9 of the said Act?
2. Whether the District Judge is justified in granting the order of injunction against the appellant restraining the appellant from encashing the refund bank guarantees?

14. Reg.Point No.1. As aforementioned, both the contracts contained the arbitration agreement in Clause 2 of Article XIX of the contracts. The arbitration agreement has also the clause relating to governing law which is already quoted supra (in paragraph-6)

15. By reading the said Clauses 1 and 2 of Article XIX of the contracts, it is amply clear that (a) the place of arbitration was initially at Paris (now changed to London by the subsequent mutual agreement between the parties); (b) the governing law of contracts (substantive law applicable) is English law, i.e., laws of England; and (c) the disputes arising out of the contracts between the parties are to be resolved by arbitration under ICC Rules (now changed to LMAA Rules by mutual agreement of the parties). These clauses are not in dispute. Even the first respondent in its requests for arbitration has clearly averred that the disputes arising out of the agreements between the parties are to be resolved under ICC Rules, seat of arbitration is Paris and substantive law applied shall be English law. It is also not in dispute that the parties by subsequent agreement have decided to get the disputes resolved under the LMAA Rules at London.

16. It is also relevant to note here itself the relevant clause/wordings found in the bank guarantees:

The Guarantee is governed by the laws of England. Place of venue is London.

From the above, it is clear that the refund bank guarantees are also governed by English law and the place of venue is London, which impliedly means that in case if any dispute arises in relation to bank guarantees, the place for adjudication of such dispute is London.

17. The Apex Court in *Batia International's Case* (cited supra), has concluded thus:

32. To conclude, we hold that the provisions of Part I would apply to all arbitrations and to all proceedings relating thereto. Where such arbitration is held in India the provisions of Part I would compulsorily apply and parties are free to deviate only to the extent permitted by the derogable provisions of Part I. In cases of international commercial arbitrations held out of India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or rules will not apply.

Thus, it is clear that even in the case of international commercial arbitrations held outside India, the provisions of Part I of the Act would apply unless the parties by agreement either expressly or impliedly excluded all or any of its provisions. In case if the parties by agreement either expressly or impliedly excluded all or any of the provisions of Part I of the Act, then the laws or the Rules chosen by the parties would prevail.

18. In the case of *Venture Global Engineering Vs. Satyam Computer Services*

Ltd. and Another, , the Apex Court has reiterated the aforementioned proposition of law contained in Bhatiya International's Case (cited supra).

19. In Bhatiya International's Case, the contract between the parties contained an arbitration clause, which provided "that the arbitration was to be as per the rules of the International Chamber of Commerce (for short "ICC"). The arbitration was to be held in Paris, France by a sole arbitrator

Thus, it is clear that the curial law applicable in that matter was Rules of ICC and the seat of arbitration was France.

In Venture Global Engineering's Case (cited supra), the parties had agreed that the arbitration be held in Paris, France as per the Rules of ICC. In the said matter also, the curial law applicable was Rules of ICC and the seat of arbitration was Paris.

In both the matters, the parties did not mutually agree on the substantive law or governing law to be made applicable. In the aforementioned two matters, there was nothing to show that the parties had excluded Indian law as a governing law or substantive law. Therefore, the Apex Court on facts, in those cases, held that there is no implied exclusion of Part I of the Act, by the parties.

20. In the case of Citation Infowares Limited Vs. Equinox Corporation, , the arbitration agreement (Clause 10.1 of the said contract) revealed that the contract was governed by and interpreted in accordance with laws of State of California, USA and the matter of dispute, if any, relating to that contract or its subject matter were to be referred for arbitration to mutually agreed arbitrator. Thus, it is clear that the parties by virtue of Clause 10.1 of the contract in the said matter had agreed that the governing law would be that of California, USA. However, there was no agreement between the parties in respect of the law governing procedure of arbitration and the place of arbitration. In that context, the Apex Court has negated the contention that there is no implied exclusion of Part I of the Act in the said matter having regard to the nature of the contract and the language employed in Clause 10.1 of the contract.

21. In the case of INDTEL Technical Services Pvt. Ltd. Vs. W.S. Atkins PLC., the arbitration agreement read thus:

13. Settlement of disputes

13.1. This agreement, its construction, validity and performance shall be governed by and constructed in accordance with the laws of England and Wales;

13.2. Subject to Clause 13.3 all disputes or differences arising out of, or in connection with, this agreement which cannot be settled amicably by the parties shall be referred to adjudication;

13.3. If any dispute or difference under this agreement touches or concerns any dispute or difference under either of the sub-contract agreements, then the parties agree that such dispute or difference hereunder will be referred to the

adjudicator or the courts as the case may be appointed to decide the dispute or difference under the relevant sub-contract agreement and the parties hereto agree to abide by such decision as if it were a decision under this agreement.

From the above, it is clear that the parties had agreed that the substantive law applicable is laws of England and Wales, however, the venue of arbitration had not been stipulated in the agreement and the choice of venue obviously was left to the parties. Even the curial law was not specified in the agreement. In the light of the same, the Apex Court has observed that, the law which was to govern the conduct of the arbitration having been not indicated by the parties, the same could be determined only by the arbitrator. When the arbitrator to be appointed in the said case chose the seat of arbitration, the law relating thereto will govern the law of conduct of arbitration proceedings. Since the curial law and the seat of arbitration were not specified in the agreement in Indtel Technical Services Private Limited's Case (cited supra), the Apex Court ruled that there was no implied exclusion of applicability of Part I of the Act and therefore the Indian Courts have jurisdiction even in respect of international commercial agreements, which are governed by the laws of another country.

22. Thus, in our considered opinion, the conclusion reached by the Apex Court in Bhatiya International's Case, Venture Global Engineering's case, Citation Infowares Limited's Case and Indtel Technical Services Private Limited's Case (cited supra) is not applicable to the facts on hand, inasmuch as the contracts in question specifically indicate that all the details including the law applicable, procedure relating to contract and procedure for arbitration, etc.

23. In this context, it is relevant to note the judgment of the Apex Court in the case of Dozco India P. Ltd. Vs. Doosan Infracore Co. Ltd., It is specifically contained in Article 22.1 of the contract in the said matter that the agreement shall be governed by and construed in accordance with the laws of The Republic of Korea. Article 23.1 of the contract provided that all the disputes arising in connection with the contract/agreement shall be finally settled by arbitration in Seoul, Korea, or such other place as parties may agree in writing pursuant to the Rules of agreement then in force of the International Chamber of Commerce. The Apex Court while deciding the said case has considered the various judgments of its own, viz., Batia International's Case, Indtel Technical Services Private Limited, and Citation Infowares Limited's Case, etc. Thus, in Dozco India Private Limited's Case, the substantive law of the contract, i.e., the law governing contract which creates the substantive rights of the parties was law of Republic of Korea; the curial law, i.e., the law governing the conduct of arbitration was Rules of ICC and seat of arbitration was Seoul. Having regard to the aforementioned three ingredients being outside India, the Apex Court in Dozco India Private Limited's Case has ruled that the parties by agreement impliedly excluded the applicability of the provisions of Part I of the Act and consequently, the Apex Court has rejected the prayer for appointment of arbitrator in terms of Section 11(6) of the Act.

24. In the recent judgment, in the case of Videocon Industries Limited vs. Union of India and another (Civil Appeal No.4269/2011, disposed of on 11.5.2011, the Apex Court has ruled that the parties to the agreement impliedly excluded the provisions of Part I of the Act. For the sake of convenience, the relevant Clauses of Article 33, 34 and 35 of the contract in the said matter are extracted below:-

33.1 Indian Law to Govern

Subject to the provisions of Article 34.12, this Contract shall be governed and interpreted in accordance with the laws of India.

33.2 Laws of India Not to be Contravened

Subject to Article 17.1 nothing in this Contract shall entitle the Contractor to exercise the rights, privileges and powers conferred upon it by this Contract in a manner which will contravene the laws of India.

34.3 Unresolved Disputes

Subject to the provisions of this Contract, the Parties agree that any matter, unresolved dispute, difference or claim which cannot be agreed or settled amicably within twenty one

(21) days may be submitted to a sole expert (where Article 34.2 applies) or otherwise to an arbitral tribunal for final decision as hereinafter provided,

34.12. Venue and Law of Arbitration Agreement

The venue of sole expert, conciliation or arbitration proceedings pursuant to this Article, unless the Parties otherwise agree, shall be Kuala Lumpur, Malaysia, and shall be conducted in the English language. In so far as practicable, the Parties shall continue to implement the terms of this Contract notwithstanding the initiation of arbitral proceedings and any pending claim or dispute. Notwithstanding the provisions of Article 33.1, the arbitration agreement contained in this Article 34 shall be governed by the laws of England.

35.2 Amendment

This Contract shall not be amended, modified, varied or supplemented in any respect except by an instrument in writing signed by all the Parties, which shall state the date upon which the amendment or modification shall become effective.

Though the substantive law governing the contract was Indian law, the arbitration agreement was to be governed by laws of England. The place of arbitration agreed by the parties was Kuala Lumpur, Malaysia. The Apex Court in Video con Industries Limited's Case (mentioned above) after considering the various judgments, viz., Bhatiya International's Case, Dozco India Private Limited's Case, Venture Global Engineering's Case, and other judgments, concluded that the aforementioned clauses contained in the contract necessary implied that the parties had impliedly agreed to exclude the provisions of Part I of the Act.

25. From the aforementioned decisions of the Apex Court, it is clear that the following are the important points to be considered while deciding the question as to whether the parties have impliedly excluded the applicability of Part I of the Act:

a) The law governing the contract which creates the substantive rights of the parties in respect of which the dispute has arisen;

b) The proper law of arbitration agreement i.e., the law governing the parties to submit the disputes to arbitration;

and

The curial law, i.e., the law governing the procedural aspects relating to arbitral procedure;

c) The seat of arbitration.

26. In the matter on hand, it is clear from Clauses 1 and 2 of Article XIX of the contracts that the governing law is English law, the law governing law of arbitration agreement is English law, the curial law is LMAA Rules (i.e., laws of LMAA, London) and the seat of arbitration is London. Since the substantive law of the contracts, the law governing the arbitration agreement, the curial law are specifically indicated in the contracts in question and that the same are, laws of England, LMAA Rules and as the seat of arbitration is London, the inevitable conclusion that can be reached in the matter on hand is that there is no question of applicability of Section 9 of the Act to the present case, inasmuch as the parties have impliedly excluded the applicability of provisions of Part I of the Act under Clauses 1 and 2 of Article XIX of the contracts. Hence, the impugned judgments and orders passed by the District Judge are without jurisdiction and therefore the same are liable to be set aside.

27. As aforementioned, even the relevant clause found in the refund bank guarantees (quoted in paragraph-16 of the judgment supra) clarifies that the refund bank guarantees are governed by laws of England and place of venue is London, which impliedly means that in case if any dispute arises in relation to bank guarantees, the place of adjudication of such dispute is London.

28. Since the parties are before the Arbitral Tribunal at London and as they have agreed for arbitration as per LMAA Rules, the Arbitration Act 1996 of England is applicable. Section 44 of the said Arbitration Act, 1996 provides the jurisdiction to the Court to pass interim orders in respect of arbitral proceedings. Section 44 of the Arbitration Act, 1996 reads thus:

44. Court powers exercisable in support of arbitral proceedings.

(1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.

(2) Those matters are-

(a) the taking of the evidence of witnesses;

(b) the preservation of evidence;

(c) making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings-

(i) for the inspection,

photographing, preservation, custody or detention of the property, or

(ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property; and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration;

(d) the sale of any goods the subject of the proceedings;

(e) the granting of an interim injunction or the appointment of a receiver.

(3) If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

(4) If the case is not one of urgency, the court shall act only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties.

(5) In any case the court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.

(6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal or of any such arbitral or other institution or person having power to act in relation to the subject-matter of the order.

(7) The leave of the court is required for any appeal from a decision of the court under this section.

(Emphasis supplied)

From the above, it is clear that respondent No.1

is not remediless. It is already before the Arbitral

Tribunal at London. Thus, it is open for it to seek interim order of injunction for the purpose of preserving the assets as per Section 44 of the Arbitration Act, 1996 in Courts at London.

Since the parties have agreed that the substantive law governing the contract is English law and as the law governing arbitration agreement is English law, it is open for respondent No.1 to approach the Courts at England to seek the interim relief.

29. Reg.Point No.2: Since we hold that the applications u/s 9 of the Act are not maintainable before the Indian Courts in view of implied exclusion of Part I of the Act, it is unnecessary for us to examine the matter on Point No.2.

30. In view of the above, the impugned Judgments and orders dated 14.1.2011 passed in AA.No.6/2010 and AA.No.7/2010, stand set aside.