

(1990) 03 MAD CK 0061
In the Madras High Court

Union of India (UOI)

APPELLANT

Vs

P. Anantharam, Chief Engineer (MES) and Another

RESPONDENT

Date of Decision : 12-03-1990

Acts Referred:

Arbitration Act, 1940 — Section 14(2)
Civil Procedure Code, 1908 (CPC) — Section 16

Citation : (1991) 286 MLJ 1

Hon'ble Judges : Lakshmanan, J

Bench : Division Bench

Judgement

Lakshmanan, J.—This petition is filed u/s 14(2) of the Arbitration Act to direct the arbitrator to file the original award dated 27.4.1988 into the Court along with the entire papers and documents and to pass a decree in terms of the award for Rs. 2,83,117 together with interest at 18% per annum from the date of award till payment and for costs.

2. The petitioner and the second respondent were parties to the agreement No. CESA/AVADI/17 of 72-73 dated 28.9.1972. The first respondent was appointed as Sole Arbitrator under the relevant arbitration clause of the said agreement. This contract related to the construction of technical accommodation for Vehicles Depot and Vehicles Depot Workshop at Avadi. As per the agreement the works are to be executed at Avadi, within the jurisdiction of the Sub Court, Poonamallee. The dispute related to this construction work at Avadi. After enquiry the arbitrator passed an award on 27.4.1988 for Rs. 2,83,117. The award was received by both parties from the arbitrator. In paragraph 7 of the petition the petitioner has stated as under:

The petitioner as well as the second respondent have permanent address in Madras City. Hence, this Court has jurisdiction for passing the decree in terms of the award passed by the 1st respondent.

The filing of the award in this Court was questioned by the second respondent. They say in their counter that the claim of the petitioner is not maintainable on

facts as well as in law. The petitioner is not entitled to the reliefs prayed for. The petition filed in this Court is not maintainable. The arbitration reference relates to a matter not falling within the territorial jurisdiction of the Original Side of this Court. The petition is therefore not maintainable. They prayed that this Court be pleased to dismiss the petition with the costs of second respondent both as not maintainable and as without jurisdiction.

3. The second respondent has raised several other points and contentions in the counter statement. As I am disposing of the matter only on the question of law in regard to the maintainability and jurisdiction of this Court to entertain this O.P. 1 am not advertent to the other issues raised by the second respondent. Those points are left open to be decided by the appropriate forum at the appropriate stage. Hence I proceed to deal with only on the question of law in regard to maintainability of this petition in this court.

4. I have heard the arguments of Mr. C. Krishnan, learned Counsel for the Union of India, and Mr. T.R. Mani, learned Senior Advocate, on behalf of second respondent. According to the learned Counsel for the second respondent, the original petition filed by the petitioner on the Original Side of this Court is not maintainable and this Court cannot receive the award since according to the learned Counsel, the arbitration reference relates to the matter not falling within the territorial jurisdiction of this Court. In support of his contention Mr. T.R. Mani, learned Senior Advocate, has invited my attention to the following three decisions: The leading judgment on this point is reported in Venkatasamiappa v. Srinidhi Ltd. (1950) 1 M.L.J. 709 A Division Bench of our High Court held as follows:

Held: The Court in Madras has no jurisdiction to receive the award and only the Court in Bangalore has jurisdiction.

In order to determine which is the Court having jurisdiction in the matter, you should first of all ascertain what the questions are, which form the subject-matter of the reference to arbitration. You then proceed to ask; supposing these questions had arisen in a suit, which is the Court which would have jurisdiction to entertain the suit? That Court would be not the Court at the place in which the agreement was entered into or where the defendant resides, but the Court which would have jurisdiction in respect of the questions forming the subject-matter of the reference. The question of residence would become relevant only should it arise out of or in connection with the subject-matter of the dispute and the reference.

Merely because the three arbitrators happen to be residents of Madras, one is not bound to presume an intention to submit to the jurisdiction of the Court in Madras.

5. The above is the leading case on the subject relating to the proper forum and test of jurisdiction u/s 31(1) read with Section 2(c) of the Arbitration Act, for petitions filed u/s 14(2) of the said Act for receiving the award and passing a

decree in terms of the award. It has been held by a Bench of this Court that the place of execution of the agreement or the residence of the parties or the Arbitrators has no relevance and the Court which would have jurisdiction in respect of the questions forming the subject-matter of the reference alone would have jurisdiction. Here, the dispute relates to a contract work to be executed at Avadi which is outside the jurisdiction of the Original Side of the High Court and falls within the jurisdiction of the Sub-Court at Poonamallee and in my opinion the Original Side has therefore no jurisdiction to receive the award and pass a decree in terms of thereof.

6. The same view is reiterated in a decision reported in *Inder Chand Jain Vs. Pooran Chand Bansi Dhar*, , where it is held that in order to determine the question of jurisdiction of the Court to entertain the applications under Sections 32 and 33 of the Arbitration Act, it must be ascertained: (1) what the questions are which form the subject-matter of the reference to arbitration and (2) which Court would have competence to determine the questions supposing those questions had arisen in a suit. The above Madras Bench decision is followed.

7. The decision reported in *Vissamseth Chandra Narasimham Vs. Ramdayal Rameswaralal and Others*, , goes a step further and held that an award can be filed only in the court in which the suit would lie with regard to the subject-matter of reference, and an agreement between the parties to file the award in a different Court cannot be given effect to, as such an agreement is against the statute and that the fact that the parties had acted upon such an agreement can be of no avail since there can be no estoppel against statute. The above Madras ruling is relied upon.

8. Section 31 of the Arbitration Act deals with the jurisdiction of the courts. Section 31(1) of the said Act provides that an award may be filed in any Court having jurisdiction in the matter to which the reference relates. Section 31(3) of the said Act, indicates that all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been or may be filed, and to no other court. On a reading of Section 31(1) and Section 2(c) of the Arbitration Act, it is clear that in order to decide which is the court which has jurisdiction in the matter to which a reference relates, what has to be ascertained is the Court within which the suit could have been instituted for the claim which was raised in the reference. From the facts of this case, it is clear that no part of the cause of action arose in Madras. The agreement related to the construction of technical accommodation for Vehicles Depot and Vehicles Depot Workshop at Avadi. The agreement was entered into between the petitioner and the second respondent. The works are to be executed at Avadi, within the jurisdiction of the Sub Court, Poonamallee. The dispute with regard to the construction work is at Avadi.

9. It is to be seen that Section 31(1) enjoins upon the arbitrator to file his award in the court having jurisdiction in the matter. If he chooses any violation of provision of Section 31(1) to file the award in a court which has no territorial

jurisdiction, then it cannot be argued that the said court acquires territorial jurisdiction. It is now well established that by agreement of parties jurisdiction cannot be conferred on courts which have no territorial, jurisdiction to decide the matter.

10. Reference may usefully be made to the decision reported in *Sushil Ansal v. Union of India* AIR 1980 Delhi 43 in which case also the contract had been awarded and executed outside Delhi. The arbitrator, however, had been appointed in Delhi and he had given his award in Delhi, thereupon an application under Sections 14 and 17 had been filed in Delhi. Sultan Singh, J. however held that on a correct interpretation of Section 2(c) read with Section 31(1), Delhi High Court would have no jurisdiction to entertain that petition. Hence the arbitration proceedings and the award was returned to the arbitrator with a direction that the same be filed in the court of competent jurisdiction.

11. Section 2 of the Arbitration Act defines Court, to mean 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 competent court within the meaning of Section 31 of the Act must be a court which would have entertained a suit between the parties to which the controversies were the same or are the subject matter of the arbitration.

12. Sub-section (1) of Section 31 provides for the filing of an award. The award can be filed in any Court having jurisdiction in the matter to which the reference relates. The "Court" referred to in Section 31 is the "Court" as defined in Section 2(c) of the Act. Sub-section (2) speaks of courts which have jurisdiction to decide all questions regarding the validity, effect or existence of an award or an arbitration agreement and it provides that these questions shall be decided by the Court in which the award has been or may be filed and by no other Court. When Sub-section (2) of Section 31 talks of an award which has been filed in any Court, it refers back to Sub-section (1) of Section 31, and therefore, the filing of the award has to be in a Court having jurisdiction in the matter in which the reference relates. In other words, if an award has in fact been filed in any Court which has no jurisdiction in the matter to which the reference relates such filing would not give jurisdiction to the Court under Sub-section (2) of Section 31. Sub-section (4) provides that where in any reference any application under the Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court. The mere filing of an application in any Court irrespective of whether such court has jurisdiction in the matter to which" the reference relates would not fix that court permanently with jurisdiction as the Court in which all subsequent applications are to be filed.

13. On a combined reading of Section 2(c) and Section 31(1) of the Arbitration Act, it must be held that the citus of cause of action alone was conferred with the jurisdiction of a court in matter of arbitration and since no part of the cause of

action arose within the jurisdiction, of the Original Side of our High Court, it could not entertain the present proceedings.

14. Section 2(c) of the Act defines "Court" as meaning a Civil Court having jurisdiction to decide all questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings u/s 21, include a Small Cause Court. The jurisdiction of the Small Cause Court is barred u/s 40 as well except as regards arbitrations in suits before it. It will be seen that u/s 31 of the Act, an award is to be filed in a Court which has jurisdiction in the matter to which the reference relates and an award filed in a Court which has no jurisdiction in the matter cannot be entertained and the Court cannot pass any judgment or decree in terms of the award. In order to decide the jurisdiction of the Court over the subject-matter of the award, it is necessary to consider the reliefs granted by the award and determine whether the Court would have jurisdiction to try a regular suit between the parties in which the relief is claimed and whether such relief could be granted by the Court: In order to determine the jurisdiction of the Court in a matter, one will have to ascertain what the questions are and if the question that has arisen is one which the Court would have jurisdiction to entertain, then that would be a competent Court to entertain the matter. Thus the Court of competent jurisdiction u/s 31 of the Act is not the Court at the place in which the agreement was entered into or the parties reside, but the Court which will exercise the jurisdiction provided the subject matter of the relief falls within its competence or jurisdiction.

15. Section 16 of the CPC gives the necessary guidance for the purpose of ascertaining the jurisdiction of the Court and provides that for the determination of any right or interest in immovable property the suit is to be instituted where the subject matter is situate.

16. In the instant case, the place of performance is at Avadi and the Court at Poonamalle alone would have jurisdiction to entertain the proceeding if the matter which is the subject-matter of arbitration had arisen in a suit.

17. The only decision cited by the learned Counsel for the Union of India reported in *M. & A. Machinery Corporation Ltd. v. M/s. Hope (India) Ltd.* AIR 1983 Cat 492 is also not on the point. In the said case the arbitrator was appointed by the Supreme Court of India. Hence the counsel appeared on behalf of the petitioner submitted that the Calcutta High Court has no jurisdiction and strongly relied on Section 31(4) of the Arbitration Act and submitted that the Supreme Court has exclusive jurisdiction in this matter. The Calcutta High Court accepting the contention held that the said Court has no jurisdiction to entertain the award and directed the awards to be taken off the record and be returned to the parties for filing the same before appropriate forum. Hence the above decision is not applicable to the facts of this case and is distinguishable since it arises u/s 31(4) of the Act.

18. I am inclined to take the view that this Court has no jurisdiction in the matter and the respondents must succeed on that ground.

19. In the result, I direct the original award and the documents etc. filed by the Arbitrator to be taken off the record and be returned to Arbitrator for filing the same in the proper court. In this view of the matter, there will be no order as to costs.