

(2001) 10 KAR CK 0009

In the Karnataka High Court

Case No : Civil Revision Petition No's. 1501 and 1503 of 2001

Valliappa Software Technological Park (Private) Limited

APPELLANT

Vs

C. Sundaram and Others

RESPONDENT

Date of Decision : 18-10-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2002) ILR (Kar) 1476 : (2002) 1 KarLJ 358 : (2002) 1 KCCR 46 SN

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : C.V. Sudhindra, for the Appellant; Vijayashankar for Shivaram Associates and Krishnappa, for the Respondent

Final Decision : Allowed

Judgement

The Court

1. The 12th respondent in the Court below has preferred the above two revision petitions challenging the orders passed by the Court below holding that the said Court has got jurisdiction to decide the application filed u/s 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to in short "Act") and also the order rejecting the request of the 12th respondent to reject the plaint under Order 7, Rule 11-A of the CPC for want of cause of action.

2. The first respondent herein filed an application u/s 9 of the Act against the petitioner herein and other eleven parties for an interim order by way of injunction restraining the respondent 1 from collecting any amount by way of rent from respondents 2 to 11 in occupation of the portion of the property belonging to the firm at No. 71, Millers Road, Bangalore, till the award is passed by the Tribunal and for appointing the petitioner jointly with the respondent as joint receivers to manage the affairs of the firm till the order from the Tribunal and for interim orders. In the said application a prayer was made for interim orders. As the respondents had entered Caveat they were notified. The

respondents filed objections to the aforesaid applications. In addition to that, they have also filed an application I.A. No. 6 under Order 7, Rule 11(a) read with Section 151 of the CPC and the 12th respondent sought for rejection of the petition insofar as the petition as against the other respondents 2 to 5, 6, 9, 10 and 11 are concerned. The 12th respondent also filed an application I.A. No. 7 u/s 42 of the Act praying that the petition be returned to the petitioner for presentation before appropriate Court of jurisdiction to decide the case in accordance with law. The said applications were opposed by filing detailed statement of objections.

3. The learned Trial Judge, after hearing both the parties at length has rejected both these applications by separate orders. Aggrieved by the said orders, the above two CRPS are filed.

4. CRP No. 1503 of 2001 is preferred against the order passed on I.A. No. 7 filed u/s 42 of the Act, holding that the Court had jurisdiction to entertain the petition filed by the petitioners.

5. Sri C.V. Sudhindra, learned Counsel appearing for the petitioner submits, that under Arbitration Act the Court which has the jurisdiction to entertain the aforesaid application has been defined. It is only the Principal Civil Court of original jurisdiction in District which has the jurisdiction to entertain the application under the Act. In the instant case, the VI Additional City Civil Judge, Bangalore, who has passed the impugned order is not the Principal City Civil Court of original jurisdiction as defined under the Act, and therefore he contends the order passed by the Court below is one without jurisdiction and the Court ought to have returned the application for presentation before appropriate Court.

6. He further submits that the deeming provision contained u/s 3(3) of Bangalore City Civil Courts Act makes it very clear that the other City Civil Courts are deemed to be the Principal City Civil Court of original jurisdiction in the City of Bangalore, therefore, by adopting the said deeming provision, the legislature has made it very clear that the class of Courts which are otherwise inferior/not equal were made equal to the Court as provided u/s 2(e) of the Act and therefore the said Court is not a Principal City Civil Court of original jurisdiction. Therefore, the impugned order passed by the Additional Court stating that it has the jurisdiction to entertain the application u/s 9 of the Arbitration Act is erroneous and liable to be set aside.

7. Sri Vijayashankar, learned Senior Counsel for the respondent supporting the order of the Court below submitted. Bangalore City Civil Courts Act, 1979 provides for establishment of City Civil Courts at Bangalore. The City Civil Court is defined in Section 2(3), whereas Section 3(1) provides for establishment of City Civil Court for the City of Bangalore. Section 3(2) provides that such a City Civil Court shall consist of a Principal City Civil Judge and other City Civil Judges as the State Government may in consultation of the High Court determine, and Section 3(3) makes it clear that notwithstanding anything contained in any law

the City Civil Court shall be deemed to be the Principal City Civil Court of original jurisdiction. Therefore, he contends in the City of Bangalore there is no Principal City Civil Court, but all the City Civil Courts of Bangalore are deemed to be Principal City Civil Courts under the Act. In this view of the matter, the petition filed by the respondent u/s 9 of the Arbitration Act before the Additional Civil Court is perfectly maintainable and the Court below was right in entertaining the said application and rejecting the application filed by the petitioners.

8. In view of the rival contentions canvassed, the point that arise for my consideration in this revision is as under:

Which is the Principal Civil Court of original jurisdiction, among the City Civil Court which has the jurisdiction over the arbitral proceedings in the City of Bangalore?

The word "Court" has been defined under the Act as under:

" "Court means the Principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such Principal Civil Court, or any Court of Small Causes".

Section 42 of the Act of 1996 reads as follows:

"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".

9. A perusal of the aforesaid provisions makes it clear the Court which has jurisdiction over the arbitral proceedings where all applications arising out of arbitration agreement and the arbitral proceedings is the Principal City Civil Court of original jurisdiction in a District, having jurisdiction to decide the questions forming the subject-matter of arbitration if the same which had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such Principal Civil Court or any Court of Small Causes. It is only that Court which has the jurisdiction to entertain any application made under Part I of the Act. Therefore, it is clear that a Court of Small Causes or any Civil Court of grade inferior to the Principal City Civil Court has no jurisdiction to entertain arbitration matters.

10. The Bangalore City Civil Courts Act of 1979 (for short, "BCCC Act") provides for the establishment of the City Civil Court in the City of Bangalore. Section 2(2) of the BCCC Act defines the area of the City of Bangalore and Section 2(3) defines City Civil Court meaning the Court established under Sub-section (1) of

Section 3. Section 2(4) defines the Court of Small Causes and Section 2(6) defines Judge, means the Principal City Civil Judge and City Civil Judge of the City Civil Court. Section 3 which deals with establishment of City Civil Court reads as under:

"(1) As from the appointed date there shall be a City Civil Court for the City of Bangalore.

(2) The City Civil Court shall consist of a Principal City Civil Judge and such number of other City Civil Judges as the State Government may, in consultation with the High Court, determine.

(3) Notwithstanding anything contained in any law, the City Civil Court-

(a) shall be deemed to be the Principal Civil Court of original jurisdiction in the City of Bangalore;

(b) shall have jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature and arising within the City of Bangalore except suits or proceedings which are cognizable by the High Court and the Court of Small Causes".

The aforesaid provisions makes it clear the City Civil Court was established in the City of Bangalore from the appointed date. The said City Civil Court consists of Principal City Civil Judge and such number of other City Civil Judges as the State Government may, in consultation with the High Court determine. Section 3(3)(a) of the BCCC Act makes it clear notwithstanding anything contained in any law, the City Civil Court shall be deemed to be the Principal Civil Court of original jurisdiction in the City of Bangalore. In other words, the BCCC Act does not define the Principal Civil Court of original jurisdiction as it has defined a City Civil Court or a Court of small causes or the High Court. In the absence of defining the Principal City Civil Court under the Act, a deeming provision has been introduced to mean that the City Civil Court shall be deemed to be the Principal Civil Courts of original jurisdiction. In other words, all the City Civil Courts constituted under the BCCC Act are Principal City Civil Courts of original jurisdiction. However, the said City Civil Court consists of the Principal City Civil Judge and such number of other City Civil Judges as the State Government may in consultation with the High Court determine. Therefore, the Principal City Civil Judge is different from the Principal Civil Court of original jurisdiction. In view of the explicit language employed by the legislature in the BCCC Act the intention has been made very clear that all the City Civil Courts constituted under the Act are deemed to be Principal City Civil Courts of original jurisdiction. The definition of Judge makes it clear that there is no difference between Principal City Civil Judge and City Civil Judge of the City Civil Court.

11. However, only one Principal City Civil Judge is constituted and other Judges who preside over the City Civil Court would be Additional Judges. Section 5 of the Bangalore City Civil Courts Act of 1979 which deals with the power of Judges who

preside over the City Civil Court makes it amply clear subject to the other provisions of the BCCC Act, each of the Judges may exercise all or any of the powers conferred on the City Civil Court by this Act or any other law for the time being in force. It also makes it clear that the Principal City Civil Judge may, subject to the general or special orders of the High Court, from time to time, make such arrangement as he thinks fit for the distribution of the business of the City Civil Court among the Judges thereof. Then Section 6 of the BCCC Act provides for filling up of the vacancy of the office of the Principal City Civil Judge in the event of the incumbent is prevented from performing his duties for any of the reasons mentioned in Section 6(1) of the BCCC Act. It clearly provides that next senior most Judge shall without relinquishing his ordinary duties assume the charge of the office of the Principal City Civil Judge and shall continue in charge thereof until the same is assumed by the Principal City Civil Judge duly appointed thereto. Sub-section (2) of Section 6 makes it clear while in charge of the office of the Principal City Civil Judge under Sub-section (1) the senior most Judge shall, subject to the general or special orders of the High Court issued in this behalf, exercise all powers and perform all the duties of the Principal City Civil Judges.

12. A reading of these provisions make it clear, that Additional City Civil Judges are not subordinate or inferior to the Principal City Civil Judge. Senior most Judge among the City Civil Judges would be appointed as the Principal City Civil Judge. If for any reason the Principal City Civil Judge is unable to perform his duties and that office become vacant, the senior most City Civil Judge shall be in charge of the said office. However, the power exercised by the Principal City Civil Judge in the matter of arrangement and distribution of work is derived by the general or special orders of the High Court from time to time. By virtue of such orders passed by the High Court, the Principal City Civil Judge would make such arrangement as it thinks fit in the distribution of the business of the City Civil Court among the Judges thereof. These provisions make it abundantly clear insofar as judicial work is concerned, there is no distinction between the Principal City Civil Judge and the Additional City Civil Judge. All of them belonged to the same cadre and senior most among them is appointed as the Principal City Civil Judge and each of the Judges have the jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature and arising within the City of Bangalore except suits or proceedings which are cognizable by the High Court or the Court of Small Causes. Therefore, it is clear in the matter of judicial work, all the City Civil Courts have the same jurisdiction, notwithstanding the fact one of the Court is presided over by a Principal Civil Judge and other Courts are by Additional Civil Judges. Only by way of general or special orders of the High Court the Principal City Civil Judge may make such arrangement as it thinks fit for the distribution of the absence of the City Civil Court. By virtue of this power the Principal City Civil Judge has to distribute and allot the cases filed in the City Civil Court among other Judges. It is purely an administrative matter. By exercise of this power, the Principal City Civil Judge and his Court would not become a

Judge or Court superior to other City Civil Courts presided by Additional Judges, nor the other City Civil Courts or other Additional Judges would become a grade inferior to such Principal City Civil Judge or the Court presided over by him. As the Court which is presided by the Principal City Civil Judge and the Additional City Civil Judges are of the same rank and by virtue of the deeming provision contained in Section 3(2) of BCCC Act each of those Courts is a Principal Civil Court of original jurisdiction of the District and have the jurisdiction to entertain the arbitration matters arising under the Act of 1996.

13. It is in this background let me consider the contention raised by the petitioner.

14. The learned Counsel for the petitioner contends, Section 42 of the Act makes it abundantly clear it is only the Court defined under the Act which has the jurisdiction to entertain arbitral proceedings and the definition of the Court in the Act makes it clear, it shall be the Principal Civil Court of original jurisdiction. According to him when a deeming provision is made it means that the Court which has the jurisdiction by virtue of that deeming provision has no jurisdiction in the ordinary course and therefore if by virtue of Section 3(2) of the BCCC Act the City Civil Court is deemed to be the Principal City Civil Court of original jurisdiction, then it means it is not the Principal City Civil Court and therefore in the instant case the Additional City Civil Court which has entertained these arbitration applications is not the Principal City Civil Court of original jurisdiction as defined under the Act of 1996. As such the said Court had no jurisdiction to entertain the present proceedings. In support of his contention he wants to draw support from the definition in the BCCC Act of 1979 where Sub-section (2) of Section 3 categorically states that the City Civil Court shall consist of a Principal City Civil Judge and Section 5 specifically deals with the powers of the Principal City Civil Judge and Section 6 which deals with temporary vacancy of the office of the Principal City Civil Judge and from this he contends the Court where Principal City Civil Judge sits is quite distinct from the Court where Additional Judges of the City Civil Court sit and therefore the "Court" as defined under the Act is that Court where the Principal City Civil Judge sits. Admittedly, in this case the arbitral proceedings are not before the Principal City Civil Judge of the City Civil Court and therefore the Additional City Civil Judge had no jurisdiction to entertain the arbitration proceedings.

15. In support of his contention, he relies on a judgment of the Allahabad High Court in the case of I.T.I. Ltd., Naini, Allahabad Vs. District Judge, Allahabad and others, In the aforesaid case an application u/s 34 of the Act of 1996 was filed in the Court of District Judge for setting aside the said award. After registering the said application, the learned District Judge directed the petition to be registered and transferred to the Court of III Additional District Judge, Allahabad, for disposal. An objection was raised before the III Additional District Judge to the effect that he had no jurisdiction to entertain the application. The Additional District Judge over-ruled the objections holding that the expression "but does not

include any Civil Court of a grade inferior to such Principal Civil Court or any Court of Small Causes" used in Section 2(e) of the Act 1996, implies that in addition to the District Judge there may be other Principal Civil Courts of original jurisdiction in a district and Additional District Judge not being inferior in grade to the District Judge comes within the purview of the term "Court" as defined u/s 2(e) of the Act. Then an application was moved u/s 42 of the Act of 1996 contending that as the application was originally presented before the Court of District Judge, in view of language, that Court alone should deal with arbitral proceedings and transfer of the said application from the Court of District Judge to the Court of III Additional District Judge was not proper. The said objection was also over-ruled. It is against the said order, the matter was taken to the High Court. In the High Court Section 3(17) of the General Clauses Act of 1897 which had defined the term "District Judge" as "the Judge of Principal City Civil Court of original jurisdiction" was taken note of and also Section 8 of the Bengal, Agra and Assam City Civil Courts Act of 1887 under which the said District Court was constituted was considered. Though it was held the Additional District Judge may have the jurisdiction to entertain application u/s 34 of the Act of 1996, in view of Section 42 it makes it obligatory that the Court to which an application is made alone shall have the jurisdiction over the arbitral proceedings. It was held that when the application u/s 34 was originally made to the Court of the District Judge, the District Judge could not have transferred the said application to the III Additional District Judge. It is in that context it was held that the III Additional District Judge has no jurisdiction to proceed with the arbitral proceedings which was filed before the District Judge and transferred to him. It is pertinent to point out, in the aforesaid judgment also it has been held that the Additional District Judge has the jurisdiction to entertain an application u/s 34 of the Act of 1996.

16. In the instant case, the application u/s 9 of the Act of 1996 was filed in the City Civil Court of Bangalore. By virtue of the order passed by the High Court the Principal City Civil Judge has allotted all the arbitration proceedings filed in the City Civil Court of Bangalore to 6th Additional City Civil Judge who sits in the Court Hall No. 11. It is not a case of Principal City Civil Judge entertaining the application u/s 9 of the Act 1996 and then transferring the said application to the Court of 6th Additional City Civil Judge who sits in Court Hall No. 11. Therefore, the ratio of the aforesaid judgment has no application to the facts of this case as under the provisions of Bangalore City Civil Courts Act of 1979 all the City Civil Courts constituted under the Act are deemed to be the Principal City Civil Court of original jurisdiction of the district, and each of the Judges has the jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature and arising within the City of Bangalore.

17. The other submission of the learned Counsel for the petitioner was that the Court presided over by the Additional City Civil Judge is inferior to the Court presided over by the Principal City Civil Judge and in view of the definition of the word "Court" in the Act of 1996 it categorically states it does not include any Civil Court of grade inferior to such Principal Civil Court, the Courts presided over

by the Additional City Civil Court cannot by any stretch of imagination be construed as Principal City Civil Court of original jurisdiction of the District. This argument proceeds on the assumption that the Court presided over by the Principal City Civil Judge is superior to the Courts presided over by Additional City Civil Judge. In the entire scheme of BCCC Act there is no scope for such interpretation. On the contrary, it is specifically enacted that notwithstanding anything contained in any law, the City Civil Court shall be deemed to be the Principal City Civil Court of original jurisdiction in the City of Bangalore. No distinction has been made between the City Civil Court presided over by the Principal City Civil Judge and the City Civil Court presided over by Additional Judges. It is also clear from Clause (b) of Sub-section (3) of Section 3 where it has been categorically stated that all Civil Courts have jurisdiction to receive, try and dispose of all the suits and other proceedings of a civil nature and arising within the City of Bangalore, it is clear that every City Civil Court has jurisdiction to receive, try and dispose of all suits and other proceedings. The suits and proceedings originate from each City Civil Court and it does not commence by transfer from the Court presided over by the Principal City Civil Judge. At the most on allotment it comes before each City Civil Court. The said order of allotment is an administrative order and not a judicial order of transfer. In view of the language employed in Section 5 the Principal City Civil Judge has no jurisdiction to even distribute or allot the work. That power is conferred on him by general or special order of the High Court. Therefore, it is clear that the said power of distribution of work and allotment of cases is purely in the nature of administrative work and referable to the orders to be passed by the High Court from time to time and but for that power conferred on him there is no distinction in law between the Principal City Civil Judge and the Additional City Civil Judges. In fact Section 4 of the BCCC Act deals with subordination to and superintendence by the High Court, and states that the City Civil Court shall be deemed to be a Court subordinate to and subject to the control and superintendence of the High Court. The BCCC Act designedly fails to state that the Additional Judge of the City Civil Court are not subordinate or inferior to the Principal City Civil Judge. The scheme of Bangalore City Civil Court provides for only one tier of Courts. No Court is inferior or superior. The senior most City Civil Judge would be appointed as Principal City Civil Judge. All are equal. At the most he could be termed as first among equals. By no stretch of imagination it could be said either he is superior to other Additional Judges or other Additional Judges are in any way inferior to Principal City Civil Judge. Similarly the Court presided over by him is not superior to any other Court, which is presided by Additional Judges. Therefore, I do not find any substance in the contention urged on behalf of the petitioner in this regard.

18. Insofar as deeming provision contained in Section 3(3)(a) of the BCCC Act is concerned, the said provision makes it clear notwithstanding anything contained in law, the City Civil Court shall be deemed to be the Principal Civil Court of original jurisdiction in the City of Bangalore. No doubt, in statutes the expression

"deemed" is commonly used for the purpose of creating the statutory fiction i.e., for the purpose of extending the meaning of some term to a subject-matter which it does not properly designate. When a person is deemed to be something the only meaning possible is that whereas he is not in reality that something the Act or Parliament requires him to be treated as it were. The phrase "shall be deemed" is frequently used in statutes when the legislature wants to confer a status or an attribute to a person or thing which is not intrinsically possessed by that person or thing on whom this conferment is made. It is commonly used in statutes to extend the application of a provision of law to a class not otherwise amenable to it. Under these circumstances, when the aforesaid statute states the City Civil Court shall be deemed to be Principal Civil Court of original jurisdiction in the City of Bangalore thus it means, in reality the City Civil Court is not a Principal Civil Court of original jurisdiction as contended by the learned Counsel for the petitioner. If the BCCC Act had defined the Principal Civil Court of original jurisdiction and it conferred such power on any other Court, by virtue of a deeming provision, then it could be said those other Courts in reality are not the Principal Civil Court of original jurisdiction. However, the BCCC Act designedly has not defined the Principal City Civil Court of original jurisdiction. By deeming provision, the City Civil Court shall be deemed to be the Principal Civil Court of original jurisdiction. It only means all the City Civil Courts constituted under the Act are the Principal City Civil Courts of original jurisdiction. But for this deeming provision, there is no Principal City Civil Court of original jurisdiction at all under the BCCC Act. If that is so, the argument of the learned Counsel for the petitioner that the Court which has entertained arbitral proceedings in the instant case is not the Principal City Civil Court of original jurisdiction cannot be accepted. Therefore, I do not find any substance in the said submission also.

19. Though several judgments were cited at the Bar on both sides, as they are of no relevance in deciding the point in controversy, they have not been adverted to except the case which has a direct bearing.

20. CRP No. 1501 of 2001 is preferred challenging the order dated 26th March, 2001 rejecting the application filed by the petitioner under Order 7, Rule 11-A read with Section 151 of the CPC. The learned Judge has rejected the said applications on the ground that the application filed u/s 9 of the Act cannot be called a plaint in a suit. It is in the nature of an application made for interim measures for protecting the property in dispute pending arbitral proceedings. Therefore, the question of rejecting the same on the ground of non-disclosure of cause of action as contained in Order 7, Rule 11 of the CPC would not arise. Having regard to the Scheme of the Act, it cannot be said that the application filed for interim measures u/s 9 of the Act would be in the nature of plaint or a suit. Therefore, Order 7, Rule 11 of the CPC has no application to such proceedings. I do not find any infirmity in the order passed by the Court below in this regard.

21. Further, it is submitted that in dealing with the said application, the learned

Judge has also made certain observations incidentally which would affect the rights of the parties either during arbitral proceedings or even at the time of considering the application u/s 9 of the Act on its merits. All observations made by the learned Judge in the course of the order impugned has to be understood as observations made only for the purpose of disposing of the said application. The Court below shall decide the application filed u/s 9 on its merits without being in any way influenced by the said observations contained in the impugned order. Hence, I do not find any merit in this CRP also. For the reasons aforesaid, I pass the following order:

22. CRP Nos. 1503 and 1501 of 2001 are dismissed. Parties to bear their own costs.