
(2015) 03 CAL CK 0083
In the Calcutta High Court
Case No : C.O. No. 136 of 2015

Sushanta Malik

APPELLANT

Vs

Srei Equipment Finance Ltd. and Others

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)(e), 21, 24, 3, 34
Civil Procedure Code, 1908 (CPC) — Section 15, 16, 20, 24
Constitution of India, 1950 — Article 236
General Clauses Act, 1897 — Section 3(17)

Citation : (2015) 5 ARBLR 533 : (2015) 2 CALLT 509

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Gopal Chandra Ghosh and Jayeta Kundu, for the Appellant; Satarup Banerjee and Abhishek Guha, Advocates for the Respondent

Judgement

Harish Tandon, J.—A point of demurrer is taken as to whether the City Civil Court has jurisdiction to entertain a proceeding arising from Arbitration and Conciliation Act, 1996. The Opposite Party put reliance upon a judgment of the Co-ordinate Bench rendered in case of Mrs. Hosenara Begum -v- Sk. Asraf Ali and Ors; (AP No. 1048 of 2013 decided on February 27, 2014). To support the aforesaid plea of demurrer that the City Civil Court at Calcutta has no jurisdiction to receive the petition under Arbitration and Conciliation Act, 1996. So long as, the High Court at Calcutta exercises ordinary original civil jurisdiction, it would be apt to quote the relevant portion from the said order which runs thus:

"In view of Section 2(1)(e) of the 1996 Act, not all civil courts of original civil jurisdiction are entitled to entertain petitions under Part-I of the 1996 Act. Only a principal civil court of original jurisdiction in a district is entitled to exercise jurisdiction under the 1996 Act and a principal civil Court of original jurisdiction in a district would be the High Court if it exercises ordinary original civil jurisdiction. As per the relevant statute as at the time that the previous Section 9 petition was filed by this petitioner, the City Court was entitled to entertain

matters which were below the floor-limit set for the High Court to exercise its ordinary original civil jurisdiction. However, it does not appear that the value of a claim or a matter can be of any relevance in a petition filed under Part-I of the 1996 Act in view of the definition of "Court" in such Act. Not only has the word "principal" been sued in the opening limb of the definition, but it has been emphasised in the last limb of the definition that the Court authorised to receive matters covered by Part-I of the 1996 Act would not include any civil court or a court inferior to the principal civil Court identified in the opening part of the definition."

2. The reliance is further placed upon a judgment of the Supreme Court rendered in 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 . To support the aforesaid contention that the High Court is a Principal Civil Court of the original jurisdiction in a District and, therefore, any other Court except the High Court exercising the original jurisdiction does not have the jurisdiction to entertain the proceeding under the said Act. Relying upon the aforesaid two decisions, it is submitted that the Court as defined in Section 2(1)(e) of the said Act means the Principal Civil Court of the original jurisdiction in a District and includes the High Court in exercise of ordinary original civil jurisdiction and expressly excludes the Civil Court of a grade inferior to such Principal Civil Court.

3. The entire argument is based upon the aforesaid two decisions and invited the attentions of this Court that the proceeding before the City Civil Court at Calcutta is not maintainable as it lacks jurisdiction to entertain such proceeding having taken under the said Act. This Court, at the first blush, was inclined to hold that the City Civil Court at Calcutta shall have no jurisdiction both pecuniary or territorial or in relation to the subject matter of dispute as the same has been exclusively conferred upon the High Court. But after carefully reading the judgment of the Supreme Court rendered in case of Atlanta Ltd; (supra), this Court desires to give a second thought and ponder as to whether the ratio laid down therein is the one which is sought to be contended before this Court. Bearing in mind that the judgment should not be read as a statute, it becomes necessary to give anxious scrutiny on the factual matrix of the said case to find out whether the question cropped up in the instant case was advanced and decided. In Atlanta Ltd; (supra), the State of Maharashtra through its Public Work Department awarded a contract to the said Company for construction Mumbra Bypass. The said contract contains an arbitration clause and a dispute arose between the parties to the contract attracting the evocation of the arbitration clause for resolution or disputes. The parties submitted to the jurisdiction of the arbitral tribunal who made an award excepting almost all the claims of the Company therein. While awarding the relief to the Company, the counterclaim of the State of Maharashtra was rejected by the arbitral tribunal. The State of Maharashtra filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Thane. On the same day,

the Company i.e. Atlanta Ltd; filed an arbitration petition before the High Court of judicature of Bombay for setting aside some of the directions passed by the arbitral tribunal and claimed further compensation. Atlanta subsequently filed an application under Section 24 of the Code of Civil Procedure before the High Court for transfer of the application under Section 34 of the Act filed before the District Judge, Thane to the original side of the High Court. The said transfer petition was filed to avoid the conflicting decisions as the same award is challenged in two forums. The High Court allowed an application under Section 24 of the Code transferring the arbitration application filed by the State of Maharashtra from the Court of District Judge, Thane to the original side of the High Court. The said order is further assailed by the State before the Supreme Court. An argument was advanced beyond the State that the definition of the term "Court" under Section 2(1)(e) means a Principal Civil Court of the original jurisdiction in a district having jurisdiction to decide the question forming the subject matter of a suit and, therefore, the District Judge, Thane is the Principal Civil Court of original jurisdiction in the district and not the High Court at Bombay.

4. The reliance is further placed upon Section 16 of the Code of Civil Procedure that a contract was given for construction of bypass which is situated within the territorial jurisdiction of a Thane District and, therefore, the suit shall be instituted in a Court within the local/legal limits of the jurisdiction, the property is situate. Further reliance is placed upon Section 20 of the Code that the said provision is subject to Section 16 of the Code. It would be very much relevant in the present context to take note of the recording made in Paragraph 14 of the said report which runs thus:

"14. The learned counsel for the respondent Atlanta Ltd., however, strongly opposed the submissions advanced at the hands of the learned counsel for the appellant on the issue of jurisdiction. In this behalf, the learned counsel for the respondent invited our attention to the reply-affidavit filed on behalf of the State of Maharashtra, to Miscellaneous Civil Application No. 162 of 2012 (filed by Atlanta Ltd. before the High Court), Para 8 of the reply-affidavit which was pointedly brought to our notice is being extracted hereunder:

"8. In fact it is an admitted position and common ground that both; this Hon"ble Court and the District Court at Thane have jurisdiction in respect of the subject-matter in issue. Peculiarly this Hon"ble Court falls within the definition of the term "court" under Section 2(1)(e) of the Arbitration Act by virtue of being a High Court in the Mumbai District having original jurisdiction, and on the other hand the District Court at Thane being the Principal Civil Court of Original Jurisdiction in the Thane District also falls within the same definition."

(emphasis supplied)

In view of the stand adopted in writing by the appellants, in response to Miscellaneous Civil Application No. 162 of 2012, it was sought to be asserted, that the appellants had no right to raise the issue of jurisdiction before this

Court."

5. It is, therefore, manifest that all the parties were unanimous on the facts that both the Courts including the District Court, Thane and the High Court at Bombay have concurrent jurisdiction in respect of the subject matter in issue. The point thus arose if two Courts have concurrent jurisdiction over the subject matter forming a dispute to be resolved by arbitration which Court shall have the jurisdiction to entertain of proceeding under the Arbitration and Conciliation Act. The aforesaid facts shall further be cleared from the recording made in Paragraph 18 of the said report which is quoted as below:

"18. In our view, it is not open to the appellants to advance such submission before this Court. Firstly, because the appellants had in Para 8 of the reply-affidavit filed before the High Court, clearly acknowledged the legal position, that both the High Court as also the District Judge, Thane, insofar as the present controversy is concerned, fall within the definition of the term "court" under Section 2(1)(e) of the Arbitration Act. And secondly, because the impugned order passed by the High Court expressly notices in para 10, that it was admitted by the rival parties before the High Court, that the High Court on the original side, as also the District Judge, Thane, had the jurisdiction in respect of the subject-matter. The relevant part of para 10 of the impugned judgment of the High Court is being extracted hereunder: (Mah LJ p. 603)

"10. Mr. Vashi, learned counsel appearing on behalf of the petitioner submitted that in the affidavit-in-reply which has been filed in this petition, it is admitted by the respondents that the place of arbitration in terms of the arbitration clause in the contract was Mumbai. It is also admitted that both, this Court on the Original Side and the District Court at Thane have jurisdiction in respect of the subject-matter in issue."

(emphasis supplied)

It was, therefore, not open to the appellants to canvass before this Court that the High Court of Bombay in exercise of its "ordinary original civil jurisdiction" could not adjudicate upon the present controversy, on account of lack of jurisdiction."

6. On the basis of the rival submissions of the parties, the Apex Court summarized the argument in following manner:

"21. The following submissions were advanced before us:

21.1. Firstly, considering Clause (c) of the operative part of the award, according to the learned counsel, it was clear that enforcement of such a clause in the award was site-specific, since Mumbra Bypass is located on the Mumbai-Pune road (on National Highway 4) and falls in Thane District, the District Judge, Thane, ought to be the "natural choice" for consideration of the issues advanced by the appellants, as also the respondent.

21.2. Secondly, according to the learned counsel for the appellants, the definition of the term "court" expressed in Section 2(1)(e) of the Arbitration Act uses the expression "subject-matter" and not "cause of action". While "cause of action" can be referable to places where the works contract is executed, or where arbitration proceedings were conducted; the term "subject-matter" used in Section 2(1)(e) of the Arbitration Act is only referable to the subject-matter of the works contract, with respect to which the dispute is raised (with respect to which, there was a direction for extension of the concession period, under the award). Accordingly it was submitted, that although the High Court may also have jurisdiction, the District Court, Thane is "more natural", "more suitable" and "more appropriate" for the adjudication of the claims, raised by the rival parties.

21.3. Thirdly it was contended, that the Original Side of the High Court of Bombay vis-a-vis the District Judge, Thane, is a "superior" court. According to the learned counsel for the appellants, even if it is acknowledged that the "ordinary original civil side" of the High Court of Bombay as also the "Principal Civil Court of Original Jurisdiction" for District Thane i.e. the District Judge, Thane, both have jurisdiction in the matter, there were many attributes on the basis of which it could be clearly established, that the Original Side of the High Court of Bombay, is superior to the Court of the District Judge, Thane. In this behalf it was sought to be pointed out, that the High Court could take cognizance of contempt of its own orders, and furthermore, a judgment delivered by the Original Side of a High Court operated as a binding precedent. It was submitted, that the District Court, Thane, does not have any such attributes. In the above view of the matter it was submitted, that reliance could be placed on Section 15 of the Code of Civil Procedure, to determine which of the two courts should adjudicate upon the matter. Section 15 is being extracted hereunder:

"15. Court in which suits to be instituted.--Every suit shall be instituted in the court of the lowest grade competent to try it."

Based on Section 15 extracted above it was submitted, that in case jurisdiction could be exercised by two courts, it was imperative to choose the court of the lowest grade competent to try the suit. Accordingly, it was contended, that from amongst the Original Side of the High Court of Bombay and the District Court, Thane, in terms of the mandate of Section 15 of the Code of Civil Procedure, the District Court, Thane, being the court lower in grade than the Original Side of the High Court of Bombay, ought to have been chosen to adjudicate upon the matters. It was also pointed out, that the choice of the District Court, Thane, would even otherwise be beneficial to the rival parties on account of the fact, that the determination by the said court, would be open for re-examination before the High Court of Bombay, which exercises supervisory jurisdiction over it."

7. While addressing the aforesaid issue, on the admitted facts that two Courts have jurisdiction to entertain the dispute, it is held:

"32. All the same, it is imperative for us to determine, which of the above two courts which have been approached by the rival parties, should be the one to adjudicate upon the disputes raised. For an answer to the controversy in hand, recourse ought to be made first of all to the provisions of the Arbitration Act. On the failure to reach a positive conclusion, other principles of law may have to be relied upon. Having given out thoughtful consideration to the issue in hand, we are of the view that the rightful answer can be determined from Section 2(1)(e) of the Arbitration Act, which defines the term "court". We shall endeavour to determine this issue, by examining how litigation is divided between a High Court exercising "ordinary original civil jurisdiction", and the "Principal Civil Court of Original Jurisdiction" in a district. What needs to be kept in mind is, that the High Court of Bombay is vested with "ordinary original civil jurisdiction" over the same area, over which jurisdiction is also exercised by the "Principal Civil Court of Original Jurisdiction" for the District of Greater Mumbai (i.e. the Principal District Judge, Greater Mumbai). The jurisdiction of the above two courts on the "ordinary original civil side" is over the area of Greater Mumbai. Whilst examining the submissions advanced by the learned counsel for the appellants under Section 15 of the Code of Civil Procedure, we have already concluded, that in the above situation, jurisdiction will vest with the High Court and not with the District Judge. The aforesaid choice of jurisdiction has been expressed in Section 2(1)(e) of the Arbitration Act, without any fetters whatsoever."

8. The Apex Court was conscious of the position where the jurisdiction of the High Court has been curtailed by a pecuniary limits but did not decide the same as both the parties proceeded in unison that the District Thane and the original side of the High Court have a concurrent jurisdiction and which Court would be more suitable or preferable was, in fact, answered therein. It is relevant to reproduce Paragraph 33 of the said judgment which is:

"33. It is not the case of the appellants before us, that because of pecuniary dimensions, and/or any other consideration(s), jurisdiction in the two alternatives mentioned above, would lie with the Principal District Judge, Greater Mumbai. Under the scheme of the provisions of the Arbitration Act, therefore, if the choice is 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 Act has made the choice in favour of the High Court. This in fact impliedly discloses a legislative intent. To our mind therefore, it makes no difference, if the "Principal Civil Court of Original Jurisdiction", is in the same district over which the High Court exercises original jurisdiction, or some other district***. In case an option is to be exercised between a High Court (under its "ordinary original civil jurisdiction") on the one hand, and a District Court (as "Principal Civil Court of Original Jurisdiction") on the other, the choice under the Arbitration Act has to be exercised in favour of the High Court."

9. There is no hesitation in my mind that where two Courts have concurrent

jurisdiction and competent to entertain the proceedings under the Arbitration and Conciliation Act, 1996, the ratio laid down in *Atlanta Ltd*; (supra) that the preference should be given to the original side of the High Court takes away the jurisdiction of the City Civil Court. The definition of the Court provided under the Arbitration and Conciliation Act is required to be interpreted in the context where a Principal Civil Court of original jurisdiction in the District is vested with exclusive jurisdiction and power to deal the subject matter and the High Court is simultaneously given jurisdiction to entertain the subject dispute over an above the pecuniary limit of the Civil Court. The expression Principal before the Civil Court of original jurisdiction cannot be read in isolation but in conjunction with having jurisdiction to decide the question forming the subject matter of arbitration if the same had been the subject matter of a suit. If the dispute does not germane under the said Act and capable of being determined by a regular suit because of its pecuniary value whether the High Court still have the jurisdiction to entertain such suit. The object of establishing the City Civil Court shall be a guiding factor in the above aspect. The Judicial Reforms Committee appointed by the Government of West Bengal on 17th December, 1949 and unanimously recommended the establishment of City Civil Court in the District of Calcutta to ensure speedy disposal of the civil case and to relief the original side of the High Court at Calcutta.

10. The object behind establishing City Civil Court was never intended to abolish or disturb the original side of the High Court but to ease out the congestion which the legislatures perceived. Subsequently the City Civil Court was established in February 23, 1957 by introduction of the City Civil Courts Act, 1953. The constitutional validity of the City Civil Courts Act, 1953 was challenged before this Court on various grounds including that the State did not have the power to curtail the jurisdiction of the High Court. Upholding the constitutional validity of the Act and having declared the said Act to be intra vires, it is held in case of *Amarendra Nath Roy Chowdhury Vs. Bikash Chandra Ghose and Another*, AIR 1957 Cal 534 : 61 CWN 630 : (1958) 1 ILR (Cal) 576 :

"While the High Court in its original side was found sufficient so long for dealing with cases that arose within the prescribed territorial limits, it is now found necessary to ease its burden by founding additional Courts. It is said that cases within the lower pecuniary limits should be heard in a more summary manner, inexpensively and with greater expedition. These are enviable dreams and no one knows whether they will come true. But this is no reason why a brave new experiment should not be made. The local Legislature as the accredited representatives of the nation must know what is good for its people. If it thinks that an additional Court will ease the burden of the litigant, the experiment should be warmly welcomed, and given a fair trial. It is not always good to approach a question in a narrow legalistic way. The Courts exist for litigants, and any attempt to benefit litigants, in whatever manner it is achieved, is deserving of our highest encomium. Whether this particular experiment will succeed is quite another matter; for History alone can answer that question."

11. By promulgation of the City Civil Court Act, 1953, the territorial jurisdiction of the High Court in its original jurisdiction was not taken away but a line of demarcation was created on a pecuniary limits. Though Sub-section 2 of Section 3 of the said Act postulates that the City Civil Court shall be deemed to be a subordinate Court to and subject to the Superintendent of the High Court within the meaning of the letters patent for the High Court and the Code of Civil Procedure, 1908. But Section 21 thereof clearly provides the overriding effect including the letters patent. Sub-section 2 of Section 5 of the Act states that the High Court shall not have the jurisdiction to try suits and proceedings of a civil nature not exceeding Rs. 10 lakhs in value. It strengthens the view expressed in case of Amarendra Nath Roy Chowdhury Vs. Bikash Chandra Ghose and Another, AIR 1957 Cal 534 : 61 CWN 630 : (1958) 1 ILR (Cal) 576 wherein it is held:

"The object of providing for an additional court like the City Civil Court, is to ensure that there should be an additional court to try cases up to a particular pecuniary limit, which should be tried more summarily and more quickly than they can be done at present, considering the pre-occupations of the High Court. thus, litigants having cases up to a particular pecuniary limit are relegated to the City Civil Court, while cases with a higher pecuniary limit are referred to the High Court. Litigants with cases within the lower pecuniary limits, who are to file their suits in the City Civil Court can be taken to constitute a class. All persons in that class, namely, the litigants who will pursue their remedies in the City Civil Court, are treated alike."

12. The reference can be conveniently made to a Division Bench Judgment of this Court rendered in case of Nakuleswar Banerjee Vs. Sakhisona Dassi, (1966) 2 ILR (Cal) 498 , it is held:

"7. For our present purpose, it is not necessary to say anything on the question of the above interpretation and we will assume for purposes of this appeal that, if the matter had rested solely on the City Civil Courts Act, for the present suit the proper forum would have been the Original Side of this Court and not the City Civil Court. The position, however, was changed by the West Bengal Act XXVII of 1957, which amended the West Bengal Premises Tenancy Act, 1956, a special statute, providing for forum in respect of ejectment suits within the local limits within which the disputed premises in the instant case falls. Under that amending statute, in respect of ejectment suits between landlords and tenants, irrespective of the question as to who is the landlord and who is the tenant, within certain limits of valuation, which cover the present case, such suits are to be instituted in and entertained by the City Civil Court.

8. Both the above statutes are of the same legislature. The latter statute, the amending Act XXVII of 1957, is not only a later statute but also a special statute, dealing with the question of forum in ejectment suits and conferring exclusive jurisdiction on the City Civil Court to entertain such suits within limits, which cover the instant case. On the interpretation, suggested by Mr. Mukherji to item No. 9 of the first Schedule of the City Civil Courts Act, as mentioned

hereinbefore, a suit of the present type, but for the above amending Act, would have probably lain in the Original Side of the this Court, but the above amending statute clearly provides that such jurisdiction of the Original Side of this Court would no longer be available but would be taken away by the exclusive jurisdiction, conferred on the City Civil Court in respect of ejectment suits within limits, covering the present case, irrespective inter alia of the status of the landlord. In this view, we hold that the learned trial Judge was right in entertaining this suit and no legitimate objection can be taken to his jurisdiction on the point. This contention of Mr. Mukherji is, accordingly, overruled."

13. It is, therefore, an Additional Court constituted to ease out the huge accumulation of the cases in the original side of the High Court with the lower pecuniary limits to entertain and decide the suits which High Court in its original jurisdiction is competent to decide the same. It is not a case of two Courts having a parallel jurisdiction where the choice and preference is to be decided if one of the choice is High Court then certainly the High Court has primacy over the District Court. If the jurisdiction is divided either territorially or pecuniary, both the Courts are treated as the Principal Civil Court of the District in relation to the value of the subject matter.

14. The definition of Court given under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 means 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 suit is wider than the definition of the Court assigned in 1940 Act. The said definition can be segregated in three parts firstly; it means the Principal Civil Court of original jurisdiction in a District secondly; includes the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the questions forming the subject matter of the suit thirdly; exclusionary one i.e. excluding the Civil Court of great inferior to such Principal Civil Court or any Court of Small Causes. The expression "having jurisdiction to decide the questions forming the subject matter of the suit" cannot be relatable to Principal Civil Court of the original jurisdiction in a District as it would be opposed to the third part which excludes any Civil Court of a great inferior to such Principal Civil Court or any Court of Small Causes. The aforesaid interpretation is possible because of Section 3(17) of the General Clauses Act defining the term "District Judge" to mean the Judges of the Principal Civil Court of original jurisdiction but shall not include the High Court in exercise of its ordinary or extraordinary original civil jurisdiction. Therefore, the Court of the District Judge is a Principal Civil Court of original jurisdiction in a District. The Bengal, Agra and Assam Civil Courts Act, 1887 have provided the unlimited pecuniary jurisdiction to the District Judge and have further provided the pecuniary limits of the Judges below the rank of the District Judge. There is a lower pecuniary limits in respect of the suits to be tried by the other Judges than the District Judge but by introduction of the definition of the Court under Arbitration and Conciliation ACT, 1996, the District Judge alone have the jurisdiction even in respect of a subject matter

below the minimum pecuniary limits. Article 236 of the Constitution of India also defined the District Judge to include the Judge of a City Civil Court which does not cover the Judge subordinate to it.

15. In this regard, the reference can be made to a Division Bench Judgment of the Himachal Pradesh High Court in case of *Surat Singh Vs. State of Himachal Pradesh and Another*, (2003) 3 ARBLR 606 that in view of the definition assigned under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996, it is a District Judge who is empowered to entertain an application filed under Part-I of the said Act irrespective of its pecuniary value, the Paragraph 8 of the said report is quoted as under:

"8. On the basis of the aforesaid discussion, therefore, what clearly emerges is that irrespective of the valuation of the subject-matter of a reference or any application filed under Part I of 1996 Act, including an Application filed under Section 34 of the Act; no Court other than the Court of a District Judge would have the jurisdiction to decide such a reference or such an application. In other words, therefore, the Court of Senior Sub Judge, would not have the jurisdiction to decide such a reference or such an application."

16. The Co-ordinate Bench in case of *Hosenara Begum* (supra) did not have an occasion to consider the matter in the light of the observations made herein above and have simply proceeded that if the word "Principal" is used before the Civil Court and excludes the Courts subordinate to the said Principal Court is used in the opening limb of the definition, the City Civil Court being subordinate to the High Court is denuded of any jurisdiction to entertain a proceeding arising under the Arbitration and Conciliation Act.

17. Even after great persuasion, I could not persuade myself to agree with the decision wherein it is held that the City Civil Court have no jurisdiction to entertain a proceeding under Arbitration and Conciliation Act, 1996.

18. Let this revisional application be placed before the Hon"ble Chief Justice for constituting a larger bench to decide the question as to whether that the City Civil Court at Calcutta have jurisdiction to entertain any proceeding under the Arbitration and Conciliation Act, 1996, having subject disputes upto Rs. 10,0000/- or the Original Side of the High Court at Calcutta have the exclusive jurisdiction for the same.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.