

(2012) 10 BOM CK 0195
In the Bombay High Court
Case No : Arbitration Petition No. 570 of 2009

Premilaxmi and Co.

APPELLANT

Vs

Konkan Railway Corporation Ltd. and Others

RESPONDENT

Date of Decision : 29-10-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 2(1)(e), 2(e), 34

Citation : (2013) 1 MhLj 360

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Shilpa Kapil, for the Appellant; Asha Bhambwani, for the Respondent

Judgement

Anoop V. Mohta, J.—Called out from final hearing board. The petitioners-original claimants have challenged Award dated 3rd April 2009 passed by the Arbitral Tribunal constituted under the agreement between the parties by invoking Section 34 of the Arbitration and Conciliation Act, 1996 (for short "Arbitration Act").

2. Admittedly, there is no specific clause of Court jurisdiction. Merely because an application u/s 11 of the Arbitration Act was filed by the petitioner and whereby an arbitral tribunal was constituted that itself cannot give jurisdiction to this Court to entertain Section 34 petition as filed.

3. Admittedly, basic cause of action arose at Ratnagiri as the construction was of a tunnel at Ratnagiri. Section 2(e) of the Arbitration Act deals with the term "Court". Therefore, the Court at Ratnagiri has jurisdiction to deal with and entertain such application against the award, though passed by the arbitral tribunal by the consent of parties by holding meetings in Mumbai. The place of arbitration in Mumbai is not sufficient to decide jurisdiction of this Court to entertain Section 34 application. The submission that in view of Section 42 and as admittedly Section 11 application was filed in this Court, therefore, this Court has jurisdiction to entertain the present petition is unacceptable. The Court as

contemplated in Section 2(e) and Section 42 cannot be compared with and cannot mean the Hon. Chief Justice and/or the designated Judge, as contemplated u/s 11 of the Arbitration Act. Both are different and distinct entity.

4. Section 34 itself, therefore, needs to be read with Section 2(e) which means the Court where cause of action arose and/or subject matter of the arbitration situated. Therefore, when admittedly the construction work was at Ratnagiri, the "Court" at Ratnagiri has jurisdiction to entertain such petition. The Apex court in Chandrakant Shankarrao Machale Vs. Parubai Bhairu Mohite, has dealt with the aspect in following terms:

10. We further reiterate that the view taken by this Court in National Aluminium Co. Ltd. Vs. Pressteel and Fabrications Pvt. Ltd. and Another, and State of Goa Vs. Western Builders, is the correct approach and we reaffirm the view that in case any appointment of arbitrator is made by the High Court u/s 11(6), the Principal Civil Court of Original Jurisdiction remains the District Court and not the High Court. And likewise, if an appointment of the arbitrator is made by this Court, in that case also, the objection can only be filed before the Principal Civil Court of Original Jurisdiction as defined in Section 2(1)(e) of the 1996 Act. Thus, in this view of the matter, we hold that the plea raised by Learned Counsel for the petitioner that this Court should entertain the award given by the arbitrator appointed by this Court and all objections to it should be disposed of by this Court is unacceptable and consequently, the prayer made in the application is rejected.

5. This Court also, though prior to the Constitution Bench decision in Konkan Railway Corporation Ltd. referring to Section 42 read with Section 2(e) taken the view, which covered the present facts and circumstances also in favour of the preliminary objection. The decision given by this Court (by D.K. Deshmukh, J., as he then was) in Garden Finance Ltd. Vs. Prakash Inds. Ltd. and Another, has dealt with this facet in detail. I am in agreement with the same. Even from the plain reading of these two Sections, I am inclined to accept the submission by the Learned Counsel appearing for respondents that this Court has no jurisdiction. The arbitration petition is, therefore, without expressing anything on merits, disposed off as not maintainable. The Learned Counsel appearing for the petitioner, further submitted to consider the aspect of limitation at this stage itself. Section 34 of the Arbitration Act provides the procedure in view of the restricted period of limitation. Therefore, I am inclined to grant liberty to the petitioner to take out appropriate application for the same. The Court to consider such application and petition in accordance with law. The petition is accordingly disposed of as not maintainable. All points are kept open. Parties to take steps accordingly. No cost.