

(2001) 10 MAD CK 0077
In the Madras High Court

Pondy Chem Private Ltd. and Another	APPELLANT
Vs	
Gas Authority of India Ltd. and Another	RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 33

Citation : (2001) 3 MLJ 644

Hon'ble Judges : A. Kulasekaran, J

Bench : Division Bench

Judgement

A. Kulasekaran, J.—The applicant in Diary No. 39221 of 2000 is M/s. Pondicherry Chemicals Pvt. Ltd. and the applicant in Diary No. 39222 of 2000 is M/s. Silicate India Limited. It is stated that both the applicants are sister concerns.

2. The applicant in Diary No. 39221 of 2000 namely M/s. Pondicherry Chemicals Pvt. Ltd., has entered into an agreement dated 16.11.1993 and the applicant in Diary No. 39222 of 2000 namely M/s. Silicates India Limited entered into an agreement dated 21.7.1994 with M/s. Gas Authority of India Limited, the first respondent herein. Article 13 of the said agreements are pertaining to arbitration.

3. Dispute arose between the parties was referred to arbitral tribunal. On 18.11.1999, the arbitral tribunal passed two separate awards. It is alleged by both the petitioner that they have filed necessary petition u/s 33 of the Arbitration and Conciliation Act, 1996 before the tribunal for reconsideration of the award. In spite of repeated reminders no order has been passed by the arbitral tribunal on the petitions. On 5.12.2000 the respondent have sent a letter demanding the award amount from the applicants herein. Hence, the applicants have filed these applications u/s 9 of the Act before this Court. The Registry has returned both the applications which are posted before this Court to decide whether this Court has territorial jurisdiction or not.

4. The respondents have filed their reply affidavit as well as counter affidavit stating that this Court is not having territorial jurisdiction.

5. The learned Counsel for the applicants Mr. H. Nazirudeen argued that both the applicants are having their administrative office at No. 81, Avadi Road, Kilpauk, Chennai-10 and the respondents are also having their branch office at Chennai and as such under explanation to Section 20 of C.P.C. and Section 2(e) of the Arbitration and Conciliation Act, 1996, the said applications are filed and this Court is vested with the territorial jurisdiction to entertain them. This contention was opposed by Mr. V. Kathiravan, the learned Counsel for the respondents.

6. It is admitted by both the sides that the agreements were executed at New Delhi and the 1st respondent is having its registered office at New Delhi and arbitration proceedings held at New Delhi. After return of the case bundle by the registry, the applicant has taken a stand that both the respondents are having their branch office at Madras within the jurisdiction of this Court, which was not disputed by the respondents, hence this Court proceeded on that basis.

7. The applicant has relied upon the provisions of Section 2(e) of the Arbitration and Conciliation Act as well as Section 20 of C.P.C. Section 2(e) of the Arbitration and Conciliation Act contemplates thus:

Court" means the Principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary 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 principle Civil Court or any Court of Small Causes.

Section 2(e) contemplates that Court means principal Civil Court of original jurisdiction in a district and includes the High Court in relation to ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of arbitration, if the same had been the subject matter of the suit. The phrase civil Court having jurisdiction to decide in Section 2(e) refer to a Court having jurisdiction under having jurisdiction to decide in Section 2(e) refer to a Court having jurisdiction u/s 20 of C.P.C. Section 20 of C.P.C. runs thus:

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given or the defendants who do not reside, carry on business or personally work for gain, as aforesaid, acquiescence in such institution: or

(c) The cause of action, wholly or in part arises.

Explanation: A Corporation shall be deemed to carry on business at its sole or principal office or in respect of any cause of action arising at any place where it has also a subordinate office at such place.

8. In this case, it is admitted by the respondents that they are having subordinate office at Chennai, however no cause of action arose at Chennai which is necessary to attract the original jurisdiction of this Court, u/s 2(e) of the Arbitration and Conciliation Act, 1996 and Explanation to Section 20 of C.P.C. Hence the said two Sections are not useful to the applicants. Moreover, u/s 120 of C.P.C., the provisions of Section 20, C.P.C. was made inapplicable to the High Court in the exercise of its original jurisdiction. The ordinary original civil jurisdiction of this Court is determined by Clause 12 of the Letters Patent.

Clause 12 of Letters Patent runs as follows: Original Jurisdiction as to suits: And we do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in the case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits, except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed hundred rupees. The said Clause 12 of Letters Patent stipulates that a place where the defendant or each of the defendants, in case there are more than one, at the commencement of the suit, carry on business would be a place where the Court have the jurisdiction. Hence, under Clause 12 of Letters Patent this Court have territorial jurisdiction.

9. Learned Counsel appearing for the applicants relied upon Food Corporation of India v. Evdomen Corporation (1999)2 S.C.C. 466. This judgment is squarely applicable to the case on hand.

10. In the result, the registry is directed to number both the Diary Numbers 39221 and 39222 of 2000 if otherwise in order and post it before the concerned Court to decide the merits of the O.A.'s. No costs.