

(2010) 02 JH CK 0113
In the Jharkhand High Court

Hindustan Copper Ltd. and Dinanath Verma
Vs

APPELLANT

NICCO Corporation Limited

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 18, 2, 34, 37
Civil Procedure Code, 1908 (CPC) — Section 15, 24
Constitution of India, 1950 — Article 226, 227
General Clauses Act, 1897 — Section 3

Citation : (2010) 02 JH CK 0113

Hon'ble Judges : Sushil Harkauli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sushil Harkauli, J.—This writ petition under Article 226 and 227 of the Constitution of India has been filed by the petitioners to challenge the order dated 27.1.2010 passed by the District Judge, Jamshedpur in Misc. (P) No. 20 of 2009. By that order the petitioner's prayer for transfer of Misc. Arbitration Case No. 3 of 2009 pending in the Court of learned Sub-Judge, Ghatshila to the Court of the learned District Judge, Jamshedpur u/s 24, CPC has been rejected by the District Judge, Jamshedpur.

2. The bare facts necessary for decision of this writ petition are that there was an arbitration award against which the present petitioners filed an objection u/s 34 of the Arbitration and Conciliation Act, 1996 before the Jharkhand High Court. A learned Single Judge of this Court held the objection u/s 34 of the Arbitration and Conciliation Act, 1996 was not maintainable before the High Court. The matter was taken in appeal u/s 37 of the Act before the Chief Justice of the Court who concurred with the decision of the learned Single Judge. The matter was taken to the Supreme Court by way of Civil Appeal No. 5630 of 2008. The Supreme Court by the final order dated 20.5.2009 remitted the matter and directed that the petition u/s 34 of the Act would be listed before the District Judge where the parties would appear on the date fixed by the Supreme Court and "the District

Judge shall allot the petition u/s 34 to an appropriate Court in terms of the provision of Section 2(1)(e) of the Act." The Supreme Court also directed that "the Court to which the matter is entrusted to by the District Judge shall make all endeavor to dispose of the same as expeditiously as possible...."

3. When the matter went before the District Judge, the parties appeared and the District Judge entrusted the matter to the Sub-Judge at Ghatshila. There was no objection to the entrustment by the petitioner. Thereafter the petitioner merely kept seeking time before the Sub-Judge, Ghatshila on one pretext or the other.

4. At this stage, it may be also mentioned that the petitioner itself had filed an earlier application u/s 34 of the Act before the Sub-Judge, Ghatshila and by the order dated 15.10.2009, the Sub-judge amalgamated the petition filed by the petitioner before him with the petition transferred from the High Court pursuant to the Supreme Court order.

5. Apparently, when the petitioner failed to get the matter adjourned further, it sought time from the Sub-Judge, Ghatshila for approaching the Supreme Court seeking clarification of the Supreme Court order dated 20.5.2009 and also for seeking clarification as to who is the competent Court to decide the application u/s 34 of the Act. This application was rejected by the Sub-Judge, Ghatshila on 15.10.2009.

6. The petitioner thereupon moved the District Judge, Jamshedpur u/s 24, C.P.C. seeking withdrawal/transfer of the pending case from the Court of Sub-Judge, Ghatshila to the Court of District Judge, Jamshedpur on the ground that the Sub-Judge, Ghatshila is not a "Court" within the meaning of Section 2(1)(e) of the Act. As stated above, the application u/s 24, C.P.C. was rejected by the impugned order of the District Judge, dated 27.1.2010.

7. While rejecting the application, the District Judge has placed reliance upon the law laid down by this Court in the case of *Md. Sadique v. State of Bihar* reported in 2000(4) PLJR 814. The said decision is by a learned Single Judge of this Court, and the same view has been taken in two other decisions of this Court, both by other learned Single Judges. These decisions are *Thakur Prasad Singh v. State of Bihar* reported in 2004 (4) PLJR 843 and *Bhopal Singh v. Nagendra Nath Singh* reported in 2001(2) PLJR 530. It has been held by these decisions of this Court that a District Judge in the State of Jharkhand does not have original civil jurisdiction under the present law and further that the Sub-Judge has unlimited pecuniary original Civil jurisdiction for the entire District. Section 2(1)(e) of the Act says that the Court means:

(1) the Principal Civil Court of original jurisdiction in a District.

(2) which has jurisdiction to decide the question forming the subject matter of the arbitration if the same had been the subject matter of a suit but.

(3) it does not include any Civil Court of a grade inferior to such Principal Civil Court and also does not include the Court of small causes.

Thus, the aforesaid first two inclusive conditions must coexist and the third exclusionary condition must not exist for determining whether the Court concerned is or is not the Principal Civil Court of original jurisdiction.

8. In the present case, the District Judge does not have original jurisdiction and even if he had original jurisdiction, if a suit had to be brought regarding the subject matter of the arbitral proceeding, it would without doubt, lie before the Sub-Judge and not before the District Judge. Thus, according to the first two conditions it is the Sub-Judge who fulfills both the inclusionary conditions mentioned in the definition of Court.

9. The submission of the learned Counsel for the petitioners during the argument is based upon Section 18 of the Bengal, Agra and Assam Civil Courts Act, 1887 which reads as follows:

18. Extent of original jurisdiction of District or Subordinate Judge- Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a district Judge or Subordinate Judge extends, subject to the provisions of Section 15 of the Code of Civil Procedure, [1908] to all original suits for the time being cognizable by Civil Courts.

Relying upon the above provision it was urged that the District Judge also has the original jurisdiction. However, the words of Section 18 indicate that the aforesaid jurisdiction conferred by the aforesaid Act is subject to any enactment for time being in force.

10. In the State, the original jurisdiction to try the Civil Suit of unlimited pecuniary limit lies with the Sub-Judge. Further, as already stated when Section 2(1)(e) uses the word "having jurisdiction to decide the question forming the subject matter of the arbitration" it would mean having the normal jurisdiction to decide such question and not by way of transferred jurisdiction by exercise of power u/s 24 of C.P.C.

11. Reliance has been placed by the learned Counsel for the petitioner upon the following decisions:

- (1) I.T.I. Ltd. v. District Judge, Allahabad and Ors. reported in AIR 1998 All. 313.
- (2) Nila Chakra Construction Vs. State of Orissa and Others,
- (3) Barkatullah Vs. Rabindranath Malakar and Others,

Reliance has also been placed from the petitioners' side upon two unreported decisions of the High Court of Himachal Pradesh and Andhra Pradesh. The High Court of Himachal Pradesh decision is dated 26.5.2003 in Civil Reference No. 01 of 2003 in the case of Surat Singh v. State of Himachal Pradesh and Anr. and the decision of the Andhra Pradesh High Court is dated 13.12.2002 in CRP Case No. 5267 of 2002 in the case of Ankati Satyamaiah v. Sallangula Lalaiah and Anr. All these decisions are based upon the application of the definition of "District" in Section 3(17) of the General Clauses Act, 1897.

12. The General Clauses Act definitions can be used for interpreting words used in other statutes but not defined in those other statutes, only if the context does not otherwise require.

13. The General Clauses Act definition cannot over-ride the definition of "Court" given in Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 which, at the cost of repetition, means the Court

(1) which has original Civil jurisdiction and also

(2) which would have jurisdiction to decide the question forming the subject matter of the arbitration if the same had been the subject matter of a suit.

14. Last and most important of all, when the Supreme Court has expressly stated in its order dated 20.5.2009 that when the application u/s 34 of the Act filed by the petitioner is listed before the District Judge, the said District Judge shall allot the petition to an appropriate Court, it would not be proper for this Court to over-ride the Supreme Court order by saying that the District Judge would not be entitled to allot the application to any other Court but he must try the application himself.

15. In view of what has been stated above, this writ petition is dismissed.