
(2013) 04 DEL CK 0105

In the Delhi High Court

Case No : R.A. No. 177 of 2013 in OMP No. 957 of 2012

Kare Partners Group India Pvt. Ltd. and Another

APPELLANT

Vs

Dr. Akhil Bhargava and Others

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 17, 2(1)(e), 37
Civil Procedure Code, 1908 (CPC) — Section 114, 20

Citation : (2013) 04 DEL CK 0105

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Rajiv Bansal, with Mr. Joseph P. and Ms. Swati Verma, for the Appellant; Rakesh Kumar, with Mr. Adiya Nayyar, for the Respondent

Judgement

Manmohan Singh, J.—The abovementioned review application has been filed by the respondents u/s 114 CPC seeking review of the order dated 18th February, 2013 passed in the main petition as well as pending applications. The main grievance of the respondents in the review application is that while disposing of the main petition and the pending applications, this Court has not considered the objection of the respondents with regard to the territorial jurisdiction, as the respondents' Hospital having its registered office at Distt. Mohali (Punjab). The prayer is made that the order dated 18th February, 2013 be reviewed to the extent that the issue of jurisdiction raised by the respondents be decided by the sole Arbitrator at the first instance and till the said issue is decided, the directions issued in the order dated 18th February, 2013 made in para 13 be kept in abeyance.

2. Mr. Rajiv Bansal, learned counsel for the petitioner has refuted the arguments of the counsel for the respondents, stating that the issue of territorial jurisdiction has not been argued except it was raised in the pleadings by the respondents. On merits, he states that all the terms and conditions were discussed between the parties in Delhi; the agreements were also executed in Delhi and the seat of

arbitration is also at Delhi. Thus, the objection of the respondents is false and frivolous.

3. The Supreme Court in Civil Appeal No. 7019 of 2005 titled as Bharat Aluminum Company vs. Kaiser Aluminum Technical Service, Inc. has explained the meaning of the term "court" as has been provided for in Section 2(1)(e) of the Act and as has follows:-

95.

Section 2(1)(e) of the Arbitration Act, 1996 reads as under:

2. Definitions

(1) In this Part, unless the context otherwise requires-.....

(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."

96. We are of the opinion, the term "subject matter of the arbitration" cannot be confused with "subject matter of the suit". The term "subject matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order u/s 17 of the Arbitration Act, 1996, the appeal against such an interim order u/s 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court

within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located.

97. The definition of Section 2(1)(e) includes "subject matter of the arbitration" to give jurisdiction to the courts where the arbitration takes place, which otherwise would not exist.....

4. From the above, it is clear that the Supreme Court while explaining the meaning of the term "court" as defined in Section 2(1)(e) has held that the subject matter on the basis of which the jurisdiction of a court can be decided is not confined within the barriers of Section 20 CPC but has a wider meaning thereby also concurring jurisdiction upon the Court where the seat of arbitration will be located. It is pertinent to mention here that the meaning of Section 2(1) (e) of the Act was not in dispute before the Supreme Court in the above said judgment and the Supreme Court has not overruled any previous law in relation to the same but has clarified the intent of the legislature in ascribing such broad meaning to the term "court" in Section 2(1)(e).

5. In view of the above said decision as well as the submissions made by Mr. Bansal, I am of the view that this Court had the jurisdiction to entertain the present petition which has already been disposed of by order dated 18th February, 2013. The review application is accordingly dismissed.