

(1982) 12 DEL CK 0024
In the Delhi High Court
Case No : Suit No. 168A of 1981

Raunaq International Ltd.

APPELLANT

Vs

Mini Sea Food and Others

RESPONDENT

Date of Decision : 01-12-1982

Acts Referred:

Citation : (1983) 4 DRJ 299 : (1983) RLR 202

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : G.N. Aggarwal and E.M. Sardul Anam, for the Appellant;

Judgement

S.S. Chadha, J.

(1) M/S. Raunaq International Ltd., petitioned herein, enter into an agreement dated March 8, 1977 with M/s. Mini Sea Foods respondent no. I for promotion of export of sea foods to U.S.A., Canada, all European countries, Australia, Japan, etc. for sale/resale in the aforesaid territories. The said agreement contains an arbitration agreement between the parties reading as follows :

"IN case of any dispute of difference arising out of this agreement or out of any matter connected therewith, the same shall be referred for adjudication to the sole arbitrator to be appointed in accordance with the provisions of the Indian Arbitration Act of 1940. The arbitration proceedings shall take place in Delhi and in accordance with the provisions of the Indian Arbitration Act of 1940. Any court proceedings shall take place in Delhi and in accordance with the provisions of Indian Arbitration Act of 1940. Any Court proceedings will also be confined to the jurisdiction of Delhi, to the exclusion of all other courts."

(2) Certain disputes and differences having arisen between the parties, the petitioner invoked the arbitration agreement and issued notice dated April 10, 1980, whereunder the petitioner nominated and appointed Shri S.N. Andley, Retd. Chief Justice of High Court of Delhi as Sole Arbitrator and requested the

respondents to signify their concurrence within 15 days of the receipt of the notice dated April 10, 1980. The respondents did not concur in the appointment of Shri S.N. Andley. Hence this petition u/s 20 of the Arbitration Act, 1940 (hereinafter referred to as the Act) for directing the arbitration agreement to be filed in Court for appointment of an arbitrator and for reference of the disputes mentioned in para 9 of the petition to the appointed arbitrator. The petition is registered as a suit.

(3) In the written statement filed by the respondents a number of objections have been raised. However, there is no dispute about the existence or validity of the arbitration agreement between the parties and of the fact that certain disputes and differences have arisen between the parties out of the agreement. The main objection is that the agreement dated March 8, 1977 was negotiated, entered into and executed at Cochin ; that the agreement was to be performed at Cochin ; that the delivery of the goods were to be made at Cochin ; that all the payments were to be made at Cochin and that no part of the agreement was to be performed outside Cochin. The stand taken is that this Court has no jurisdiction to entertain and proceed with this petition. It is submitted that in agreement between the parties cannot confer jurisdiction upon a Court which it has not got. The plea further is that the petitioner has waived the jurisdiction clause of the agreement by implied content by taking criminal action against the respondents in Cochin courts and thus the parties agreed to annual the jurisdiction clause in the agreement.

(4) The following issues arose between the parties and framed :

"1. Whether this court has jurisdiction to entertain the proceedings? Opr 2. Whether the clause in the agreement is in restraint of the legal proceedings and void u/s 28 of the Contract Act, 1872 ? Opr 3. Relief."

(5) The parties were directed to lead evidence by way of affidavits and counter affidavits. The same have been filed. I have heard the arguments of the learned counsel for the parties.

(6) The affidavit filed on behalf of the petitioner deposes that the petitioner is a Public Limited Company incorporated under the Companies Act, 1956 und having its registered office in New Delhi within the jurisdiction of this Court at Allahabad Bank Building, 17 Parliament Street, New Delhi. There is no denial to this averment in the counter affidavit. In fact, in the reply to the petition the plea taken by the respondents is that the mere fact that the petitioner has its Head Office or Registered office at Delhi, the transactions conducted by the Branch of Ernakulam does not ipso facto create jurisdiction at Delhi. It is, thus, clearly established on the record that the petitioner is a Public Limited Company incorporated under the Companies Act, 1956 having its registered office within the jurisdiction of this Court. Shri G.N. Aggarwal, learned counsel for the petitioner has not argued that any part of the cause of action has arisen within the jurisdiction of this Court. His entire case is based on the fact that the

registered office if the petitioner is situated within the jurisdiction of this Court. He urges that apart from the Court having jurisdiction to entertain the proceedings under the Act within whose jurisdiction the cause of action to suo arises, the Court will also have jurisdiction to entertain the proceedings under the Act in terms of clauses (a) and (b) of Section 20 Code of Civil Procedure. The Court within the meaning of Section 2(c) of the Act means a Civil Court having jurisdiction to decide the question forming the subject matter of the reference if the same had been the subject matter of the suit, but does not except for the purpose of arbitration proceedings u/s 21, include Small Cause Court. The petition u/s 20 of the Act could be filed in a Court having jurisdiction in the matter to which the agreement relates and that, according to the Counsel, the agreement could be filed in this Court.

(7) In *Hakam Sing Vs. Gammon (India) Ltd.*, , a similar question arose. In that case the agreement between the parties expressly stipulated that the contract shall be deemed to have been entered into by the parties in the city of Bombay, though in fact it was executed at Varanasi. It was urged that the parties could not by agreement confer jurisdiction on the Courts at Bombay, which they did not otherwise possess. The respondents, however, had their principal office in Bombay and thus they were liable in respect of a cause of action arising under the terms of the tender to be sued in the Courts at Bombay. Their Lordships of the Supreme Court held that where two courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the disputes between them shall be tried in one of such Courts is not contrary to public policy. Their Lordships then noticed the provision of Section 20 of the CPC and also Explanation II. The Supreme Court rejected the arguments of the counsel that the expression "corporation" in Explanation II includes only a statutory corporation and not a company registered under the Indian Companies Act. It was ruled that the CPC uses the expression "corporation" as meaning a legal person and includes a company registered under the Companies Act. It was then held that since an application for filing the award in respect of a dispute arising out of the terms of the agreement could- be filed in the Courts in the City of Bombay, both because of the terms of Clause 13 of the Agreement and because the respondents had their Head Office where they carried on business, the agreement between the parties that the Courts in Bombay alone shall have jurisdiction to try the proceedings relation to arbitration was binding between them. A Full Bench of this Court in *Ram Rattan Bhartia Vs. Food Corporation of India and Others*, again considered a similar question. It was held that apart from the Court having jurisdiction to entertain the proceedings under the Act within whose jurisdiction the cause of action to sue arises, the Court within the local limits of whose jurisdiction the defendant or each of the defendants at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain, will also have jurisdiction to entertain the proceedings under the Act in terms of clauses (a) and (b) of Section 20 of the Code of Civil Procedure.

(8) I am unable to accept the arguments of Mr. E.M. Sardul Anam, the learned counsel for the respondent that in case the respondents had initiated the proceedings against the petitioner herein, only then Section 20(a) of the CPC could come into operation. This takes a very narrow and restricted view of the agreement between the parties to restrict the jurisdiction of the Courts at Delhi. The petitioner has its registered office at Delhi and it is liable to be sued in respect of a cause of action at Delhi. That would make the courts at Delhi as one of the competent courts. It is not open to the parties by agreement to confer jurisdiction on a court if it does not possess. If two or more courts have jurisdiction under the CPC to try a suit or proceedings-then the parties could by an agreement restrict the jurisdiction to one out of the two competent courts. This is what the parties have done by agreeing that any court proceedings will be confined to the jurisdiction of Delhi, to the exclusion of all other courts. If the proceedings had been instituted by the respondents in the Courts at Cochin, then the petitioner herein could have successfully challenged the jurisdiction of the Courts at Cochin because of the existence of the agreement between the parties restricting the jurisdiction of the Courts at Delhi only. The petition would have been returned for presentation to the proper court i.e. the Courts at Delhi. Suppose the respondents had agreed or concurred in the appointment of Shri S.N. Andley as the sole arbitrator and the disputes between the parties had been referred to that arbitration and an award had been made. Or in the alternative the parties had agreed to the arbitration of another arbitrator and an award had been published. The award could have been forwarded by the arbitrator along with the proceedings to the Court. It could be filed by the arbitrator in the courts at Delhi as the Delhi Courts had the jurisdiction because M/s. Raunaq International Limited had their registered office at Delhi. An application for filing the award in respect of the dispute arising out of the terms of the agreement could be made in the courts at Delhi. By virtue of the provisions of Section 31(1) of the Act the award could be filed in any court having jurisdiction in the matter to which the reference relates. The phrase in a reference is comprehensive enough to cover an application first made after the award is made and published. Section 31(4) would vest exclusive jurisdiction in the court to which an application of the filing of the award has been first made u/s 14 of the Act. It was also ruled in Union of India (UOI) Vs. Surjeet Singh Atwal, that :-

" THERE are different sections in the arbitration Act whereby an application is to be made even before any reference has been made. Section 8 for instances, provides for an application to invoke the power of the Court, when the parties fail to concur in the appointment of an arbitrator to whom the reference can be made. So also Section 20 provides for an application to file the arbitration agreement in Court so that an order of reference to an arbitrator can be made. These are clearly applications anterior to the reference but they lead to a reference. Such applications are undoubtedly application "in the matter of a reference" and may fall within the purview of Section 31(4) of the Act even though these applications are made before any reference has taken place."

(9) Necessity was felt for clothing a single Court with effective and exclusive jurisdiction so as to avoid conflict and scramble for jurisdiction.

(10) A combined reading of the provisions of Sections 2(c), 20 and 31 of the Act in the light of above discussion persuades me to hold that the parties had by their valid agreement restricted the jurisdiction to the Courts at Delhi which has jurisdiction in the matter to which the reference relates. Issue No. 1 is held in favor of the petitioner. Issue No. 2

(11) While discussing issue no. 1, I have referred to the settled view of the law that where two courts are having jurisdiction to try the suit or the proceedings, then an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act, 1872. Issue no. 2 is hold against the respondents.

(12) Accordingly, I direct that the arbitration agreement between the parties be filed in this Court within one month. The parties have agreed to the settlement of the disputes and for adjudication by a sole arbitrator to be appointed in accordance with the provisions of the Act. I, accordingly appoint Mr. H. Hardy, Retired Chief Justice of this Court as an arbitrator. His tentative fees are fixed at Rs. 5,000.00 . It should be paid by the petitioner subject to the further orders of this Court. The disputes mentioned in para 9 of the petition shall stand referred.

(13) There will be no order as to costs of these proceedings.