
(2000) 07 PAT CK 0023

In the Patna High Court

Case No : C.R. No. 2448 and 2446 of 1999

Md. Sadique (in 2448), Md. Amin (in 2446)

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 14, 15, 2(1), 2(1)(e), 3(17)

Citation : (2000) 4 PLJR 814

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Nand Kishore Singh, for the Appellant; A.P. Jittu, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Deb, J.—These two revision petitions have arisen out of the common order passed by the District Judge, Gopalganj, in Misc. case no. 39 of 1999 and 40 of 1999. Petitioners in both the revision petitions have filed separate petition u/s 14 and 15 of the Arbitration and Conciliation Act, 1996 for referring the matter of dispute between them and the Superintending Engineer, Flood Control Survey representing the State of Bihar. Objections were raised regarding the maintainability of the petitions and Jurisdiction of the District Judge. Serestedar of the court of the District Judge gave notes to the effect that the District Judge has got no power to entertain these petitions and that from the averments made those petitions cannot be under Sections 14 or 15 of the Arbitration and Conciliation Act rather those might be construed as u/s 8 of the Act. By the impugned order learned District. Judge held that the petitions are misconceived as those can be construed only u/s 8 of the Act and that too those must have been filed before the appropriate civil court of the district having jurisdiction to entertain the petitions. Hence, this revision petitions have been preferred by the above-named petitioners.

2. During the course of argument learned counsel appearing for and on behalf of the petitioners has conceded that wrong nomenclature was given in the petitions

and virtually the petitions were filed as initial petitions for appointment of arbitrator and referring the dispute to arbitrator as contemplated u/s 8 of the Act on the basis of the arbitration Clause in the agreement arrived at between the parties. Then the only question remains as to whether the learned District Judge had committed error holding that he had no jurisdiction to entertain these petitions and returned the same to the petitioners for the purpose of filing before appropriate court. His submissions are that as per definition of the court and as per Section 2 (1) (e) of the Act the court means the principal civil court of original jurisdiction in a district and, as such, the District Judge being the principal civil court in the district he is to be construed to have the only power and jurisdiction to entertain such petition. His submissions are that the definition of court of the old Act as per Section 2 (1) has been narrowed down in the new Act in the definition as contained in Section 2 (1) (e). Under the old provisions court meant any civil court except the court of small causes whereas under the definition in new Act 1996 court has been defined as under

The principal civil court of original jurisdiction in a district includes the High Court in exercise of its original and original civil jurisdiction having jurisdiction to decide the question forming the subject matter of the arbitration if the same had been the subject matter of a suit but it does not include any civil court of a great inferiority to such principal civil court to any court of small causes.

3. So the principal civil court original jurisdiction has been qualified the extent of having jurisdiction to decide the question if it would have been a suit of the same subject matter. By return to definition of District Judge as per Section 3 (17) of the General Clauses Act 1897 it has been argued that the District Judge is the principal civil court of original jurisdiction. As per the General Clauses Act the District Judge means the Judge of a principal civil court of original jurisdiction but shall not include a High Court in exercise of its ordinary or extraordinary original civil jurisdiction. Thus as per the General Clauses Act also the Judge of a principal civil court of original jurisdiction is meant a District Judge but hierarchy of the civil court has been made the Bengal Agra and Assam Civil Court Act, 1887 and under that Act the court Subordinate Judge is construed to be the principal civil court of original jurisdiction. having inferior pecuniary jurisdiction the District Judge although stands on the higher position in the hierarchy but as the Civil Courts Act 1887 the District Judge the Additional District Judge have got original jurisdiction for deciding a Some original jurisdiction have been given to the District Judge by different Acts such as Indian Succession Act whereby the District Judge has been powered to exercise original jurisdiction under the Indian Succession Act for the purpose of grant of succession, certifiers and for adjudicating of proceeding of probate and matters of administration but in deciding a suit under the original jurisdiction, the sole power has been given to the Sub Judge under the Act and in that way, definitely the Sub-Judge should be construed as the principal civil court in a district for the purpose of entertaining a suit of original jurisdiction and not the District Judge. This point was raised before a Bench of this Court in the case of Sushil Kumar Chaudhary and Another

Etc. Vs. State of Bihar and Others, and a single Judge of this Court has held that application u/s 8 is maintainable before the Sub-Judge who is a civil court of original jurisdiction. The definition of principal civil court under the Act 1996 and that of principal civil court of original jurisdiction under the Bengal, Agra and Assam Civil Courts Act 1887 were considered and then the decision has been arrived at. I am totally in agreement with that decision of our High Court. But the learned counsel for the petitioners has referred to a decision of the learned single Judge of Allahabad High Court in the case of M/s I.T. I. Ltd. vs. District Judge, Allahabad as reported in 1998 All 313. In that case the petition was filed before the District Judge, Allahabad but then by powers conferred by Act 1887 the suit was transferred to the court of Additional District Judge which was then objected to as per definition of Section 2 (1) (e) of the Act 1996 that the Additional District Judge cannot have the power to entertain such suit or proceeding with the same. The provisions of Section 8 (2) of the Bengal, Agra and Assam Civil Courts Act 1887 was considered and it was held that principal civil court of original jurisdiction has only got the power to entertain a petition under the Act 1996 and no other court can entertain so and, as such, the Additional District Judge has got no power. There it was not considered specifically as to whether the petition was also maintainable before the District Judge or not or whether the District Judge can be construed as a principal civil court as per the definition mentioned above. On harmonious construction of the definition of principal civil court of original jurisdiction and that of the District Judge in Arbitration and Conciliation Act 1996, General Clauses Act 1897 and the Bengal, Agra and Assam Civil Courts Act 1887 it could be found that the Subordinate Judge of a district is practically the principal civil Court of original jurisdiction for entertaining a suit and not the District Judge. It has been strenuously argued by the learned advocate for and on behalf of the petitioners that even if it is construed in ordinary meaning and for ordinary civil suits that the Sub-Judge of a district is principal civil court of original jurisdiction but as the District Judge is the principal civil court in the district then by this special Act he has been conferred the only power to entertain and dispose of the petitions filed under the Arbitration Act 1996. I am not convinced with such as already mentioned above regarding the qualification being given to the principal civil court of original jurisdiction in the definition of Section 2 (1) (e) of the Act to the effect that such court means for the original jurisdiction of entertaining the subject matter of the suit. Ruling of Allahabad High Court is not exactly on that point rather the decision of our High Court as mentioned above was totally on the point as raised before this Court. The Government Advocate appearing for and on behalf of the opposite party has also referred to the decision of a Bombay High Court from the annotations of the book of Law on Arbitration and Conciliation by Justice B.R Saraf and Justice S.M. Jhunjhunwalla that considering the Bombay City Civil Court Act, 1948 it was held that when greater Bombay is concerned, the original civil jurisdiction is vested in the High Court and not under the City Civil Court and that the city civil court Bombay shall have the jurisdiction only as per the jurisdiction of the city itself as per the discussions made in that judgment as reported in 1995 Bom 43 (Khetan

Industries Pvt. Ltd. vs. M.R.P. Khetan) and 1992 MLR 1075 (Chchatris Bhuj M. Merchant vs. Sumati Morarji). The hierarchy made as per the Bengal, Agra and Assam Civil Courts Act 1887 shall be the finality in respect of considering the jurisdiction of a civil court and in that way the Sub-Judge should be construed as the principal civil court of a district having original jurisdiction.

4. Although u/s 8 of the Act word "court" has never been mentioned in the Act 1996 only mention is about the judicial authority and in that sense perhaps the discussions made above shall be an academic one for the purpose of other sections in that Act but for section 8 the judicial authority as mentioned only draw out the principal civil court in a district and by applying the provisions of Civil Courts Act 1887 Sub-Judge should be the said judicial authority for the purpose of entertaining a petition u/s 8 of the Act. Thus, I find that the learned District Judge has rightly decided the jurisdiction point and asked the petitioners to take away their petitions for filing before the appropriate court. There is nothing to interfere with the same. Hence, these revision petitions are dismissed. At the last learned counsel appearing for and on behalf of the petitioners submitted that if this Court finds that the order of the District Judge is proper then time should be allowed to the petitioners to move before the Apex Court by granting leave for thrashing out the point in the Apex Court. I do not think leave is necessary to be granted by this Court because the petitioners are at liberty according to law to move the Apex Court against the order passed in these two petitions.