

(2010) 09 BOM CK 0129

In the Bombay High Court

Case No : Arbitration Petition No. 1072 of 2010

United Spirits Limited

APPELLANT

Vs

Paras Collins Distilleries Private Ltd., Andhra Pradesh
Beverage Corporation Limited and Mr. Vijay Bhaskar Reddy of
Hyderabad

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 42, 7, 7(4), 9

Civil Procedure Code, 1908 (CPC) — Section 148, 21, 99

Suits Valuation Act, 1887 — Section 11

Citation : (2011) 7 ALLMR 143 : (2011) 1 BomCR 97 : (2010) 112 BOMLR 4451

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

Bench : Single Bench

Advocate : Nitin G. Thakkar and Sandeep Parikh, instructed by Bharat Shah and Company, for the Appellant; Rajni Iyer, K.B. Dighe and V.S. Khanavkar, for the Respondent

Judgement

S.J. Vazifdar, J.—This is an application u/s 9 of the Arbitration and Conciliation Act, 1996. The petitioner has sought reliefs pending the enforcement/execution of a consent award made by the learned sole arbitrator, Hon"ble Mr Justice S.P. Bharucha, former Chief Justice of India against respondent Nos. 1 and 3. Under the award respondent Nos. 1 and 3 are bound and liable to pay the petitioner an amount which today with interest is about Rs. 8,80,00,000. The petitioner has inter-alia sought an order of attachment of Rs. 2,65,88,000 payable by respondent No. 2, Andhra Pradesh Beverage Corporation Ltd., to respondent No. 1, disclosure of the assets of Respondent Nos. 1 and 3 and an order of attachment, appointment of a Court Receiver and injunctions in respect of various properties of Respondent No. 1 as provided in the consent award.

2. The case, in a nutshell, is this. The agreement between the parties contains an arbitration clause. The Petitioner had filed Arbitration Petition No. 307 of 2006 also u/s 9, which was disposed of by an order dated 28th June, 2006, inter-alia,

recording the consent of the parties to refer the disputes to the sole arbitration. No objection as to the territorial jurisdiction of this Court was raised. The consent award was passed by the sole arbitrator.

The only objection now taken is that this Court had no territorial jurisdiction to entertain Arbitration Petition No. 307 of 2006 and, accordingly, the order dated 28th June, 2006, and the consent award are a nullity. I have rejected the contentions and granted interim reliefs pending the enforcement of the consent award.

3. The petitioner and respondent No. 1 had entered into a "Agreement for tie-up manufacture of IMFL products" dated 1st July 2005. Clause 35 thereof contained an arbitration agreement. Under the agreement respondent No. 1 was to manufacture such quantities of IMFL bearing such brands as directed by the petitioner. Considering the objections raised by the respondents it is not necessary to refer to the disputes between the parties and the terms and conditions of the agreement. Suffice it to state that Clause 22 thereof stipulated the consideration payable by respondent No. 1 to the petitioner. As Respondent No. 1 failed to make payment as required by the said agreement the petitioner by a letter dated 12th July 2006, invoked the arbitration clause and nominated a former judge of this Court as an arbitrator and called upon Respondent No. 1 to nominate another arbitrator.

3(A). The Petitioner filed Arbitration Petition No. 307 of 2006 in this Court seeking various interim reliefs, including restraining Respondent No. 1 from disposing of its properties and an injunction restraining Respondent No. 2 from making payment to Respondent No. 1 to the extent of its claim. By an order dated the 2nd August 2006 certain interim reliefs were granted.

(B) By an order dated 28th August 2006 the arbitration petition was disposed of by consent of parties. The order up to paragraph 2 reads as under:

The petition is disposed of by consent of parties in the following terms:

1. By consent of parties Hon'ble Mr. Justice S.P. Bharucha (Retired C. J. I.) ...is appointed as Arbitrator
2. The disputes between the parties are referred to the learned Arbitrator for being decided in accordance with law.
5. Pleadings were filed before the learned arbitrator. The learned arbitrator appointed a Chartered Accountant.

6(A). Respondent No. 1 violated an interim order dated 10th September 2007 passed by the learned arbitrator. The learned Counsel appearing on behalf of the Respondent No. 1 stated before the learned arbitrator that Respondent No. 3 herein would place an apology and an undertaking on affidavit within two weeks. The learned Arbitrator, accordingly, accepted the apology and the undertaking as recorded in an order dated 31st January, 2009. An affidavit was filed on 4th

February, 2009 before the learned arbitrator tendering an unconditional and unqualified apology for breach of the order passed by the arbitrator dated 10th September, 2007, by entering into a sublease agreement with a third party, without obtaining the prior permission of the arbitrator.

(B). Respondent No. 1, thereafter, violated an interim order dated 12th January 2009. The learned arbitrator observed in an order dated 28th April 2010 that it was so serious a matter that it could not be overlooked. Respondent No. 1 was directed to file an affidavit to explain the same. The learned arbitrator noted that the apology tendered by respondent No. 1 for the earlier violation of the interim order had been accepted but that if the allegation on behalf of the petitioner was well founded he would not be so inclined in respect of this violation.

7. The matter thereafter proceeded before the learned arbitrator. While respondent No. 3, the managing director of respondent No. 1 was under cross-examination Respondent No. 1 offered to settle the Petitioners claim. Two orders were passed by the learned arbitrator on 15th June 2010.

(A) The first was an order in terms of the minutes of the order impleading Respondent No. 3 herein as Respondent No. 2 in the arbitration proceedings. Respondent No. 3 confirmed that he was aware of the proposed settlement arrived at between the petitioner and respondent No. 1; that he agreed to become a party to the arbitration proceedings and to submit to the jurisdiction of the arbitral tribunal and also agreed to personally guarantee the payment by respondent No. 1 to the claimant as per the agreed settlement. Respondent No. 3 herein was accordingly added as the Respondent No. 2 in the arbitration proceedings.

(B) Secondly, the learned arbitrator by a separate order also made an award in terms of the consent terms signed by the parties and their advocates. Clauses 1 to 5 of the consent terms read as under:

1. The Respondents do jointly and severally pay to the Claimant a sum of Rs. 5,50,00,000/- (Rupees Five Crores Fifty Lakhs Only) with interest thereon @ 15% p.a. from 14th October, 2006 till payment/realization.

2. In the event of the Respondents paying a sum of Rs. 4,50,00,000/- (Rupees Four Crores Fifty Lakhs Only) in the manner following without committing any default the decree herein shall stand satisfied:

....

3. In the event of the Respondents committing a default in payment of any of the installments mentioned in Clause 2 above, the entire amount mentioned in Clause 1 above less amounts if any paid, shall forthwith become due and payable by the Respondents to the Claimant and the award/decreed shall forthwith become executable.

4. Till the award/decreed herein is fully satisfied the Respondents undertake not to

dispose of, alienate or encumber or part with possession of the properties mentioned in the Affidavit of Respondent No. 1 dated 4th October, 2007. For the sake of convenience the Schedule is annexed hereto and marked as Schedule "A". However, the Respondents shall be permitted to enter into a Sub-Lease Agreement till 31st March, 2012 with Allied Blenders or any other parties as per the draft annexed hereto as Schedule "B", on condition that the Respondent No. 1 shall bring to the notice of the SubLessee the terms hereof. It is clarified that if the decree become executable the Claimant shall be entitled to attach the assets mentioned in Schedule "A" and Schedule "B" hereto.

5. Respondents agree and undertake to comply with the aforesaid terms and further agree and undertake to take an order from the Hon'ble High Court Judicature at Bombay in terms of Clause 4 above in the Petition u/s 9 of the Arbitration and Conciliation Act, 1996 which is proposed to be filed by the Claimant herein.

8(A). Pursuant to Clause 5 of the consent award the petitioner filed Arbitration Petition (Lodging) No. 766 of 2010 which was subsequently numbered as Arbitration Petition No. 979 of 2010. The petition was to be moved on 22nd June 2010 but was adjourned at the request of Respondent No. 1 by an e-mail message. The message stated that Respondent No. 3 had gone to his village to make arrangements for funds to meet the obligations under the consent award.

(B) By an order dated 25th June 2010 the learned judge recorded the statement on behalf of the respondents that they had no objection to an order being passed in terms of prayers (a) and (b). Accordingly an order was made in terms of prayers (a) and (b) except the bracketed portion i.e. the words "save and except". Respondent No. 1 thereby undertook not to dispose of, alienate, encumber or part with possession of the properties set out in Schedule A and also undertook to comply with the terms and conditions set out in the consent terms as provided in Clause 4 thereof.

9. On merits, therefore, there is nothing to be said in favour of Respondent Nos. 1 and 3. Ms. Iyer, however, submitted that:

(a) This Court had no jurisdiction to entertain and try Arbitration Petition No. 307 of 2006 as no part of the cause of action had arisen in Mumbai.

(b) In any event, a part of the cause of action had arisen outside Mumbai and leave under Clause 12 of the Letters Patent not having been taken, this Court had no jurisdiction to entertain Arbitration Petition No. 307 of 2006, which was disposed of by consent of the parties, inter-alia, appointing the sole arbitrator.

(c) The order dated 28th August, 2006, passed in Arbitration Petition No. 307 of 2005 and the award are, therefore, void.

(d) It is open, therefore, to Respondent Nos. 1 and 3 to raise this contention in collateral proceedings and in execution proceedings.

(e) This application u/s 9 is also not maintainable as the Petitioner has not taken leave under Clause 12 of the Letters Patent.

Whether the award is void?

10. Even assuming that this Court had no jurisdiction to entertain Arbitration Petition No. 307 of 2006 and that this Court has no jurisdiction to entertain the present Arbitration Petition, the award cannot, by any stretch of imagination, be said to be void.

11. Clause 35 of the Agreement For Tie-up Manufacture of IMFL Products dated 1st July, 2005, reads as under:

35. Any dispute or difference between the parties hereto concerning anything contained in or arising out of this Agreement or as to the rights, duties or liabilities hereunder of the parties hereto shall be referred to the arbitration of two arbitrators one to be appointed by each party in accordance with and subject to the provisions of the Arbitration & Conciliation Act, 1996, or any statutory modifications or re-enactment thereof for the time being in force and such arbitration proceedings shall take place at Mumbai and subject to the jurisdiction of the courts at Mumbai.

12. The agreement and the fact that it contains Clause 35 is admitted. The order dated 28th August, 2006 set out above disposed of Arbitration Petition No. 307 of 2006 "by consent of parties", inter-alia, by appointing the sole arbitrator and referring the disputes between the parties to the sole arbitrator. There is nothing in law which prevented the parties from having the agreement recorded either in correspondence, in a formal agreement or even in an order of the court in any proceedings. In fact, the order dated 28th August, 2006, is not only a record of an agreement to refer the disputes to the learned sole arbitrator, but the same is pursuant to and records the agreement between the parties to refer their disputes to arbitration as contained in Clause 35 of the said agreement.

13. Ms. Iyer, however, relying upon a judgment of a learned single Judge of this Court in Sonusing Dhanusing Patil and Anr. v. Bansi Chindu Kumbhar 1993 (2) Mh.L.J. 1141, submitted that the agreement between the parties which immediately preceded the order dated 28th August, 2006, cannot be relied upon as it stood merged in the order. Paragraph 19 of the judgment reads as under:

19. Thus taking overall view and position of the law represented before me by the learned Counsel, in my judgment, the position appears to be quite crystallized. The position is that the Court exercising the powers u/s 148 of CPC must have the seisin over the proceedings in regard to which the Court is understood to be exercising powers under said section. When the Court accepting the terms agreed upon by the parties passes a decree in terms thereof, the terms get the legal character and a decree of the Court cannot be considered to be an agreement or contract between the parties when the terms bear the impression of the Court and character of a decree of the Court, the Executing

Court gets no power to exercise powers u/s 148 of CPC because the Court has no jurisdiction to touch what is in the nature of final decree between the parties and only thing left to the Court is to proceed with legal consequences in the execution proceedings. In this view of the matter, the learned trial Judge could not have decided the decree to be an agreement and could not have resorted to exercise the powers u/s 148 of Civil Procedure Code. The Court had no alternative but to pass the necessary orders which are inevitable as a consequence of non-compliance of the terms of the consent decree.

14. Even assuming Ms. Iyer's submission based on this judgment to be well founded, it would be of no assistance to Respondent Nos. 1 and 3 in the present case for more than one reason.

Firstly, it is Ms. Iyer's contention that the order dated 28th August, 2006, is void and non-est. If the submission is well founded all it means is that the order cannot be enforced. It can nevertheless be relied upon as evidence of the parties having agreed to refer the disputes between them to the sole arbitrator on the basis of the statement recorded therein. Even assuming that the order is void and that, therefore, the parties could not be compelled to go to arbitration on the basis thereof, it would make no difference in this case as the parties in fact went to arbitration. As I will demonstrate later, the submission that the order is void and non-est is not well founded. That, however, is another matter.

15. In any event, the reference to the learned arbitrator is valid in view of Clause 35 of the said agreement. Thus, even if the order dated 28th August, 2006, cannot be looked at for any purpose, the validity of the reference is established in view of the express agreement between the parties contained in Clause 35 of the said agreement. That the agreement requires a reference to more than one arbitrator is of no consequence. The parties are always at liberty in such cases to refer the disputes to a sole arbitrator. In fact, they often do, keeping in mind the costs and the convenience of referring the disputes to a sole arbitrator.

16. As rightly submitted by Mr. Thakkar, the learned senior counsel appearing on behalf of the Petitioner, the reference of the disputes to the sole arbitrator can also be supported u/s 7(4)(c) of the said Act. Section 7 reads as under:

7. Arbitration agreement - (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

....

(4) An arbitration agreement is in writing if it is contained in

....

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

In paragraphs 23 and 29 of the statement of claim, the petitioner stated as under:

23. Since the Respondent failed and neglected to make payment of the Claimant's dues, the Claimant by a letter dated 12th July, 2006 addressed to the Respondent, invoked the arbitration clause as mentioned in Clause 35 of the said Agreement and nominated the Hon'ble Mr. Justice V.P. Tipnis as an Arbitrator and called upon the Respondent to nominate another Arbitrator. In a separate Compilation of Documents is annexed and marked as Exhibit "N" a copy of the aforesaid letter dated 12th July, 2006.

....

29. By an order dated 28th August, 2006, the aforesaid Arbitration Petition was disposed of by consent of the Claimant and the Respondent. It was agreed that the dispute between the parties be referred to the sole Arbitration of this Tribunal.

The Respondent did not traverse the statements made in paragraph 23 of the statement of claim. In paragraph 25 of the reply, Respondent No. 1 stated as under:

25. With reference to paragraph-29 of the Statement of Claim, the Respondent states that this paragraph merely records the contents of the order dated August 28, 2006 and the contents of undertaking filed by the Respondent. The same deserves no reply as the same is a matter of record.

Thus the Petitioner expressly asserted the existence of the arbitration agreement in the statement of claim and the Respondent No.1 did not deny the same. This is as clear a case u/s 7(4)(c), as any.

17. The submission that the award is void is, therefore, rejected. The award is valid, subsisting and binding between the parties. It has not been challenged. Indeed, on merits a challenge would be totally unsustainable.

Whether the order dated 28th August 2006, is void?

18. Ms. Iyer submitted that the order dated 28th August, 2006, is void as the entire cause of action arose outside Mumbai. She further submitted that in any event, a part of the cause of action arose outside Mumbai and as leave under Clause 12 of the Letters Patent had not been obtained, this Court in any event had no jurisdiction to entertain Arbitration Petition No. 307 of 2006 which was disposed of by the said order dated 28th August, 2006. Mr. Thakkar submitted that the agreement had been executed in Mumbai. This was disputed on behalf of the Respondent Nos. 1 and 3 who contended that though the agreement states that it was executed in Mumbai, it was, in fact, executed in Chennai. I do not intend dealing with this controversy. I will assume Ms. Iyer's contention on facts viz. that no part of the cause of action arose in Mumbai, to be correct. I will assume, as well founded, her submission that it was necessary for the Petitioner to have obtained leave under Clause 12 in respect of Arbitration Petition No. 307

of 2006. Even so, the order dated 28th August, 2006, cannot be held to be void or non-est.

19. Mr. Thakkar's reliance upon the judgment of a bench of four learned Judges of the Supreme Court in *Seth Hiralal Patni Vs. Sri Kali Nath*, , in support of his submission that the order dated 28th August, 2006 is not void and non-est is well founded. It is important to note the facts of the case as they are almost identical to the facts of the present case.

The Respondent filed a suit on the Original Side of this Court for recovery of money, after obtaining leave under Clause 12 of the Letters Patent. The suit was referred to arbitration. As in the present case, in that case too, the Respondent agreed to the reference to arbitration. The arbitrator made an award in favour of the Respondent. The Appellant's petition, challenging the award was dismissed. The Appeal against the order was dismissed. The award was incorporated in a decree of the court. The decree was transferred to the court of District Judge, Agra, for execution and execution proceedings were instituted by the Respondent in that court.

The Appellant objected to the execution of the decree on the ground that the Bombay High Court had no jurisdiction to entertain the suit and to make the award a decree of the court as no part of the cause of action had arisen within the territorial jurisdiction of this Court and that, therefore, all the proceedings were wholly without jurisdiction. The objections were dismissed. The appeal against the order was dismissed. The Supreme Court, in paragraph 4, held as under:

4. The only ground on which the decision of the High Court is challenged is that the suit instituted on the original side of the Bombay High Court was wholly incompetent for want of territorial jurisdiction and that, therefore, the award that followed on the reference between the parties and the decree of Court, under execution, were all null and void. Strong reliance was placed upon the decision of the Privy Council in the case of *Ledgard v. Bull*. In our opinion, there is no substance in this contention. There was no inherent lack of jurisdiction in the Bombay High Court where the suit was instituted by the plaintiff-decree holder. The plaint had been filed after obtaining the necessary leave of the High Court under Clause 12 of the Letters Patent. Whether the leave obtained had been rightly obtained or wrongly obtained is not a matter which can be agitated at the execution stage. The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it. But in the instant case there was no such inherent lack of jurisdiction. The decision of the Privy Council in the case of *Ledgard v. Bull* is an

authority for the proposition that consent or waiver can cure defect of jurisdiction but cannot cure inherent lack of jurisdiction. In that case, the suit had been instituted in the Court of the Subordinate Judge, who was incompetent to try it. By consent of the parties, the case was transferred to the Court of the District Judge for convenience of trial. It was laid down by the Privy Council that as the court in which the suit had been originally instituted was entirely lacking in jurisdiction, in the sense that it was incompetent to try it, whatever happened subsequently was null and void because consent of parties could not operate to confer jurisdiction on a court which was incompetent to try the suit. That decision has no relevance to a case like the present where there could be no question of inherent lack of jurisdiction in the sense that the Bombay High Court was incompetent to try a suit of that kind. The objection to its territorial jurisdiction is one which does not go to the competence of the court and can, therefore, be waived. In the instant case, when the plaintiff obtained the leave of the Bombay High Court on the original side, under Clause 12 of the Letters Patent, the correctness of the procedure or of the order granting the leave could be questioned by the defendant or the objection could be waived by him. When he agreed to refer the matter to arbitration through court, he would be deemed to have waived his objection to the territorial jurisdiction of the court, raised by him in his written statement. It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure. Having consented to have the controversy between the parties resolved by reference to arbitration through court, the defendant deprived himself of the right to question the authority of the court to refer the matter to arbitration or of the arbitrator to render the award.

[Emphasis supplied]

The judgment clearly supports the Petitioner's case. The facts in Hira Lal's case and in the present petition are almost identical. The fact that in Hira Lal's case the Plaintiff had obtained leave under Clause 12 makes no difference as the contention was that the leave could not have been granted inasmuch as no part of the cause of action had arisen within the jurisdiction of this Court. Leave under Clause 12 can only be granted if a material part of the cause of action had arisen within the jurisdiction of this Court. The observations of the Supreme Court, therefore, would equally apply irrespective of whether or not leave under Clause 12 was taken. Had it not been so, the Supreme Court would have examined whether or not a part of the cause of action had arisen within the jurisdiction of this Court.

20. Ms. Iyer did not dispute the fact that the judgment clearly supported the

Petitioner's case. She, however, submitted that the judgment is contrary to a judgment of the Supreme Court also of four learned Judges, in the case of Kiran Singh and Others Vs. Chaman Paswan and Others, . Ms. Iyer relied upon a solitary sentence in paragraph 6 of the judgment in support of her submission. It is of vital importance, however, to read the judgment as a whole.

In that case, the Appellant instituted the suit in the court of the subordinate Judge for possession of the land of which Defendant Nos. 12 and 13 were the owners and on which Defendant Nos. 1 to 11 were alleged to have committed trespass. The subordinate Judge dismissed the suit. The Appellant preferred an appeal to the court of District Judge who dismissed the appeal. The Appellant filed a second appeal in the High Court, Patna. The stamp reporter took an objection to the valuation in the plaint and the court determined the correct valuation to be Rs. 9,980/-. The Appellant paid the additional court fees. In view of the revised valuation, the Appellant raised the contention that the appeal from the decree of a subordinate Judge would lie, not to the District Court, but directly to the High Court and, accordingly, the appeal to the High Court should be heard as a first appeal, ignoring the judgment of the District Court. This was obviously to take advantage of the wider scope of a first appeal than of a second appeal. In a first appeal, the Appellant would be entitled to full hearing as well as on questions of fact as on law. The High Court held that the appeal to the District Court was competent and that it's decision would be reversed only if the Appellant could establish prejudice on the merits. In other words, the contention in Kiran Singh's case was one of lack of pecuniary jurisdiction. As stated in the opening sentence of the judgment, the appeal raised question on the correction of Section 11 of the Suits Valuation Act. Ms. Iyer relied upon the second sentence in paragraph 6. It would be appropriate, however, to refer to paragraphs 6 and 7 of the judgment, which read as under:

6. The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.

7. Section 11 enacts that notwithstanding anything in Section 578 of the CPC an

objection that a court which had no jurisdiction over a suit or appeal had exercised it by reason of overvaluation or undervaluation, should not be entertained by an appellate court, except as provided in the section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the section has come in - and deservedly - for considerable criticism; but amidst much that is obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for overvaluation or undervaluation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on overvaluation or undervaluation, should be dealt with under that section and not otherwise. The reference to Section 578, now Section 99 CPC, in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the courts which passed them lacked jurisdiction as a result of overvaluation or undervaluation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it. With reference to objections relating to territorial jurisdiction, Section 21 of the CPC enacts that no objection to the place of suing should be allowed by an appellate or Revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 of the CPC and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained u/s 11 of the Suits Valuation Act.

[Emphasis supplied]

21. The learned Counsel submitted that there is a conflict between the two judgments of the Supreme Court. I do not agree. There appears to be a conflict on reading stray sentences in paragraph 6 of the judgment in Kiran Singh's case in isolation, removed from the rest of the judgment, especially paragraph 7. Read as a whole, there is no conflict.

The Supreme Court in paragraph 6 observed : "If the question...fell to be determined only on the application of general principles...." a judgment by a court which had no territorial or pecuniary jurisdiction would be a nullity. It is important to note that the Supreme Court thereafter proceeded to consider the provisions of the CPC and the Suits Valuation Act, which dealt with the territorial and pecuniary jurisdiction of courts. Noting Section 11 of the Suits Valuation Act and Section 21 of the Civil Procedure Code, the Supreme Court came to the conclusion that - "the policy of the legislature has been to treat objections to jurisdiction, both territorial and pecuniary, as technical and one open to consideration by an appellate court unless there has been a prejudice on the merits."

Thus, though in "general principles" and viewed in a vacuum, the position would be as contended by Ms. Iyer (paragraph 6), the Supreme Court on an analysis of the relevant laws came to the conclusion (paragraph 7 onwards) that the "policy of legislature" has been to treat these objections as technical. If that be the policy of the legislature, such defects as to jurisdiction, both territorial and pecuniary, can hardly render a proceeding and orders passed therein void. The Supreme Court, accordingly, in fact, did not uphold the objection as to pecuniary jurisdiction.

There is thus no conflict between the judgment of the Supreme Court in *Hira Lal Patni v. Kali Nath* and *Kiran Singh v. Chaman Paswan*. They are in fact in consonance with each other.

The observation of the Supreme Court regarding the policy of the legislature in treating objections as to territorial and pecuniary jurisdiction as being merely technical is not limited to suits. They are observations of a general nature and apply to all proceedings. On this aspect, viz. this policy of the legislature, there is nothing peculiar about suits that warrants a distinction between suits on the one hand and other proceedings on the other. I would, in any event, readily extend the observations to other proceedings, including applications under the Arbitration & Conciliation Act, 1996.

Whether the application is not maintainable?

22. Ms. Iyer submitted that this Court has no jurisdiction to entertain and try the present petition as the Petitioner has not obtained leave under Clause 12 of the Letters Patent. The submission is not well founded.

23. Even assuming that the first application made to the court under the provisions of the Arbitration & Conciliation Act, 1996, viz. Arbitration Petition No. 307 of 2006, required leave under Clause 12, subsequent applications do not require such leave. There is no question of leave being obtained in respect of subsequent applications. The Act mandates that subsequent applications must be filed in the court in which any application under Part-I was made earlier. Section 42 of the Act reads as under:

42. Jurisdiction.- Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other court.

24. In the present case, Arbitration Petition No. 307 of 2006 was filed in this Court. I have held above that the order passed therein is not a nullity. If the order is not a nullity, it is axiomatic that the proceedings in which the order was passed cannot be held to be a nullity. There is no order or judgment of any court declaring that petition as being not maintainable.

25. Arbitration Petition No. 307 of 2006 having been filed under Part-I of the said Act, this Court alone has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the said agreement and the same can be made in this Court and in no other court. In view of Section 42, subsequent applications under Part-I of the said Act do not require leave under Clause 12. Indeed, no other court in the country can entertain subsequent applications in respect of the said arbitration agreement.

26. The question of jurisdiction can be raised only in the first application under Part-I of the said Act with respect to an arbitration agreement. Once the court entertains such an application, the question of jurisdiction is decided in that application and in that application alone. The question of jurisdiction cannot be raised in subsequent applications in view of Section 42 of the said Act. The same would also be barred on principles of res judicata or constructive res judicata or issue estoppel or on principles analogous thereto, as the case may be. A view to the contrary would result in the working of the Act and arbitral proceedings being hampered enormously for reasons which are too obvious to enumerate.

27. This Court, therefore, has jurisdiction to entertain and try the present Arbitration Petition.

28. It is unnecessary to pass remarks or strictures against the conduct of Respondent Nos.1 and 3. I will let the facts speak for themselves.

29. In the circumstances, the petition is disposed of by the following order:

ORDER:

(i) The petition is made absolute in terms of prayer (a), except the words bracketed in red.

(ii) The Petitioner is at liberty to apply for payment of the said amount in the execution proceedings.

(iii) The Petition is also made absolute in terms of prayers (d), (f), (g) and (h). Till the Court Receiver takes possession of the above properties, there shall be an order in terms of prayer (e), except the words "dealing with and/or" bracketed in

red.

Prayers (f) and (g) to be complied with on or before 31st October, 2010.

(iv) Respondent Nos. 1 and 3 are restrained from disposing of, alienating, encumbering, parting with possession of or creating any third party rights in respect of the immovable properties of Respondent Nos. 1 and 3. This is in addition to prayer (d) pending the realisation of the amounts due under the award.

(v) Liberty to apply for attachment, Court Receiver and any other relief in respect of the properties disclosed by Respondents Nos. 1 and 3 pursuant to this order, in the execution proceedings.

(vi) Respondent Nos. 1 and 3 shall pay the costs of this application, fixed at Rs. 15,000/-, on or before 31st October, 2010.

(vii) This order is stayed upto and including 15th October, 2010. However, till 31st October, 2010, the Receiver shall take only formal possession of the property and make an inventory, but shall not take physical possession thereof.