
(2019) 11 JH CK 0075

In the Jharkhand High Court

Case No : Arbitration Application No. 20 Of 2019

M/s Vaidya Industries

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 2, 2(e), 2(1), 2(1)(e), 9, 9(1), 29(A), 36, 37(2)
Commercial Courts Act, 2015 — Section 3, 6
Code Of Criminal Procedure, 1973 — Section 129
Bihar Reorganization Act, 2000 — Section 27
Bengal, Agra And Assam Civil Courts Act, 1887 — Section 18, 19, 19(1), 19(2), 21, 21(1)(a)
Code Of Civil Procedure, 1908 — Section 15

Citation : (2019) 11 JH CK 0075

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Praveen Chandra, Atul Rai, Vikash Kumar

Final Decision : Dismissed

Judgement

1. Heard Mr. Praveen Chandra along with Mr. Atul Rai, Advocates appearing on behalf of the petitioner.
2. Heard Mr. Vikash Kumar, counsel appearing on behalf of the respondents.
3. This application has been filed under Section 9(1) of Arbitration and Conciliation Act, 1996 on being aggrieved by the issuance of Notice No. 2402/SK dated 20.09.2019 issued under the signature of Respondent No. 04 intimating to the petitioner regarding rejection of request made vide letters dated 17.07.2019 and 13.08.2019, offering the upgraded version of the model of mobile sets, without mentioning any reason and directing the petitioner to supply as per terms of contract within 90 days and also to provide the supply schedule within three days.

4. It is submitted that the petitioner has a reasonable apprehension that Respondent authorities may take coercive action against the petitioner without taking recourse to the alternative dispute resolution mechanism as provided under General Terms and Conditions of contract. In this background the present petition has been filed under section 9(1) of the Arbitration and Conciliation Act, 1996 for the following reliefs:-

"(i) The petitioner prays for staying and keeping in abeyance the impugned notice No. 2402/sk dated 20.09.2019 passed by Respondent No. 04.

(ii) The petitioner prays for issuance of appropriate orders commanding upon the Respondent Authorities to restrain from taking any coercive action against the applicant including cancellation of Contract, forfeiture of Bank Guarantee, blacklisting, etc. till the settlement of the dispute as per the terms and conditions of the Bid document contract"

Preliminary objection of the respondents on the point of maintainability of the case

5. Counsel for the respondents has raised preliminary objection regarding the maintainability of the present petition by submitting that Jharkhand High Court is not exercising ordinary original civil jurisdiction with respect to the subject matter of commercial dispute arising out of contract and accordingly, the petition under Section 9 of Arbitration and Conciliation Act, 1996 is not maintainable before this Court. He refers to section 9 read with section 2(e) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") to submit that the term 'Court' has been defined in section 2(e) and the principal civil court of original jurisdiction in a district has been defined which includes the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the question forming the subject matter of arbitration, if the same had been the subject matter of the suit. He submits that the definition of 'Court' under Section 2(1)(e) of the aforesaid Act of 1996 read with Section 9 of the said Act clearly indicates that the appropriate petition for relief under section 9 can be filed before the same Court which exercises jurisdiction to decide the question forming subject matter of the arbitration, if the same had been the subject matter of suit.

6. The learned counsel further refers to The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (herein after referred to as Commercial Courts Act, 2015) and submits that the commercial court has exclusive jurisdiction to try and decide commercial dispute above a specified value and a commercial court is constituted under Section 3 read with Section 6 of the Commercial Courts Act, 2015. The learned counsel further submits that as the Jharkhand High Court does not have any jurisdiction to decide a suit of the nature involved in this case so commercial division to try such suit has not been constituted in the High Court under the provisions of Commercial Court's Act, 2015. He submits that this High Court has only

commercial appellate division, which has been duly constituted under the Commercial Court's Act, 2015.

7. The learned counsel has also referred to a judgement dated 22.11.2018 passed by this Court in Arbitration Application No. 9 of 2018, wherein a petition was filed seeking extension of period of mandate of the learned Arbitrator in terms of Section 29(A) of Arbitration and Conciliation Act, 1996 as the arbitrator was appointed vide order passed by this court in the Arbitration Application No. 2 of 2016 . He submits that this Court held that such petition was not maintainable before this Court. While deciding the issue regarding maintainability of the petition before this Court, reliance was placed upon judgment passed by Hon'ble Supreme Court reported in (2015) 1 SCC 32 (State of West Bengal and Others Vs. Associated Contractors) as well as the judgment reported in (2018) 2 SCC 602 (State of Jharkhand and Others Vs. Hindustan Construction Company Limited) and ultimately, the petition was rejected as not maintainable by holding that this High Court is not principal civil court of original jurisdiction within the meaning of "court" as defined under Section 2(1)(e) of the aforesaid Act of 1996 as this court does not have the original jurisdiction like the other presidency courts.

Arguments of the petitioner on the point of maintainability of the case

8. In response, the learned counsel appearing on behalf of the petitioner has referred to Rule 33 and 84 of High Court of Jharkhand Rules, 2001. He submits that it has been inter alia provided in the Rule 84 that all applications under the aforesaid Act of 1996 are to be numbered as A.A. and it also provides for registration of appeals. He also referred to Rule 33(iv) of the said rules which deals with disposal of a suit coming before this Court in exercise of its ordinary or extraordinary original civil jurisdiction.

9. The learned counsel further refers to Section 129 of Code of Civil Procedure and also Section 27 of Bihar Reorganization Act, 2000 to submit that the rules of Jharkhand High Court having been framed under the aforesaid provisions, this High Court acquires the jurisdiction to try suit of the present nature on its original side and accordingly, he submits that the definition of 'Court' would cover Jharkhand High Court. The counsel for the petitioner submits that the present petition under Section 9 of the aforesaid Act of 1996 is maintainable and has been rightly filed.

10. Learned counsel for the petitioner further refers to Section 2 of the aforesaid Act of 1996 to submit that at the very beginning of Section 2, the term "unless the context otherwise requires" has been used and therefore, in the context of an application under Section 9, the definition of "Court" as defined under Section 2(1)(e) of the aforesaid Act of 1996 will have no applicability and the concerned court for the purposes of entertaining an application under Section 9 of the aforesaid Act of 1996 would be this High Court only.

11. The learned counsel for the petitioner has also referred to a judgment passed

by Hon'ble Supreme Court reported in (2007) 1 SCC 467 (Pandey and Co. Builders Pvt. Ltd. Vs. State of Bihar and Another) to submit that the various provisions of Bengal, Agra and Assam Civil Courts Act, 1887 as well as those governing Patna High Court have been considered and the Hon'ble Supreme Court has also observed that the rules framed by Patna High Court in exercise of its original jurisdiction under Article 225 of the Constitution of India also do not authorize it to entertain the suit as a court of original jurisdiction. The counsel submits that in the aforesaid background, it was held by the Hon'ble Supreme Court that an appeal under Section 37(2) of the aforesaid Act of 1996 was not maintainable before it. In this background, he again refers to High Court of Jharkhand Rules, 2001 and submits that in view of the aforesaid Rule 33 and 84 of High Court Jharkhand Rules, 2001, suit is maintainable before this Court on the original side and therefore, the petition under Section 9 is required to be filed before this Court only. He submits that the aforesaid provisions of High Court of Jharkhand Rules, 2001 have not been considered by this Court in aforesaid judgement passed by this court in the Arbitration Application No. 9 of 2018, which has been relied upon by the respondents.

12. The learned counsel for the petitioner has also referred to another judgment passed by the Hon'ble Supreme Court reported in (2012) 9 SCC 552 (Bharat Aluminium Company and Others Vs. Kaiser Aluminium Technical Service, Inc. and Ors.) and has referred to para 159 thereof to submit that this Court has jurisdiction to grant interim measures.

Findings of this Court on the point of maintainability of the case

13. After hearing the counsel for the parties and after considering the materials on record, this Court finds that the solitary point which is required to be decided at this stage in the present case is as to whether the petition filed under section 9(1) of the aforesaid Act of 1996 is maintainable before this Court ?

14. The appellant has relied upon para 159 of the judgement reported in (2012) 9 SCC 552 (Bharat Aluminium Company and Others Vs. Kaiser Aluminium Technical Service, Inc. and Ors.) to submit that the definition of "court" under section 2 of the aforesaid act of 1996 will not apply to section 9 of the aforesaid Act of 1996. This Court finds that the aforesaid para 159 of the judgement reported in (2012) 9 SCC 552 has no bearing in this case as the same was dealing with "interim measures etc by the Indian courts where the seat of arbitration is outside India" and it has been held by the Hon'ble supreme court in para 163 that the provision contained in section 9 is limited to its application to arbitrations which take place in India. It is not the case of the petitioner that the seat of arbitration in the agreement involved in this case is outside India.

15. Section 9 of Arbitration and Conciliation Act, 1996 provides for interim measure etc. to be granted by court and sub-section 1 thereof provides that a party may, before or during the arbitral proceedings or at the time after the making of the arbitral award, but before it is enforced in accordance with Section

36, apply to a "court" inter alia for interim measures.

16. Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 reads as follows:

"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."

17. For disputes other than international commercial arbitration, The term 'Court' as defined under Section 2(1)(e) of the aforesaid Act of 1996 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 question forming the subject matter of the arbitration, if the same had been the subject matter of a suit.

18. Thus, in order to come within the meaning of the term "court " as defined in the aforesaid Act of 1996 , Jharkhand High court has to satisfy both the conditions, have ordinary original civil jurisdiction and jurisdiction to decide the question forming the subject matter of the arbitration, if the same had been the subject matter of a suit.

19. The present proceedings admittedly arise out of an arbitration agreement between the parties and the dispute arises out of commercial transaction and it is required to be examined as to whether a suit, forming the subject matter of the arbitration, would lie in this High Court or not if it was a subject matter of a suit.

20. Chapter II of Bengal, Agra and Assam Civil Courts Act, 1887 deals with constitution of Courts and Section 3 thereof provides for classes of Courts. It reads as follows:

"3. Classes of Courts.- There shall be the following classes of Civil Courts under this Act, namely.-

- (1) the Court of the District Judge;
- (2) the Court of the Additional Judge;
- (3) the Court of the Subordinate Judge; and
- (4) the Court of the Munsif."

21. Chapter III of the Bengal, Agra and Assam Civil Courts Act, 1887 relates to ordinary jurisdiction and Section 18 thereof provides for extent of original jurisdiction of District or Subordinate Judge. Section 19 deals with extent of jurisdiction of Munsif. Section 21 deals with appeals from subordinate judges and Munsifs. Section 18 , 19 and 21 read 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.

19. Extent of jurisdiction of Munsif.- (1) Save as aforesaid, and subject to the provisions of sub-section (2), the jurisdiction of a Munsif extends to all like suits of which the value does not exceed fifty thousand rupees.

(2) The State Government may, on the recommendation of the High Court, direct, by notification in the Official Gazette, with respect to any Munsif named therein, that his jurisdiction shall extend to all like suits of such value not exceeding one Lac rupees as may be specified in the notification.

Provided that the State Government may, by notification in the Official Gazette, delegate to the High Court its powers under this section.

21. Appeals from Subordinate Judges and Munsifs.- (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie-

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made was less than two lakhs fifty thousand rupees, and

(b) to the High Court in any other case:

Provided that the High Court may at any time decide/ direct that any Appeal or class or group of Appeals filed before it at any time, shall be transferred to District Judge or Additional District Judge, and on such decision being taken or order being passed by the High Court, such Appeal or class or group of Appeals shall so stand transferred to such a transferee court which shall hear and dispose of such an Appeal or class or group of Appeals, as if, the same had been filed before it under clause (a).

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the State Government, direct by notification in the official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly."

22. Prior to 11.06.2019 the amount specified in section 19(1) was Rupees fifty

thousand; in section 19(2) was Rupees One lac and in section 21 (1) (a) was 2.5 lacs. The amendment has been carried out by virtue of Bengal, Agra and Assam Civil Courts (Jharkhand Amendment) Act, 2018 (Jharkhand Act no. 09 of 2019) which has come into force on 11.06.2019.

23. Upon perusal of the provisions of Section 18 read with Section 19 of Bengal, Agra and Assam Civil Courts Act , 1887, it appears that the suit upto a specified value lies before Munsif and suits relating to higher value lie before the District Judge or the Sub-ordinate Judge who have unlimited pecuniary jurisdiction. Further pursuant to coming into force of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, the suits arising out of commercial disputes above the specified value are to be decided only by the commercial courts constituted under the said Act of 2015.

24. The rules framed by the Jharkhand High Court do not authorize this Court to entertain suits as a Court of ordinary original civil jurisdiction except few matters in which the Court exercises original civil jurisdiction for specific purpose like that of Indian Succession Act etc.

25. Thus, the Bengal, Agra and Assam Civil Courts Act does not make this High Court as one of the classes of the Civil Court and further does not vest ordinary original civil jurisdiction to this Court to try suits of the nature of commercial dispute involved in this case. Further there is no such rule or provision to show that the question forming the subject matter of the arbitration involving commercial disputes could have been entertained by this Court, had it been the subject matter of the suit forming the subject matter of the arbitration.

26. This Court is of the considered view that Rule 33 of High Court of Jharkhand Rules, 2001 which provides for constitution of Benches, in connection with a suit coming before this Court in the exercise of its original or extraordinary original civil jurisdiction, is only for the purposes of ordinary original civil jurisdiction which this court has for the limited purpose like that of Indian Succession Act etc. Further, Rule 84 of High Court of Jharkhand Rules, 2001 is meant only for registration of cases and their nomenclature. Rule 33 and 84 by themselves are not sufficient to confer any jurisdiction to this High Court to entertain and decide suit arising out of commercial dispute like the present one. Accordingly, the contention of the petitioner that in view of the Rule 33 and Rule 84 of the High Court of Jharkhand Rules, 2001, this Court acquires ordinary original civil jurisdiction to try a suit of the nature involved in this case, is hereby rejected.

27. Although the petitioner has argued that the term 'Court' as mentioned in Section 9 of the aforesaid Act of 1996 need not be read with definition of 'Court' under Section 2(1)(e) of the aforesaid Act of 1996 in view of the phrase used in the beginning of Section 2(1) of the aforesaid Act of 1996 i.e. "unless the context otherwise requires" and that context in which this term has been used, does not apply to the provision of Section 9, but, he has not advanced any argument to suggest as to why the term 'Court' as mentioned in Section 9 of the aforesaid Act

of 1996, should not be read with definition of 'Court' as defined under Section 2(1)(e) of the aforesaid Act of 1996. This court is of the considered view that this argument of the petitioner is fit to be rejected. Considering the specific definition of the word "Court" in Section 2(1)(e) of the Act of 1996, the term "court" as used in section 9 of the Act of 1996 has to be read to mean, the Court as defined under Section 2(1)(e) of the Act of 1996 if there is no reason to read it otherwise. This court is of the considered view that there is nothing in section 9 of the aforesaid Act of 1996 to call for any other interpretation of the term "court" other than what has been defined under section 2(1)(e) of the aforesaid Act of 1996 by referring to the words "unless the context otherwise requires" as used in section 2 of the Act of 1996. This Court is further of the considered view that no anomalous situation would arise if the term "Court", which has been used in Section 9 of the aforesaid Act of 1996, is read with the definition of 'Court' under Section 2(1)(e) of the aforesaid Act. Accordingly, aforesaid contention of the petitioner is also rejected.

28. This Court further finds that as the learned court below has unlimited pecuniary jurisdiction to entertain suits forming the subject matter of arbitration, therefore, when the definition of 'court' as defined under Section 2(1)(e) of the aforesaid Act of 1996 is read with the term 'court' used in Section 9 of the aforesaid Act, the application under Section 9 would lie in the same court where the subject matter of arbitration, if the same had been the subject matter of the suit, would lie and not before this High Court.

29. In view of the aforesaid findings, this Court is of the considered view that the present petition is not maintainable before this Court and the various provisions which have been shown by the petitioner from High Court of Jharkhand Rules, 2001 does not confer jurisdiction upon this Court to try a suit which is the subject matter of arbitration in the present case, if the same had been the subject matter of a suit. Thus the argument of the petitioner that this court while passing judgement in the Arbitration Application No. 9 of 2018 has not considered the rules framed by this court does not make any difference. This court, after considering the provisions relied upon by the petitioner, again comes to the conclusion that this High Court is not principal civil court of original jurisdiction within the meaning of "court" as defined under Section 2(1)(e) of the aforesaid Act of 1996 as this court does not have the original jurisdiction like the other presidency courts.

30. Accordingly, this Court is of the considered view that this Court being not a court of ordinary original civil jurisdiction to entertain the suit forming the subject matter of the arbitration, the present petition under Section 9(1) of Arbitration and Conciliation Act, 1996, is not maintainable before this Court. The present petition, under Section 9 of the Arbitration and Conciliation Act, 1996, is dismissed as not maintainable.

31. Pending interlocutory application, if any, is dismissed as not pressed.