

(2002) 02 GAU CK 0003

In the Gauhati High Court

Case No : C.R. (P) No. 39 (SH) of 2000 and Miscellaneous Case No. 163 (SH) of 2000

M. Banerjee and Sons and Others

APPELLANT

Vs

M.N. Bhagabati and Others

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Citation : AIR 2003 Guw 13 : (2002) 1 GLT 561

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : S.R. Sen, P.D.B. Baruah and A.S. Bhattacharjee, for the Appellant;

Judgement

A.K. Patnaik, J.—The brief facts relevant for the disposal of this Civil Revision and the Misc. Cases are that on 26.7.2000, M/s. M. Banerjee & Sons, filed Execution Case No. 4(H) 2000 in the Court of the learned Assistant District Judge, Shillong. In the said application, M/s. M. Banerjee & Sons made a prayer to the Court for directing the sole Arbitrator Shri M. N. Bhagabati to file the original award dated 16.2.2000 in the Court and on receipt of the award passed necessary order for proceeding with the Execution of the award. But, the learned Assistant District Judge, passed orders on 26.7.2000 that as no decree has been filed and enclosed with the Execution Application, the Application is dismissed. Aggrieved by the said order dated 26.7.2000 passed by the learned Assistant District Judge, Shillong, dismissing (Arb.) Misc. Ex. 4(H) 2000 M/s. M. Banerjee and Sons, have filed a Revision u/s 115 of the Code of Civil Procedure, 1908 numbered as CR(P) 39 (SG) 2000 before this Court. Along with the said CR (P), M/s. M. Banerjee and Sons have also filed Misc. Case No. 163(SH)2000, for transferring the said (Arb.) Misc. Execution case No. 4(H)2000 from the Court of the learned Assistant District Judge, Shillong, to the Court of the Assistant District Judge, Shillong.

2. On 22.9.2000, the State Bank of India, filed an application u/s 34 of the Arbitration and Conciliation Act, 1996, in the Court of the learned District Judge,

Kamrup, Guwahati, which was numbered as Misc. (Arbitration) Case No. 474 of 2000. In the said application, the State Bank of India, prayed for setting aside the award passed by Shri M. N. Bhagawati, Sole Arbitrator on 16.2.2000, and pending disposal of the said application, to stay the operation of the award. On 28.9.2000, the learned District Judge, Kamrup, admitted the aforesaid application u/s 34 of the Arbitration and Conciliation Act, 1996 (for short the Act, 1996) and passed further orders that pending hearing of the application, the operation of the Arbitral Award dated 16.2.2000 passed by the sole Arbitrator, shall remain stayed. Thereafter, M/s. M. Banerjee and Sons filed Misc. Case No. 168 (SH) 2000 before this Court in CR(P) 39 (SH) 2000 praying for transfer of Misc. (Arb) Case No. 474 of 2000 from the Court of the learned District Judge, Kamrup to this Court and in the interim for stay of the operation of the order dated 28.9.2000 passed by the learned District Judge in the said Misc. (Arb) Case No. 474 of 2000 and for staying of further proceedings of the said case before the learned District Judge, Kamrup. On 3.11.2000, the Court issued notice in the said Misc. Case No. 168 (SH) 2000, and passed orders that in the meantime further proceedings of the said case before the learned District Judge, Kamrup, Guwahati, between the State Bank of India and M/s. M. Banerjee and Sons shall remain suspended. After receipt of the said notice, the State Bank of India, has filed Misc. Case 182(SH) 2000, in this Court contending inter alia that Shillong Bench of this Court had no jurisdiction to pass orders in respect of the case arising at Guwahati and for setting aside the order passed by this Court in Misc. Case No. 168 (SH) 2000 on 3.11.2000 staying further proceedings in Misc. (Arbitration) Case No., 474 of 2000, between the State Bank of India and M/s. M. Banerjee and Sons, in the Court of the learned District Judge, Kamrup. Mr. S. R. Sen, learned counsel for the petitioner M/s. M. Banerjee and Sons submitted that u/s 36 of the Act of 1996, the award of the Arbitrator can be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. Thus, the view taken by the learned Assistant District Judge, Shillong in the impugned order dated 26.7.2000, that the award dated 16.2.2000, passed by the Arbitrator can only be executed if it has been made a decree of the Court is erroneous in law. According to Mr. Sen, the learned Assistant District Judge, Shillong, should have exercised jurisdiction and executed the award of the Arbitrator on the application filed by the petitioner and as he has failed to exercise jurisdiction vested in him this Court in exercise of its power u/s 115 of the Civil Procedure Code, 1908, can set aside the said order dated 26.7.2000, and the learned Assistant District Judge, Shillong, should remit the matter back to the Assistant District Judge, Shillong for passing order for execution of the award. He further submitted that Section 42 of the Act, 1996, clearly provides that where with respect to a arbitration agreement any application under the part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent application arising after that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

3. Mr. Sen, contended that since the application of the petitioner M/s. M.

Banerjee and Sons for execution of the award dated 16.2.2000, was filed in the Court of the learned Assistant District Judge at Shillong in July, 2000, and that the application of the State Bank of India, for setting aside the award u/s 34 of the Act, 1996, was filed in the Court of the learned District Judge, Kamrup, in September 2000, by virtue of what is provided in Section 42 of the Act, 1996, it is the Court of the learned Assistant District Judge, Shillong which will have jurisdiction to pass orders in the matter and, that the learned District Judge, Kamrup, at Guwahati, had no jurisdiction to pass any orders on the application of the State Bank of India, u/s 34 of the Act, 1996. Mr. Sen made elaborate submissions before the Court to show that the Court at Shillong had jurisdiction over the dispute between the parties. He referred to Clause 5 of the agreement of the parties which provides that all legal dispute shall be limited within the territorial jurisdiction of the High Court, at Shillong or District Court thereof. He cited decisions for the proposition that if two Courts have got jurisdiction to decide a dispute, it was open for the parties to incorporate a clause in the agreement that only one out of the two Courts will have jurisdiction to decide the dispute. Mr. Sen also cited the decisions in *Khaleel Ahmed Dakhani vs. Hatti Gold Mines Co., Ltd.* SLT 2000 III 168 : 2000 (1) Arb.LR 668 (SC) and in *Guru Nanak Foundation Vs. Rattan Singh and Sons*, in which it has been held that the Court in which application is first filed with regard to dispute arising in arbitration proceedings will have exclusive jurisdiction to decide all matters relating to the said arbitration proceedings subsequently filed. Mr. A.S. Bhattacharjee, learned counsel appearing for the State Bank of India, on the other hand, submitted that the contract out of which the dispute arises was executed at Guwahati outside the State of Meghalaya and the Courts at Shillong had no jurisdiction to decide the dispute between the parties. He further argued that the Shillong Bench of the Gauhati High Court has no jurisdiction to entertain any application with regard to a case arising at Guwahati. He referred to the order of the President in the Notification dated 1.2.1995 by which the permanent Bench of the Gauhati High Court at Shillong was constituted to show that the permanent Bench of the Gauhati High Court at Shillong could exercise jurisdiction and powers vested in the Gauhati High Court in respect of cases arising in the State of Meghalaya. According to Mr. Bhattacharjee, therefore, the permanent Bench of the Gauhati High Court at Shillong cannot exercise jurisdiction and powers in respect of cases arising outside the State of Meghalaya. In support of his aforesaid submission, Mr. Bhattacharjee, relied on the decision of the Supreme Court in *Rajasthan High Court Advocates' Association vs. Union of India* 2001 (2) SCC 294, wherein it has been held that the permanent Bench of the Rajasthan High Court at Jaipur can exercise territorial jurisdiction only in respect of cases arising in the eleven specified Districts of the State of Rajasthan allotted to the Bench at Jaipur by the Presidential Order. Mr. Bhattacharjee, submitted that in view of the aforesaid position of law, the Shillong Bench of the Gauhati High Court had no jurisdiction whatsoever to pass orders for staying or setting aside the orders passed by the learned District Judge, Kamrup, Guwahati, in Misc. (Arb) Case No. 474 of 2000, filed by the State Bank of India inasmuch as the said case arises not within the

State of Meghalaya, but in the State of Assam. Clause 2 of the Presidential Order constituting the Permanent Bench of the Gauhati High Court at Shillong, as notified by Notification dated 1.2.1995, reads as follows :

"(2) Establishment of a permanent Bench of Gauhati High Court at Shillong - There shall be established a permanent Bench of the Gauhati High Court at Shillong, and such Judges of the Gauhati High Court, being not less than two in number, as the Chief Justice of that High Court may, from time to time nominate, shall sit at Shillong in order to exercise the jurisdiction and powers from the time being vested in the Gauhati High Court in respect of cases arising in the State of Meghalaya.

Provided that the Chief Justice of that High Court may, in his discretion, order that any case or class of cases arising in the State of Meghalaya shall be heard at Gauhati."

4. It is clear from the aforesaid provisions in Clause 2 of the Presidential Order constituting the Permanent Bench of the Gauhati High Court at Shillong, that the Shillong Bench of the Gauhati High Court can exercise jurisdiction and powers for the time being vested in the Gauhati High Court in respect of cases arising in the State of Meghalaya.

5. The application of M/s. M. Banerjee and Sons for directing the sole Arbitrator Shri M. N. Bhagabati, to file the award dated 16.2.2000, and to pass orders for proceeding with the Execution of the said award was filed in the Court of the learned Assistant District Judge at Shillong. In the said application numbered as (Arbitration) Case No. 4(H)2000 the learned Assistant District Judge, Shillong, passed the order dated 26.7.2000, to the effect that as no decree has been filed and enclosed along with the Execution Application, the Execution case has to be dismissed. This (Arb) Misc. Execution Case No. 4(H) 2000, filed by M/s. M. Banerjee and Sons, in the Court of the learned Assistant District Judge, Shillong, is a case arising in the State of Meghalaya and the Shillong Bench of the Gauhati High Court can exercise jurisdiction and powers vested in the Gauhati High Court, in respect of the said (Arb) Misc. Execution Case No. 4(H) 2000 in the Court of the learned Assistant District Judge, Shillong. Section 42 of the Act, 1996, reads :

"42. Jurisdiction - 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, the Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."

6. It will be clear from the aforesaid provisions of Section 42 of the Act, 1996, that notwithstanding anything contained in part or in any other law for the time being in force, where in respect of an arbitration agreement any application under the part has been made in a Court, that Court alone shall have jurisdiction

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

7. The application in respect of the award dated 16.2.2000 of the Sole Arbitrator Shri M. N. Bhagabati, was filed by M/s. M. Banerjee and Sons in the Court of the learned Assistant District Judge, Shillong on 26.7.2000, whereas, the application in respect of the very same award dated 16.2.2000 passed by the Sole Arbitrator, Shri M.N. Bhagabati was filed by the State Bank of India, in the Court of the learned District Judge, Kamrup at Guwahati on 22.9.2000. Since the application of M/s. M. Banerjee and Sons, (Arb.) Misc. Execution Case No. 4(H)2000, in the Court of the learned Assistant District Judge, Shillong, was first in point of time, the learned Assistant District Judge, Shillong, had jurisdiction over the arbitral proceedings as provided u/s 42 of the Act, 1996, all subsequent applications arising out of the agreement and the arbitral proceeding shall have to be made in the Court of the learned Assistant District Judge, Shillong, and in no other Court. Hence, the Court of the learned District Judge, Kamrup Guwahati had no jurisdiction to entertain the application of the State Bank of India, u/s 34 of the Act, 1996 and passed orders thereon on 28.9.2000. In *Khaleel Ahmed Dakhani vs. Hatti Gold Mines Co. Ltd.* (supra), Hatti Gold Mines Co. Ltd., filed an application for setting aside the award dated 28.8.1998 u/s 34 of the Act, 1996, in the Court of the Principal Civil Judge, Bangalore and while this application was pending, Khaleel Ahmed Dakhani, filed an application for execution of the award in the Court of the Principal District Judge, Raichur. On a Revision filed by Hatti Gold Mines Co. Ltd., the High Court set aside the order passed by the Principal District Judge, Raichur, and allowed the Revision. Khaleel Ahmed Dakhani, challenged the order passed by the High Court before the Supreme Court and the Supreme Court held that in the circumstance, the Principal District Judge, Raichur, should not have entertained the application for execution and other attachment of movable property of the respondent, and that the High Court took a correct view in the matter and rightly set aside the impugned order. In the said case, however, the High Court has not dealt with the provisions of Section 42 of the Act, 1996. In *Guru Nanak Foundation vs. M/s. Rattan Singh & Sons* (supra), the High Court had the occasion to deal with the sub-section (4) of Section 41 of the Arbitration Act, 1940, which contains similar provisions as in Section 42 of the Act, 1996, and the Supreme Court held that, where an application is made under reference to a Court competent to entertain it, that Court alone will have jurisdiction over the arbitration proceeding and all subsequent applications arising out of that reference and the arbitration proceeding shall have to be made in that Court alone and no other Court. In the said case of *M/s. Guru Nanak Foundation vs. M/s. Rattan Singh and Sons*, the Supreme Court has gone so far as to say that Section 31(4) of the Arbitration Act, 1940, not only confers exclusive jurisdiction on the Court to which an application is made in reference but simultaneously ousts the jurisdiction of any other Court which may as well have the jurisdiction in this behalf. Considering the provisions of sub-section (42)

of the Act, 1996, which are similar to sub-section (31) of the Arbitration Act, 1940, and considering the aforesaid law laid down by the Apex Court in *M/s. Guru Nanak Foundation vs. M/s. Rattan Singh & Sons* (supra). I have no doubt that in the present case, the learned Assistant District Judge, Shillong, before whom the application relating to the arbitral award was filed first in time had jurisdiction over the arbitration proceedings and the learned District Judge, Kamrup, before whom the application was filed with regard to the very same arbitral award had no jurisdiction to entertain and pass orders on the subsequent application of the State Bank of India filed before the Court. Once the learned Assistant District Judge, Shillong passes any order on the application for execution of the award, any party aggrieved by the order of the learned Assistant District Judge, Shillong can file a revision before the Shillong Bench of the Gauhati High Court which would have jurisdiction to pass orders with regard to the said case by virtue of what is provided in Clause 2 of the Presidential Order constituting the Shillong Bench of the Gauhati High Court because such a case arises in the State of Meghalaya. The fact that the State Bank of India has opted to file an application before the learned District Judge, Kamrup, at Guwahati outside the State of Meghalaya will not oust the jurisdiction of the Shillong Bench of the Gauhati High Court, if it has such jurisdiction over the case by virtue of what is provided in Clause 2 of the Presidential Order constituting the permanent Bench at Shillong. Once the Shillong Bench of the Gauhati High Court has jurisdiction and powers to pass orders in respect of a case, it will also have all powers to pass orders with regard to any ancillary matters arising out of that case.

8. In the present case, as indicated above, the Shillong Bench of the Gauhati High Court had jurisdiction and powers to entertain the Civil Revision against the order passed by the learned Assistant District Judge, Shillong in a case between *M/s. M. Banerjee and Sons* and the State Bank of India, arising out of arbitration proceedings and the arbitral award dated 16.2.2000. In fact, the Shillong Bench did entertain Civil Revision No. 39(SH) 2000 against the order dated 26.7.2000 passed by the learned Assistant District Judge, Shillong, in (Arb) Misc. Execution Case No. 4(H) 2000. The said (Arb) Misc. Execution Case No. 4 (H) 2000, relates to the arbitration proceedings in which the award dated 16.2.2000 has been passed by the sole Arbitrator. Similarly, Misc. (Arb) Case No. 474 of 2000 in the Court of the learned District Judge, Kamrup, at Guwahati also arose out of arbitration proceedings in which the very same award dated 16.2.2000 had been passed by the sole Arbitrator. In my considered view, the (Arb) Misc. Execution Case No. 4(H) 2000 in the Court of the learned Assistant District Judge, Shillong, and Misc. (Arb) Case No. 474 of 2000, in the Court of the learned District Judge, Kamrup, Guwahati, relate to one and the same case between *M/s. M. Banerjee and Sons* and the State Bank of India, and the Shillong Bench of the Gauhati High Court has jurisdiction to pass orders not only in respect of (Arb) Misc. Execution Case No. 4(H) 2000 in the Court of the learned Assistant District Judge, Shillong but also in relation to Misc. (Arb) Case No. 474 of 2000 in the

Court of the Assistant District Judge, Kamrup. The contention of Mr. Bhattacharjee, learned counsel for the State Bank of India, therefore, that the Shillong Bench of the Gauhati High Court has no jurisdiction to pass any orders in relation to Misc. (Arb) Case No. 474 of 2000 in the Court of the learned District Judge, Kamrup, Guwahati has no merit. The decision of the Supreme Court in *Rajasthan High Court Advocates' Association vs. Union of India* (supra), cited by Mr. Bhattacharjee, is based on interpretation of the Presidential Order constituting the Permanent Bench of Jaipur and is with regard to the jurisdiction of the Permanent Bench of Jaipur while entertaining writ petition under Article 226 of the Constitution. Conclusion in this case that Shillong Bench of the Gauhati High Court had jurisdiction to pass orders also in relation to Misc. (Arb) Case No. 474 of 2000, in the Court of the learned District Judge, Kamrup, Guwahati, is based on the Presidential Order constituting the Permanent Bench of the Gauhati High Court at Shillong, and is with regard to the exercise of jurisdiction u/s 115 of the Civil Procedure Code. Accordingly, Misc. Case No. 182(SH) 2000 is dismissed.

9. Coming now to the Civil Revision CR(P) 39(SH) 2000, against the order dated 26.7.2000 in (Arb) Execution Case No. 4(H) 2000 of the Court of the learned Assistant District Judge, Shillong, it appears from the said impugned order dated 26.7.2000 of the learned Assistant District Judge, Shillong, that the only reason given by him for dismissing the said execution case is that no decree has been filed and enclosed along with the arbitration application. Section 36 of the Act, 1996, which provides for enforcement of the award is quoted herein below :

"36. Enforcement - Where the time for making an application to set aside the arbitral award u/s 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."

10. It will be clear from the very language of Section 36 of the Act, 1996, quoted above that arbitral award has to be enforced under the Code of Civil Procedure, 1908, and in the same manner as if it were a decree of the Court. Hence for the purpose of execution, the award itself is to be treated as a decree of the Court. The learned Assistant District Judge, could not have dismissed the application for execution on the ground either that the decree has not been filed along with the Execution application or that the award has not been made a decree of the Court. The learned Assistant District Judge has, in my considered opinion, failed to exercise the jurisdiction vested in him under law. Civil Revision is accordingly allowed and the impugned order of the Assistant District Judge dated 26.7.2000, is set aside. The learned Assistant District Judge, Shillong, will have to hear the parties and pass fresh orders in accordance with law in the said (Arb.) Misc. Execution case No. 4(H)2000 filed by M. Banerjee and Sons.

11. Misc. Case 163(SH) 2000, has been filed by M/s. M. Banerjee and Sons, u/s 24 of the Code of Civil Procedure, 1908, for transferring (Arb) Misc. Execution Case No. 4(H) 2000, from the Court of the Assistant District Judge Shillong, to

the Court of the learned Assistant District Judge, Shillong for disposal in accordance with law. In course of hearing today, Mr. S.R. Sen, learned counsel for the petitioner M/s. M. Banerjee and Sons submitted that since the circumstances which existed when the said Misc. Case was filed no longer exist today the petitioner does not press this case. Misc. Case 163(SH) 2000 is accordingly dismissed on withdrawal.

12. Misc. Case No. 168(SH) 2000 has been filed by M/s. M. Banerjee and Sons u/s 24 of the Code of Civil Procedure, 1908, for transferring Misc. (Arb) Case No. 474 of 2000, from the Court of the learned District Judge, Kamrup, Guwahati to this Court. As discussed above, it is the Court of the learned Assistant District Judge, Shillong, which has jurisdiction to pass orders both on the application of M/s. M. Banerjee and Sons for execution of the award as well as the application of the State Bank of India, for setting aside the award. Hence, it will not be appropriate to order for transfer of Misc. (Arb) Case No. 474 of 2000 filed by the State Bank of India u/s 34 of the Act, 1996, for setting aside the award to this Court. It will be more appropriate if the said Misc. (Arb.) Case No. 474 of 2000 filed by the State Bank of India is transferred to the Court of the Assistant District Judge, Shillong. Hence, I order that Misc. (Arb.) Case No. 474 of 2000 filed by the State Bank of India will stand transferred to the Court of the learned Assistant District Judge, Shillong. Obviously, before passing orders for execution of the award on the application of M/s. M. Banerjee and Sons in (Arb) Execution Case No. 4(H) 2000, the learned Assistant District Judge, to consider the application of the State Bank of India u/s 34 of the Act, 1996 for setting aside the award. It will be open for M/s. M. Banerjee and Sons to file their objection to the said application u/s 34 of the Act, 1996 in Misc. (Arb) Case No. 474 of 2000, before the learned Assistant District Judge, Shillong, and in such objection also raise the contention that the application u/s 34 of the Act, 1996, of the State Bank of India was barred under the law for limitation. In case such objection is filed by M/s. M. Banerjee and Sons and such contention is raised, the learned Assistant District Judge, Shillong, will consider the same and decide in accordance with law. Section 2(e) of the Act, 1996 defines the expression "Court" to mean the principal Civil Court of original jurisdiction in a district having jurisdiction to decide the question of forming the subject matter of arbitration if the same had been the subject-matter of the suit. It is for the learned Assistant District Judge, Shillong to decide as to which Court has jurisdiction over the dispute between the parties in accordance with Section 2(e) of the Act, 1996 after taking into consideration the contention of M/s. M. Banerjee and Sons that the Court at Shillong has the jurisdiction and the contention of the State Bank of India that the Court at Guwahati has the jurisdiction in the matter. In this judgment, no opinion has been expressed by this Court as to which is the Court within the meaning of Section 2(e) of the Act, 1996, which will have the jurisdiction to decide the dispute between the parties. All that has been decided in this judgment is that the learned Assistant District Judge, Shillong, before whom the application in relating to the arbitration

proceedings was filed first will have to consider first the application of the State Bank of India u/s 34 of the Arbitration Act, 1996, for setting aside the Award, and thereafter the application of M/s. M. Banerjee and Sons for execution of the Award dated 16.2.2000 of the Arbitrator, and pass orders in accordance with law.

13. The Civil Revision and Miscellaneous cases referred to above stand deposed of.