
(2005) 07 RAJ CK 0059
In the Rajasthan High Court
Case No : Civil Writ Petition No. 272 of 2005

Hindustan Copper Limited

APPELLANT

Vs

Bhagwati Gases Limited

RESPONDENT

Date of Decision : 30-07-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1), 34
Rajasthan Civil Courts Ordinance, 1950 — Section 10, 10(1), 11, 16(1), 18

Citation : (2005) 3 ARBLR 622 : (2005) 3 RLW 2199

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : A.K. Bhandari, for the Appellant; R.K. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—The petitioner filed an application on 13.10.2004 before the Additional District Judge, Khetri for staying proceedings to enable the petitioner to move before the District Judge, Jhunjhunu to withdraw the case from the Court of Additional District Judge, Khetri to the Court of District Judge, Jhunjhunu on the ground that u/s 2(1)(e) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as the Act of 1996) the principal civil court of original jurisdiction is only the court of District Judge, Jhunjhunu and not the court of Additional, District Judge, Khetri and therefore, the court has no jurisdiction to hear application u/s 34 of the Act of 1996.

2. The Additional District Judge, Khetri vide its order dated 4.12.2004 dismissed the petitioner's application with cost of Rs. 1000/-. The present writ petition is directed against the order dated 4.12.2004.

3. Precisely controversy is with regard to the fact that whether the court of Additional District Judge is principal civil court of original jurisdiction or not. For that purpose, both the learned counsel for the parties referred Section 6 of the Rajasthan Civil Courts Ordinance, 1950 (hereinafter to be referred as the

Ordinance of 1950) which is reproduced hereunder:-

6. Classes of Courts :- There shall be the following classes of Subordinate Civil Courts in the State of Rajasthan, namely:-

- (1) the Court of the District Judge,
- (2) the Special Civil Courts
- (3) the Court of the Civil Judge, and
- (4) the Court of the Munsif

4. By bare perusal of Clause 6, it appears that the subordinate civil courts are consist the Court of District Judge, Special Civil Court, Court of Civil Judge and the Court of the Munsif.

5. The Additional District Judge is defined u/s 10 of the Ordinance of 1950. As per Section 10 of the Ordinance of 1950, when the business pending before any District Judge or District Judges so requires for its speedy disposal, the State Government may, upon the recommendation of the High Court sanction the appointment of such number of Additional Judges for the Court or Courts of such District Judge or District Judges, as may be necessary. Where the District Judge transferred the execution proceedings to the Additional District Judge u/s 10 of the Ordinance, the Additional District Judge is fully empowered to exercise the same powers as the District Judge had.

6. As per Section 11 of the Ordinance of 1950, in the event of the death, resignation or removal of a District Judge or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held an Additional Judge of his Court or if no Additional Judge has been appointed for that Court or is present at that place, the Civil Judge if there be only one, and if there be more than one the Civil Judge who is senior in respect of date of appointment as Civil Judge, present thereat, shall without relinquishing his ordinary duties, assume charge of the office of the District Judge and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer duly appointed thereto.

7. As per Sub-section (2) of Section 11, while incharge of the office of the District Judge the Additional Judge or Civil Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise the powers of the District Judge.

8. The Principal Civil Court is defined u/s 18 of the Ordinance. As per Sub-section 1 of Section 18, the Court of District Judge shall be the Principal Civil Court of original civil jurisdiction in the area over which his jurisdiction extends.

9. Since the present matter relates to the arbitration Act, both the parties referred certain provisions of the Arbitration and Conciliation Act, 1996. As per 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. After giving much emphasis of Section 2(1) (e), learned counsel for the petitioner submits that principal civil court does not include the Additional District Judge, therefore, Additional District Judge, Khetri has no jurisdiction to hear the application u/s 34 of the Act of 1996.

10. Here in the instant case, the petitioner moved an application u/s 34 of the Act of 1996 before the Additional District Judge, Khetri for setting aside the award passed by the Arbitrator and on 13.10.2004, the petitioner also filed an application alleging therein that the principal civil court of original court in a district is court of District Judge including the High Court in exercising the original jurisdiction can only decide all applications under the Arbitration and Conciliation Act, 1996 and no other court can decide such application.

11. To strengthen the submissions, learned Counsel for the petitioner placed reliance on the judgment rendered by Hon"ble Supreme Court in case of Seth Hiralal Patni Vs. Sri Kali Nath, wherein it was observed that "competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction.

12. In case of Kiran Singh and Others Vs. Chaman Paswan and Others, , the Hon"ble Supreme Court has observed that "it is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought be enforced or relief upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

13. Learned counsel for the petitioner also referred certain judgments reported in Feroze N. Dotivalaq Vs. P.M. Wadhwani and Others, , Janak Dulari Vs. Narain Dass, I.T.I. Ltd., Naini, Allahabad Vs. District Judge, Allahabad and others, Kuldeep Singh Vs. The State of Punjab and Another, and the order passed by this Court in SB Civil Revision No. 300/1976, dated 26.8.1976.

14. Per contra, learned counsel for the respondents submits that District Judge includes Additional District Judge. To this effect, he placed a notification on record whereby while exercising power u/s 7(1) and Section 10 (1) and Section 16 (1) of Rajasthan Civil Court Ordinance, 1950 on the recommendation of the Rajasthan High Court, the State Government issued a notification on 21.5.1993 appoint the Additional District Judge, Khetri to discharge the function as a District Judge.

15. As per Section 7 (1) of the Ordinance of 1950, the State Government may by notification/in the official gazette fix and alter the local limits of the jurisdiction of

any Civil Court under this Ordinance.

16. As referred hereinabove, as per Section 10 (1), the State Government upon the recommendation of the High Court sanction/appointment of such number of Additional District Judge.

17. Here in the instant case, vide notification dated 21.5.1993 on the recommendation of the High Court, the Government appointed the Additional District Judge, Khetri to discharge the function as a District Judge, as such he is empowered to exercise the powers as the District Judge had as held by this Court in case of Sarojani Devi v. Gulabchand reported in 1990 (2)RLR411.

18. Learned counsel for the respondents referred the judgment rendered in case of 2002 AIHC 3017 wherein the Karnataka High Court has observed that arbitration matters arising under the Arbitration and Conciliation Act, Additional Judge presiding over City Court has jurisdiction to entertain said matters. The City Civil Court shall be deemed to be the Principal Civil Court of original jurisdiction. It only means all the City Civil Courts constituted under the Act are the Principal City Civil Courts of original jurisdiction. There is no Principal City Civil Court of original jurisdiction at all under the BCCC Act. It that is so, the plea that the court which has entertained arbitral proceedings is not the Principal City Civil Court of original jurisdiction is not tenable."

19. Similar view has been taken in the following judgments :-

1. AIR 1970 Assam and Nagaland 111
2. AIR (36) 1949 Nagpur 408
3. Nepa Limited Vs. Manoj Kumar Agrawal,
4. Order dated 2.12.2004 of Delhi High Court in OMP No. " 485/2003.

20. Learned counsel for the respondents submits that the petitioner earlier filed a writ petition before the Delhi High Court. On 2.12.2004, the petitioner's counsel sought leave to withdraw the writ petition with liberty to take appropriate proceedings as available to him in accordance with law. It was the specific plea of the counsel for respondents that the Court at Khetri is only the Court, who have the jurisdiction to entertain the petition as per the agreement between the parties. The writ petition was allowed to withdraw with cost of Rs. 20,000/-. Thereafter the petitioner filed an appeal u/s 34 of the Act of 1996 before the Additional District Judge, Khetri. Thereafter, he moved an application for staying the hearing as the petitioner wishes to file an application before the District Judge for transferring the matter from Additional District Judge, Khetri to District Judge, Jhunjhunu.

21. I have perused the judgments referred before by the parties as well as the provisions of Act of 1996, Ordinance of 1950 and General Clauses Act, 1897. Upon thorough consideration of the material available on record, it reveals that the State Government issued a notification on 21.5.1993 on the recommendation

of the High Court whereby the Additional District Judge at Khetri was appointed as District Judge. As such the Additional District Judge is having the jurisdiction to discharge the functions as District Judge. As per Section 10 of the Ordinance of 1950, the Additional District Judge is fully empowered to exercise the powers as the District Judge had as held by this Court in case of Sarojani Devi (*supra*).

22. In view of the observations made hereinabove, I do not find any jurisdictional error in entertaining the application u/s 34 of the Act of 1996 by the Additional District Judge, Khetri. The impugned order dated 4.12.2004 does not require any interference by this Court. The writ petition fails being devoid of merit and herewith dismissed with no orders as to costs.