

(2015) 07 PAT CK 0021

In the Patna High Court

Case No : Miscellaneous Appeal No. 187 of 2007 and Civil Writ Jurisdiction Case No. 11503 of 2011

Shivam Housing Pvt. Ltd. and Others

APPELLANT

Vs

Thakur Mithilesh Kumar Singh and Others

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2, 2(1)(e), 34, 37, 37(1)(b)
Civil Courts Amins Act, 1856 — Section 3
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 15
Constitution of India, 1950 — Article 227
General Clauses Act, 1897 — Section 3
Trusts Act, 1882 — Section 34, 72

Citation : (2015) 3 PLJR 876

Hon'ble Judges : V.N. Sinha, J; Nilu Agrawal, J

Bench : Division Bench

Advocate : Pushkar Narain Shahi, Senior Advocate and Rishi Raj Sinha, for the Appellant; Jitendra Kishore Verma and Nand Kumar Singh, Advocates for the Respondent

Judgement

V.N. Sinha, J—In the miscellaneous appeal learned Single Judge of this Court under order No. 20 dated 25.02.2011 referred the appeal for authoritative consideration by a Division Bench of this Court to decide the question as to whether Subordinate Judge or the District Judge is Principal Civil Court of original jurisdiction in a district within the meaning of Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act"). In this connection, learned Single Judge doubted the correctness of the judgment of this Court in the case of The Executive Engineer, C.P.W.D. and Others Vs. R.L. Singh Civil Engineer, (1997) 1 BLJR 857 : (1997) 1 PLJR 523 and the subsequent decisions of this Court in the case of Md. Sadique (in 2448), Md. Amin (in 2446) Vs. State of Bihar, (2000) 4 PLJR 814 , Thakur Prasad Singh Vs. The State of Bihar and Another, (2000) 4 PLJR 843 and Bhopal Singh and Others Vs. Nagendra Narain Singh and Others in the reference order.

2. The connected writ petition has also been referred under Order No. 5 dated 26.02.2013 to be heard along with the appeal in the light of the reference order to consider the same question in the light of the judgment of the Bombay High Court in the case of Fountain Head Developers Vs. Mrs. Maria Arcangela Sequeira (since deceased through LRs.) and Others, AIR 2007 Bom 149 : (2007) 3 ALLMR 304 : (2007) 2 ARBLR 362 : (2007) 3 BomCR 393 : (2008) 1 CTC 7 .

3. The Miscellaneous Appeal has been filed under Section 37(1)(b) of the Act assailing the order dated 21.04.2007 passed by Sub-Judge-I, Patna City in Miscellaneous Application No. 3 of 2007, whereunder the Subordinate Judge dismissed the Miscellaneous Application filed under Section 34 of the Act on the ground that the application was filed after prescribed time on 16.04.2007 and no petition for condonation of delay has been filed by the applicant further holding that Sub-Judge has no jurisdiction to set aside the impugned award dated 05.02.2007 passed by retired Judge of the High Court Mr. Justice R.N. Prasad.

4. Learned counsel for the appellant submitted that according to sub-section (3) of Section 34 of the Act, an application for setting aside award passed by the arbitrator appointed under the Act may not be entertained if filed, after three months have elapsed, from the date on which the party filing the application had received the arbitral award. In the instant case, the impugned award is dated 05.02.2007, the application assailing the same under Section 34 of the Act was filed on 16.04.2007 i.e. within three months, as such, there was no occasion for the learned Subordinate Judge not to entertain and reject the application on the ground of limitation. Learned counsel for the appellant further submitted that the court below has erroneously held that Sub-Judge has no jurisdiction to set aside the award passed by a retired Judge of the High Court. According to learned counsel Chapter VII Section 34 of the Act provide for recourse against arbitral award. The award passed by any arbitrator appointed under the Act if required to be assailed the same may be assailed as per the provisions of Section 34 of the Act before the Court as defined under Section 2(1)(e) of the Act i.e. Principal Civil Court of original jurisdiction in the district which may be High Court in exercise of its ordinary civil jurisdiction. It is submitted that in the State of Bihar Subordinate Judge/Civil Judge, Senior Division is the Principal Civil Court of original jurisdiction in the district. He also submitted that under the provisions of The Bengal, Agra and Assam Civil Courts Act, 1887 (hereinafter referred to as the "Civil Courts Act") Subordinate Judge/Civil Judge, Senior Division is the Civil Court of original jurisdiction with unlimited upper limit to entertain a suit. High Court of Patna does not have any original civil jurisdiction to entertain a suit. The District Judge may entertain a suit by virtue of power given to the District Judge under any Statute i.e. Indian Succession Act etc. Learned counsel further pointed out that from the definition of the court as provided under Section 2(1)(e) of the Act itself it is apparent that Principal Civil Court of original jurisdiction in the district is competent court to set aside the arbitral award, provided the party making the application made out a case for setting aside the same in terms of sub-section (2) of Section 34 of the Act and the subject matter of the arbitral

award is the same which could be the subject matter of a suit before it.

5. According to the learned counsel this Court while answering the reference, is required to consider the questions involved in the light of the key words appearing in the definition section 2(1)(e) i.e. if the same has been the subject matter of the suit.

6. Learned counsel further submitted that adjudication of the dispute by the arbitrator is an alternative forum and according to him if the dispute can be decided in a suit then the court which has the jurisdiction to entertain the suit will only be the competent court to decide the challenge made to the arbitral award. He also submitted that in the State of Bihar Sub-Judge/Civil Judge, Senior Division has unlimited upper limit to entertain a civil suit. As such, in view of the key words of the definition section quoted above the competent court to decide the civil dispute being the Sub-Judge/Civil Judge, Senior Division with unlimited upper limit to entertain the suit shall be the Principal Civil Court in the district to consider the challenge made to the arbitral award.

7. Learned counsel further submitted that the District Judge is not competent under the Civil Court's Act to entertain the suit in regard to the same subject matter. In this connection he referred to the last portion of the definition clause which provide that the Principal Civil Court does not include Civil Court of grade inferior to such Principal Civil Court meaning thereby in the context of Bihar, Munsif/Civil Judge, Junior Division may have original Civil Jurisdiction but being inferior to the Sub Judge/Civil Judge, Senior Division shall not have jurisdiction to consider the challenge made to the arbitral award. Learned counsel for the appellant submitted that if the District Judge is treated as a Principal Civil Court of original jurisdiction in the district for the purpose of the Act then the key words of the definition section will become redundant and hence, such interpretation is not to be accepted as per the settled principle of interpretation of Statute.

8. Learned Counsel for the appellant also referred to Section 37 of the Act which provides for forum of appeal to assail the order passed by the Principal Civil Court of original jurisdiction in the district considering the challenge made to the award passed by the arbitral Tribunal. It is submitted that in the State of Bihar pecuniary jurisdiction of the District Judge to hear an appeal arising out of a judgment and decree passed by the Civil Court is up to Rs. 10 lacs and if the valuation of the property in dispute is more than Rs. 10 lacs the appeal lies to the High Court. It is submitted that if the arbitral award is in respect of the subject matter having value less than Rs. 10 lacs then the appellate authority to hear the appeal would be District Judge but if the District Judge is Principal Civil Court of original jurisdiction in the district, he cannot be the appellate authority even in a matter in which value of the subject matter of the arbitral award is less than Rs. 10 lacs. According to learned counsel, aforesaid interpretation would create anomalous and conflicting situation contrary to the principle of harmonious construction. He also submitted that appellate jurisdiction cannot be

conferred on the High Court to entertain appeal as that would tantamount to conferring jurisdiction against the provisions of the Statute and is unwarranted in law.

9. Learned counsel for the appellant further submitted that in terms of the Civil Courts Act jurisdiction to consider the appeal arising out of a judgment/decreed passed in a suit valuation whereof is up to Rs. 10 lacs lies with the District Judge the appeal in such matters cannot be filed before the High Court. In this connection reference is made to the case of Deonath Missir and Others Vs. Chandraman Missir and Others, AIR 1958 Patna 430 : (1958) 6 BLJR 246 where similar question was raised and it was held that if the forum of appeal as per the jurisdiction is before the District Judge then an appeal cannot be filed before the High Court.

10. Learned counsel for the appellant with reference to the provisions of Part-II, Chapter-II of the Act, which provides for provisions relating to Jenewa Convention Awards particularly Section 56, submitted that the forum to enforce the Jenewa Convention Award is also the Principal Civil Court of original jurisdiction in a district as has been defined under Section 2(1)(e) of the Act.

11. Learned counsel next referred to the definition of the District Judge as given under sub-section (17) of Section 3 of the General Clauses Act, 1897 and submitted that District Judge shall mean the Judge of a Principal Civil Court of original jurisdiction but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. In this connection he also referred to Section 23 of the Civil Courts Act which provides for exercise of jurisdiction of district court in certain proceedings by Subordinate Judge or Munsif and submitted that the High Court may by general or special order authorize any Subordinate Judge or Munsif to take cognizance of any matter or District Judge to transfer to a Subordinate Judge or Munsif under his administrative control, proceedings mentioned in the Section or any other of those proceedings specified in the order.

12. Learned counsel submitted that Section 23 of the Civil Courts Act empowers the District Judge to transfer a case pending before the Subordinate Judge or Munsif if the High Court by general or special order so directs. It is submitted that if direction from the High Court is inherent then there was no occasion for conferring power on the District Judge to take up the trial of any matter by general or special order.

13. Learned counsel for the appellant finally supported the view taken by the learned Single Judge in the case of The Executive Engineer v. Ms. R.L. Singh (supra) wherein it has been held that in the State of Bihar Sub-Judge shall be the Principal Civil Court of original jurisdiction in the district and thereunder learned Single Judge has rightly interpreted and held that District Judge is not the Principal Civil Court of original jurisdiction rather Sub-Judge is the Principal Civil Court of original jurisdiction in the district.

14. On the other hand, learned counsel for the respondents submitted that in terms of Section 34 of the Act, arbitral award can be assailed before a court defined under Section 2(1)(e) of the Act before the Principal Civil Court of original jurisdiction in the district but such court will not include any civil court of a grade inferior to the Principal Civil Court. According to learned counsel where there is more than one civil court in a district having ordinary original civil jurisdiction the proceeding to set aside an arbitral award shall lie before the principal, main or chief amongst the civil courts available in the district. The use of the word "principal" in the definition clause Section 2(1)(e) cannot be ignored and has to be assigned its due meaning. Further in the subsequent part of the definition exclusion of civil court of inferior grade leaves no manner of doubt that in terms of the provisions of the Act the jurisdiction to set aside the arbitral award is vested in the highest or superior-most civil court of original jurisdiction available in the district. According to learned counsel, the Legislature has empowered only one court i.e. the Principal Civil Court of original jurisdiction, the jurisdiction to set aside the arbitral award. Thus, the superior-most or the highest amongst all the civil courts available in the district is vested with the jurisdiction to entertain the challenge to an arbitral award under Section 34 of the Act.

15. Learned counsel next referred to Section 3 of the Civil Courts Act which provides for different classes of Civil courts i.e. District Judge at the top followed by Additional District Judge, Sub-Judge and Munsif.

16. Learned counsel also referred to Section 18 of the Civil Courts Act which provides for extent of original jurisdiction of District, Subordinate Judge and submitted that District, Subordinate Judge has concurrent jurisdiction to try a civil suit. The procedural requirement, as provided under Section 15 of the Code of Civil Procedure, require the suits to be filed, tried by Subordinate Judge or Munsif as per its valuation. At this stage, again learned counsel pointed out that in terms of the Act, which is a special statute, the arbitral award is required to be challenged under Sections 34, 2(1)(e) of the Act before the Principal Civil Court in the district which does not include any civil court of inferior grade to the Principal Civil Court. It is submitted that in view of Section 18 of the Civil Courts Act there cannot be two opinion that amongst the civil courts available in the district, District Judge is the Principal amongst the civil courts, as such, according to learned counsel, for the respondents, arbitral award can only be challenged before the District Judge and not before the Subordinate Judge who is undoubtedly inferior in grade to the Principal Civil Court in the district. In this regard learned counsel also referred to the definition of the District Judge in the General Clauses Act, 1887 and placing reliance on the judgments of the Supreme Court in the case of State of Maharashtra through Executive Engineer, Road Development Division No. 111, Panvel and another v. Atlanta Limited (2014) 11 SCC 619 paragraphs 24.2, 24.3, 26, 32, 33 and State of West Bengal Vs. Associated Contractors, AIR 2015 SC 260 : (2014) AIRSCW 5844 : (2014) 10 SCALE 394 submitted that the Supreme Court taking note of Section 2(1)(e) of

the Act held that the Act contains a different scheme than Section 15 of the C.P.C. wherein the Civil Procedure Code requires the suit to be filed, tried by a court lowest in grade. It is submitted that Apex Court in the aforesaid two judgments categorically held that the scheme of Section 15 C.P.C. cannot be incorporated while interpreting Section 2(1)(e) of the Act. Under Section 2(1)(e) of the Act the superior-most court having original civil jurisdiction in the district is the Principal Civil Court of original jurisdiction and is vested with the jurisdiction to decide the proceeding under Section 34 of the Act. In the light of Section 2(1)(e) of the Act the principal or superior-most civil court having original jurisdiction to try a suit has the authority to decide the validity of the arbitral award under Section 34 of the Act. In this connection, it is pointed out that in the State of Bihar a Sub-Judge tries the suit of the value exceeding Rs. 1,50,000/- though both Sub-Judge and the District Judge has concurrent jurisdiction to try the suit but because of the procedural requirement of Section 15 C.P.C. the suit is tried by the court of inferior grade i.e. Sub-Judge and not by the District Judge. In view of definition of the court under Section 2(1)(e) of the Act the challenge to the arbitral award is required to be made before the principal or highest amongst the civil courts available in the district and the scheme of Section 15 C.P.C. cannot be incorporated while interpreting Sections 2(1)(e), 34 of the Act, which is a special statute, as has been held by the Supreme Court in the aforesaid two judgments in the case of State of Maharashtra through Executive Engineer (supra) and State of West Bengal and others v. Associated Contractors (supra).

17. To buttress the aforesaid submission learned counsel for the respondents also placed reliance on the judgment of Madras High Court in the case of 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 . Learned counsel with reference to the aforesaid judgment submitted that Section 15 C.P.C. lays down a Rule of procedure for trial of suit by the court of Sub-Judge/Munsif, being inferior in grade, and submitted that in view of Section 15 C.P.C. the jurisdiction of District Judge to consider the challenge made to the arbitral award under Sections 34, 2(1)(e) of the Act cannot be ousted.

18. Learned counsel submitted that judgment of the Single Judge of this Court in the case of Md. Sidique (supra) appears to have been rendered without taking into account Section 18 of the Civil Courts Act, as in the said judgment High Court has proceeded on the assumption that under the Civil Courts Act Subordinate Judge only has the jurisdiction to try a suit of unlimited pecuniary jurisdiction and the District Judge does not have such power. It is submitted that the presumption raised by His Lordship does not have any statutory force in the light of the provisions of the Civil Courts Act which clearly vests ordinary original civil jurisdiction to try a suit of unlimited jurisdiction in both Subordinate Judge and the District Judge. Reference in the said judgment made to the earlier case law in the case of The Executive Engineer, Central Public Works Department (supra) is also misplaced as the High Court in the said judgment has no where

held that the court of Subordinate Judge is the Principal Civil Court of original jurisdiction, rather His Lordship held that the court of Subordinate Judge is a civil court of original jurisdiction but has not held that the District Judge is not a civil court of original jurisdiction in the district. In this connection, he also pointed out that in the case of The Executive Engineer, Central Public Works Department (supra) His Lordship was dealing with an application under Section 8 of the Act which requires interpretation of the term "judicial authority" and not the "court" as required under Section 34 of the Act. According to learned counsel, judicial authority can be any judicial authority including a Munsif, Sub-Judge or District Judge and any one of the three can exercise jurisdiction under Section 8 of the Act but the same is not the case when the court is required to interpret the term "court" as used in Section 34 of the Act. It is submitted that aforesaid aspect has been highlighted in paragraph 13 of the reference order dated 25.02.2011 whereunder present reference has been made as also in the case of M/s. Fountain Head Developers & etc. (supra) paragraph 15.

19. Learned counsel for the respondent next referred to the judgment of this Court in the case of Thakur Prasad Singh (supra) paragraph 3 and Bhopal Singh (supra) paragraph 6 and submitted that in both the cases this Court has based its decision on the ratio of the earlier judgment in the case of Md. Sidique (supra) and has not furnished its own reasoning to support its conclusion.

20. Learned counsel for the respondents distinguished the judgment of the High Court in the case of Pandey and Co. Builders Pvt. Ltd. Vs. The State of Bihar and Another, (2006) 3 BLJR 2212 : (2005) 4 PLJR 379 and the judgment of the Supreme Court in the case of Pandey and Co. Builders Pvt. Ltd. Vs. State of Bihar and Another, AIR 2007 SC 465 : (2006) 4 ARBLR 192 : (2006) 10 JT 414 : (2006) 11 SCALE 665 : (2007) 1 SCC 467 : (2006) 8 SCR 997 Supp and submitted that both the case law have no application to the facts of the present case, as in both the aforesaid cases the court dealt with the question as to whether Patna High Court exercises ordinary original civil jurisdiction.

21. Learned counsel also distinguished the judgment of this Court in the case of Ashok Kumar Singh and Others Vs. Shanti Devi and Others, (2009) 3 PLJR 845 and submitted that thereunder the court considered as to who amongst the different subordinate judges serving in the district i.e. Sub-Judge-I, II, III etc. will be the Principal Civil Court of original jurisdiction in that district.

22. Learned counsel with reference to Section 18 of the Civil Courts Act submitted that the provision clearly vests ordinary civil jurisdiction in the District Judge to try all suits and any interpretation to the contrary that only the Sub-Judge has the sole power or authority to try a suit of the value more than Rs. 1,50,000/- is "per incuriam" Section 18 of the Act and would render inclusion of the term "District Judge" in Section 18 redundant. Reference in this connection, has been made to the judgments of the Supreme Court in the case of Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, AIR 2011 SC 1989 : (2011) 6 JT 379 : (2011) 5 SCALE 624 : (2011) 7 SCC 639 : (2011) 3 UJ 1977 :

(2011) AIRSCW 4473 and Union of India (UOI) and Others Vs. S.K. Saigal and Others, AIR 2007 SC 1211 : (2006) 10 JT 284 : (2006) 12 SCALE 367 : (2007) 14 SCC 556 : (2006) 9 SCR 1165 Supp : (2007) AIRSCW 1269 and submitted that District Judge is the Principal Civil Court of original jurisdiction vested with the civil original jurisdiction to entertain the application under Section 34 of the Act, any other interpretation would be contrary to the scheme of the special Act, as envisaged in its definition clause Section 2(1)(e) of the Act. It is submitted that similar question arose before the Full Bench of Bombay High Court and the Court after considering the relevant aspects in detail in the case of M/s. Fountain Head Developers & etc. (supra) paragraphs 2, 7, 8, 9, 11 to 18 held that pecuniary jurisdiction of a court has no significance to determine which of the court is the Principal Civil Court of original jurisdiction under the Act and it has been held that the District Judge is the Principal Civil Court of original jurisdiction vis-?-vis the Civil Judge(Senior Division). For reaching such conclusion the Full Bench of Bombay High Court in paragraph 14 of its judgment placed reliance on the Constitution Bench judgment of the Supreme Court in the case of M/s. Sundaram Finance Ltd. (supra) and held that Principal Civil Court of original jurisdiction is normally the District Judge and further held that the High Court(s) in India exercising ordinary original civil jurisdiction are not too many. In most of the States Principal Civil Court of original jurisdiction would be the District Judge. Bombay High Court examined in the said judgment meaning of the term "principal" as also other expressions used in Section 2(1)(e) of the Act and concluded that the Act contemplates one Principal Civil Court of original jurisdiction in a district which is highest in rank in the civil court.

23. Learned counsel for the respondents also referred to the judgment of this Court in the case of Balbhadra Singh alias Balbhadra Narain Singh Vs. Munaka Devi and Others and submitted that in the said judgment learned Single Judge of this Court having examined the provisions of the Civil Courts Act held that it is the District Judge who is the Principal Civil Court of original jurisdiction under the Civil Courts Act.

24. Learned counsel also submitted that various other High Courts have examined the provisions of Section 2(1)(e) of the Act and held that the District Judge is the Principal Civil Court of original jurisdiction in the district within the meaning of the Act for entertaining the challenge made to the arbitral award under Section 34 of the Act and referred to the judgments in the case of Nila Chakra Construction Vs. State of Orissa and Others, AIR 2005 Ori 30 : (2005) 1 ARBLR 360 : (2004) 98 CLT 519 : (2004) 2 OLR 452 , Raipur Development Authority Vs. Sarin Construction Company, AIR 2006 Chh 12 : (2005) 1 CGLJ 380 : (2006) 2 MPJR 145 , Lakhamraju Sujatha Vs. Yuvaraj Finance Pvt. Ltd. and L. Venkata Rama Raju, (2010) 1 ALT 173 , Godara Construction Company Vs. State of Rajasthan and Another, AIR 2004 Raj 66 : (2004) 1 ARBLR 208 : (2004) 1 RLW 88 : (2003) 4 WLC 703 , Globe Congeneration Power Limited Vs. Sri Hiranyakeshi Sahakari Sakkere Karkhane Niyamit, AIR 2005 Kar 94 : (2005) 1 ARBLR 502 : (2004) ILR (Kar) 2045 : (2004) 7 KarLJ 124 , S.M. Suparies Vs.

Karnataka Bank Ltd., AIR 2011 Kar 38 : (2011) 2 ARBLR 259 : (2011) 3 KarLJ 133 : (2011) 3 KCCR 2300 and I.T.I. Ltd., Naini, Allahabad Vs. District Judge, Allahabad and others, AIR 1998 All 313 : (1998) 3 AWC 2244 .

25. Learned counsel for the respondents next submitted that the object behind the Act is to minimise the supervisory role of a court in arbitral proceedings and for such proposition placed reliance on the judgment of this Court in the case of Mukta Arts Limited Vs. Ankit Films a Proprietorship Firm of Sri Anand Kumar Saraogi as also of the Supreme Court in the case of M/s. Fountain Head Developers & etc. (supra) paragraphs 8, 17 and submitted that if Sub-Judge is held to be the Principal Civil Court of original jurisdiction the appeal would lie before the District Judge in the civil court itself even if the value of the subject matter of the arbitral proceeding is less than Rs. 10 lacs, which would result in availability of another extraordinary remedy under Article 227 of the Constitution. In this background, it is submitted that if the District Judge is held to be the competent court to entertain the application under Section 34 of the Act, the appeal would lie to the High Court and the additional remedy under Article 227 of the Constitution may not be available, which is consistent with the object of the Act.

26. Learned counsel for the respondents further submitted that submission that District Judge is overburdened with lots of responsibilities, cases, therefore, he should not be further overburdened, has no force when the issue of jurisdiction is involved and the statute clearly vests jurisdiction in a particular court, namely, the District Judge. The consideration of hardship, practical difficulties and inconvenience has no role in determination of jurisdiction. Reference in this connection, is made to the judgment of the Supreme Court in the case of Executive Engineer, Road Development Division No. III, Panvel and Another Vs. Atlanta Limited, AIR 2014 SC 1093 : (2014) AIRSCW 637 : (2014) 2 JT 1 : (2014) 1 SCALE 277 : (2014) 3 SCJ 520 . It is also submitted that because of erroneous interpretation given to the provisions of the Act so far in the State, Subordinate Judges, who have no jurisdiction to entertain the application under Section 34 of the Act, have been entertaining such application for which there is no legal basis and the illegality continued so far may not be allowed to be perpetuated indefinitely by invoking the principles of stare decisis.

27. Learned counsel for the respondents also referred to the judgment of the Division Bench of this Court in the case of Bhuwaneshwari Kuer Vs. Raghubansh Mani Prasad Narayan Singh and Others, AIR 1954 Patna 34 : (1953) 1 BLJR 467 and submitted that the suit in the reported case was instituted before the District Judge for rendition of accounts of the trust property by the trustee and subsequently transferred to the Additional District Judge whereunder the objection regarding its maintainability on the ground that District Judge does not have the original jurisdiction to try the suit in view of Section 15 read with Order 7 Rule 10 C.P.C. was raised. The High Court considered the provisions of the C.P.C. and Sections 34, 72 of the Trust Act and held in paragraphs 3, 5 that

Section 15 requiring the suit to be tried by the court of lowest grade does not oust the jurisdiction of the court of higher grade and it cannot be held under Section 18 of the Civil Courts Act that the District Judge has no jurisdiction to try the suit. It was further held that Section 15 read with Order 7 Rule 10 C.P.C. does not bar exercise of jurisdiction by the District Judge to try the suit, rather it gives the discretion to the court of higher grade to refuse to try the suit and the object of the Section is to prevent overcrowding of suits in the court of higher grade but that does not mean that there is a bar imposed on the District Judge to try an original suit.

28. In the light of the aforesaid judgment learned counsel for the respondents submitted that the view that the District Judge does not have ordinary original civil jurisdiction is not correct. In this connection, learned counsel also referred to the judgment of Madras High Court in the case of M/s. Sundaram Finance Ltd. (supra) paragraph 5.

29. We have considered the rival submissions. It appears appellants assailed the award dated 05.02.2007, passed by a Retired Judge of this Court by filing miscellaneous application under sub-section (3) of Section 34 of the Act on 16.04.2007 i.e. within three months from the date of the award before Subordinate Judge, as such, there was no occasion for the learned Subordinate Judge not to entertain and reject the miscellaneous application on the ground of limitation. Both the appeal and the writ petition could have been disposed of on the aforesaid short ground that the miscellaneous application assailing the award dated 05.02.2007 is not barred by limitation as the said application was filed within three months from the date of the award, as is provided under sub-section (3) of Section 34 of the Act which, inter alia, require any application for setting aside the award to be filed within three months from the date on which the party making the application has received the arbitral award. That being so, but in view of the reference orders dated 25.02.2011, 26.02.2013 larger question raised in the appeal and the writ petition i.e. whether Subordinate Judge or the District Judge is the Principal Civil Court of original jurisdiction in a district within the meaning of Section 34 of the Act, is being considered hereinafter.

30. Section 34 of the Act, which provides for application for setting aside arbitral award is in Chapter VII of the Act and is postulated hereinbelow:

31. Sub-section (1) of Section 34 of the Act provides that recourse to set aside the arbitral award may be made only by an application filed before the Court in accordance with sub-sections (2), (3). Sub-section (2) of Section 34 provides that arbitral award may be set aside by the court if (a) the party making the application proves that (i) he was under some incapacity or (ii) the arbitration agreement itself is not valid in law or (iii) the party filing the application was not given proper notice for appointment of Arbitrator or of the arbitral proceedings or was otherwise unable to present his case before the Arbitrator or (iv) the arbitral award deals with a dispute not contemplated or falling within the arbitration clause or (v) the composition of the arbitral tribunal or the arbitral procedure was

not in accordance with the agreement (b) the court finds that (i) the subject-matter of the dispute is not capable of settlement by arbitration or (ii) the arbitration award is in conflict with the public policy of India. Sub-section (3) of Section 34 provides for limitation for filing the application for setting aside the arbitral award.

32. In terms of sub-sections (1), (2) of Section 34 of the Act the arbitral award can be assailed only by filing an application before a Court. The "Court" has been defined in sub-section (1)(e) of Section 2 of the Act, which is also quoted below:

"2(1)(e) "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;"

From perusal of definition it appears Principal Civil Court of original jurisdiction in a district also 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 provided the same had been the subject-matter of a suit. It, however, does not include any civil court of a grade inferior to such Principal Civil Court or any court of small causes. It is, thus, evident that the Principal Civil Court of original jurisdiction in a district may include a High Court in exercise of its original jurisdiction provided the High Court has jurisdiction to decide the question forming the subject matter of arbitration by entertaining a suit but does not include any civil court of a grade inferior to such Principal Civil Court or any court of small causes. It is, thus, obvious that the court entertaining the application to set aside the arbitral award under Section 34 of the Act has to be the civil court of original jurisdiction highest in grade and may also include the High Court exercising ordinary original civil jurisdiction to try a suit. The civil court considering the arbitral award cannot be of a grade inferior to the Principal Civil Court. Patna High Court having no original civil jurisdiction to try a suit, there is no difficulty in concluding that in the State of Bihar the court within the meaning of Section 34 of the Act vested with the jurisdiction to consider the validity of the arbitral award is the court of District Judge, which has also the original civil jurisdiction and is not of a grade inferior to any other civil court within the same jurisdiction. The court of Subordinate Judge being a grade inferior to the court of District Judge may not be the competent court within the meaning of Section 34 read with sub-section (1)(e) of Section 2 of the Act to consider the validity of the arbitral award.

33. The view taken by the learned Single Judge in the case of Executive Engineer v. M/s. R.L. Singh (supra), Md. Sidique (supra), Thakur Prasad Singh (supra) and Bhopal Singh (supra) appears to have been rendered without taking note of Section 34 read with Section 2(1)(e) of the Act as also without taking note of Section 18 of the Civil Courts Act which, inter alia, provides the extent of original

jurisdiction of District, Subordinate Judge to all original suits cognizable by civil courts subject to Section 15 of the Code of Civil Procedure which provides that the suit shall be instituted in the court of the lowest grade competent to try it. The scheme of the Act, however, is contrary to the scheme of the Code of Civil Procedure which requires a suit to be instituted, tried by the court of lowest grade competent to try the suit, as in terms of Section 34 read with sub-section (1)(e) of Section 2 the arbitral award is required to be assailed before the Principal Civil Court of original jurisdiction which will not include any civil court of a grade inferior, as such, in terms of the Act it is only the District Judge who has jurisdiction to consider the challenge made to the arbitral award.

34. In view of our finding above, both the impugned orders dated 21.04.2007, 21.01.2011, passed by Sub-Judge-I, Patna City, Sub-Judge-III, Rohtas at Sasaram in Miscellaneous Application No. 03 of 2007, Miscellaneous Case No. 20/06 respectively are set aside. Both the miscellaneous cases are now required to be dealt with by the District Judge in accordance with law which may also include Additional District Judge. Both the miscellaneous applications have remained pending for long, as such, it is directed that the Subordinate Judge concerned should transfer the miscellaneous cases to the District Judge, who shall either deal with the same himself or transfer the cases to any other Additional District Judge but the matter must be disposed of as early as possible, in any case, within 60 days from the date of receipt of this judgment in the court below.

35. Both the appeal and the writ petition are, accordingly, allowed.