
(2015) 01 CAL CK 0058
In the Calcutta High Court
Case No : AP No. 1855 of 2014

Nasim Akhtar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)(e), 34

Citation : AIR 2015 Cal 64 : (2015) 4 ARBLR 94 : (2015) 2 CALLT 427 : (2015) 5 CHN 410

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Swatarup Banerjee and S.K. Tiwari, for the Appellant; Aparna Banerjee, Advocates for the Respondent

Judgement

Biswanath Somadder, J.—This is an application under section 34 of the Arbitration and Conciliation Act, 1996, challenging an award dated 29th September, 2014, passed by an arbitral tribunal comprising of a sole arbitrator. Initially, the petitioner had approached the City Civil Court at Calcutta but was advised to withdraw the section 34 application in order to file the same before this Court. Consequently, that section 34 application was dismissed for non-prosecution at the instance of the petitioner and the present application was filed before this Court. A question that comes up for consideration is whether the award, which carries a value of Rs. 71,58,180/-, could not have been challenged before the City Civil Court at Calcutta on the ground that only this Court, exercising its ordinary original civil jurisdiction, was competent to entertain, try and determine the instant section 34 application, notwithstanding the fact that the City Civil Court had pecuniary jurisdiction to do so.

2. In order to find a clear answer to the issue, one requires to take into consideration, at first, the statutory definition of the word, "Court", as provided under section 2(1)(e) of the Arbitration and Conciliation Act, 1996, which 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;"

3. A bare reading of the provision of law, as quoted above, clearly reveals that only a "principal Civil Court of original jurisdiction" in a district will have jurisdiction to entertain, try and determine questions forming the subject matter of the arbitration if the same had been the subject-matter of a suit and such definition of "Court" also includes the High Court in exercise of its "ordinary civil jurisdiction", but excludes any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

4. So far as the Calcutta High Court is concerned, its "ordinary original civil jurisdiction" was established by the Letters Patent promulgated in the year 1865 and as such, the statutory definition of "Court" would include within its fold, this Court.

5. Now, it is required to be examined as to whether the City Civil Court at Calcutta is the "principal Civil Court of original jurisdiction" for Calcutta or is a Civil Court inferior to a principal Civil Court.

6. After India attained independence, by a State Act called the City Civil Court Act, 1953, a Civil Court, which was called the City Civil Court, was established. The City Civil Court Act, 1953, under section 5, specifically provides that the local limits of the jurisdiction of the City Civil Court shall be the "City of Calcutta". "City of Calcutta" has been defined under sub-section (2) of section 2 and means the area comprised within the local limits of the "ordinary civil jurisdiction" of the Calcutta High Court. However, so far as the pecuniary limit of the City Civil Court is concerned, the same has been clearly provided under Sub-section (2) of section 5 of the City Civil Court Act, 1953. This sub-section (2) of section 5 of the City Civil Court Act, 1953, has been amended from time to time and has been recently amended by the City Civil Court (Amendment) Act, 2013, by introducing a new proviso. By virtue of the said proviso, the City Civil Court and the High Court at Calcutta shall now have concurrent jurisdiction to try suits and proceedings of a civil nature, the value of which exceeds rupees ten lakhs but does not exceed rupees one crore.

7. In the facts of the instant case, it is noticed that the award carries a value of Rs. 71,58,180/- and there is no dispute regarding the cause of action having arisen within the original jurisdiction of the City Civil Court at Calcutta. Therefore, ordinarily, the City Civil Court at Calcutta would be competent to entertain, try and determine the matter, having pecuniary jurisdiction to do so, provided it is established that it is the "principal Civil Court of original jurisdiction" for the "City of Calcutta".

8. It is noticed from the preamble of the City Civil Court Act, 1953, that this Act was for the purpose of establishing an "additional Civil Court" for the "City of Calcutta". The reason, perhaps, is that the City Civil Court is structured to be a Civil Court of limited pecuniary jurisdiction. Had it been the legislative intent to establish the City Civil Court as the "Principal Civil Court", the preamble would have read otherwise and there would not have been a fetter on its pecuniary jurisdiction or the necessity of introducing Sub-section (2) under section 3 of the City Civil Court Act, 1953, which reads as follows:-

"The City Civil Court shall be deemed to be a Court subordinate to and subject to the superintendence of the High Court within the meaning of the Letters Patent for the High Court and of the Code of Civil Procedure. 1908."

(Emphasis supplied)

9. It is, therefore, clearly established that the City Civil Court at Calcutta is not the "principal Civil Court of original jurisdiction" for the "City of Calcutta" and is a "civil court of a grade inferior" and as such does not come within the definition of the word, "Court", as provided under section 2(1)(e) of the Arbitration and Conciliation Act, 1996.

10. A question of a similar nature arose before the Madras High Court earlier. In a decision rendered by a Division Bench of Madras High Court reported in Sundaram Finance Limited Vs. M.K. Kurian and Tomy Thomas Mathew, AIR 2006 Mad 218 : (2006) 1 ARBLR 548 : (2006) 1 CTC 433 : (2006) 1 LW 473 : (2006) 1 MLJ 506 , it has been clearly held to the effect that so far as the city of Chennai is concerned (Madras High Court, being a Court established by the Letters Patent), the words, "principal Civil Court of original jurisdiction", as defined under section 2(1)(e) of the Arbitration and Conciliation Act, 1996, would mean the Madras High Court exercising jurisdiction on the Original Side and not the City Civil Court.

11. The Supreme Court, in the State of Maharashtra v. Atlanta Limited reported in (2014) 11 SCC 619, while considering the jurisdiction of the Bombay High Court (also being a Court established by the Letters Patent) in respect of its ordinary original civil jurisdiction, has gone even further and held to the effect that even if there is a requirement of choice between the High Court, in exercise of its "ordinary original civil jurisdiction", on the one hand and the "Principal Civil Court of original jurisdiction" in the district i.e. the District Judge, on the other, section 2(1)(e) of the Arbitration and Conciliation Act, 1996 has made the choice in favour of the High Court. The Supreme Court has observed that this, in fact, impliedly discloses a legislative intent.

12. For reasons stated above, it must be held that notwithstanding the fact that the City Civil Court at Calcutta may have jurisdiction to adjudicate upon the subject-matter of a civil suit to the extent of its pecuniary jurisdiction, it cannot come within the definition of a "principal Civil Court of original jurisdiction" as provided under section 2(1)(e) of the Arbitration and Conciliation Act, 1996,

being a "civil court of a grade inferior" and this Court shall have exclusive jurisdiction for the purpose of entertaining, trying and determining applications under the Arbitration and Conciliation Act, 1996, provided, of course, the cause of action arises within this Court's "ordinary original civil jurisdiction".

13. As such, the question posed by this Court, is clearly answered in favour of the petitioner and this Court alone shall have jurisdiction to entertain, try and determine the instant application filed under section 34 of the Arbitration and Conciliation Act, 1996.

14. Let this matter be heard upon filing of affidavits. Affidavit-in-opposition may be filed within four weeks; reply thereto, if any, within three weeks thereafter. Let this matter appear under the heading "Arbitration Motion Adjourned" six weeks hence. Urgent photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.