

(2007) 10 GAU CK 0024
In the Gauhati High Court

Union of India (UOI) and Another

APPELLANT

Vs

Shree Bharat Builders and Another

RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Arbitration Act, 1940 — Section 14, 2, 31, 41
Civil Procedure Code, 1908 (CPC) — Section 151, 20, 24

Citation : (2007) 4 GLT 803

Hon'ble Judges : A.P. Subba, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Subba, J.—This is an application filed by the petitioners u/s 24 read with Section 151 CPC and Section 41 of the Arbitration Act, 1940, seeking transfer of Arbitration Misc. Case No. 118 (T)/1998 pending in the court of Assistant to Deputy Commissioner at Shillong to any competent court at Guwahati, Assam.

2. The case of the petitioners, in brief, is that, the opposite parties had been awarded a contract work of the amount of Rs. 5,58,228.79 duly executing a contract agreement. The execution of the work as per the contract was completed in December 1992 and an undisputed portion of the bill claimed by the opposite parties was paid on 22.1.95. After the completion of the work, the opposite parties/contractors raised certain further claims. As the claims so raised by them were not agreed to by the department, a dispute arose and on the request made by the opposite party No. 1, the Chief Engineer (Air Force), Shillong Zone, appointed as Arbitrator. The Arbitrator entered into reference, took up hearing and published his award dated 31.10.98 u/s 14 of the Arbitration Act, 1940. Consequent upon the publication of the award, the opposite party No. 1 filed an application u/s 14 of the Arbitration Act, 1940 in the court of Assistant to the Deputy Commissioner at Shillong for filing of the award and for making the award a Rule of the Court. The said application was registered as Arbitration Misc. Case No. 118(T)/1998 and notices were issued directing the sole Arbitrator

to file the original award and also calling for objections.

3. It is the case of the petitioners that the contract work in respect of which the dispute arose was executed at Kumbhigram which falls in the State of Assam. The parties to the contract agreement had their head office at Guwahati where they also had their place of residence. Hence, the application u/s 14 of the Arbitration Act ought to have been filed in any competent court in Guwahati and not in the court of Assistant to the Deputy Commissioner, Shillong. It is thus prayed that the Arbitration Misc. Case No. 118(T)/98 be transferred to a competent court at Guwahati for further adjudication from the court of Assistant to the Deputy Commissioner, Shillong.

4. The opposite parties chose not to file any written objection.

5. I have heard Mr. P. Dey, learned Counsel for the petitioners and Mr. S.R. Sen, learned senior counsel assisted by Mrs. P.D.B. Baruah, learned Counsel for the opposite parties.

6. The undisputed facts are that the contract agreement was entered into between the parties at Shillong and the contract work was executed at Kumbhigram, Silchar in Cachar District of Assam. When a dispute arose between the parties, a sole Arbitrator was appointed by the Chief Engineer (Air Force), Shillong Zone. The Arbitrator so appointed held his sittings at Shillong and submitted his award to the court at Shillong.

7. On the basis of the above facts, the submission made by Mr. P. Dey, learned Counsel for the petitioners is that substantial part of the work relating to the contract having been executed in Kumbhigram, Silchar falling outside Shillong and the parties to the contract having their head office at Guwahati, also falling outside Shillong, the application u/s 14 of the Arbitration Act, 1940 ought to have been filed in any competent court at Guwahati and not in Shillong. In support of his submission, the learned Counsel relied on a decision of the Supreme Court rendered in *Union of India and Others Vs. Adani Exports Ltd. and Another*. It is, however to be noted that this judgment does not lay down that an application u/s 14 should be filed in a place where substantial part of the cause of action has arisen. Section 20 CPC, on the other hand, makes it clear that a court within whose jurisdiction the cause of action wholly or in part arises will have jurisdiction. Further, Section 31 of the Arbitration Act, 1940 read with Section 2 makes it clear that only that court will have jurisdiction to decide the matter in which a civil suit with regard to the subject matter of reference could be filed. Section 31 says that an award may be filed in any court having jurisdiction in the matter to which the reference relates. Section 2 which defines "court" states, that "court" 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 a suit. Therefore, a combined reading of Section 31 and Section 2 of the Arbitration Act makes it clear that the court before which the suit could have been instituted for the subject matter of reference would have the jurisdiction.

8. Therefore, the question is whether a suit could have been filed in the courts at Shillong if the subject matter of reference was treated as a subject matter of suit? It is the submission of Mr. S.R. Sen, learned senior counsel that the Chief Engineer, (Air Force) Shillong would be a necessary party in any proceedings in respect of the contract agreement and as such courts in Shillong have equal jurisdiction to entertain a petition under the provisions of the Arbitration Act as well as Section 20 of the CPC. A Full Bench of Delhi High Court in *Ram Rattan Bhartia Vs. Food Corporation of India and Others*, has laid down the law as follows:

In view of our discussion on the various points, noted above, our answer to the reference is that apart from a 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 cls. (a) and (b) of Section 20 of the Code.

Relying on the above observation, it is the contention of the learned Counsel for the opposite parties that the Chief Engineer (Air Force), Shillong Zone/Respondent No. 2 as stated before would be a necessary party in any proceeding that may be initiated in connection with the contract agreement and since he has his headquarter in Shillong, the case of the opposite parties is squarely covered by the above decision.

9. Even though Shri R Dey, learned Counsel for the petitioners stuck to this stand that the courts in Shillong will have no jurisdiction in the matter, he did not dispute that the Chief Engineer (Air Force), Shillong Zone/Respondent No. 1 who has his headquarter in Shillong would be a necessary party either in a petition u/s 14 of the Arbitration Act or in a civil suit that may be filed in respect of the subject matter of reference.

10. Hence, the fact that the Chief Engineer (Air Force), Shillong Zone, (respondent No. 2) who has his Headquarters at Shillong would be a necessary party to any proceeding relating to the contract agreement having not been denied, it is plain that the present case falls within the ambit of Section 20 of CPC which provides that every suit shall be instituted in a court within the local limits of whose jurisdiction any of the defendants actually and voluntarily resides or carries on business or personally work for gain at the time of the commencement of the suit.

11. The above discussion makes it amply clear that the present petition is devoid of merit and is liable to be rejected. In the result, the present petition filed by the petitioner is dismissed. Consequently, the stay order dated 26.2.99, shall stand vacated.

12. It is needless to say that the concerned court shall proceed with the matter

according to law.

Records of the court be returned forthwith.