

(2012) 10 CAL CK 0087
In the Calcutta High Court
Case No : C.O. No. 4378 of 2007

West Bengal State Electricity Distribution Co. Ltd.	APPELLANT
Vs	
West Dinajpur Engineers" Co-operative Labour Contract and Construction Society Ltd.	RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 17, 30
Civil Procedure Code, 1908 (CPC) — Section 14(2), 17, 20, 21

Citation : (2013) 1 CALLT 261

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Aninda Mitra, Mr. Bhaskar Mitra and Mr. Debasish Ray, for the Appellant; Basari Bhusan Sarkar, Ms. Iti Datta and Mr. Arup Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—Challenge is to the Order dated August 30, 2007 passed by the learned Civil Judge (Senior Division), Raigunj in Suit No. OC-22 of 2004 thereby decreeing the suit u/s 17 of the Arbitration Act, 1940. An award and then the passing of a decree on the basis of the award are the subject-matters of challenge in this application. The Arbitrator appointed under the provisions of the Arbitration Act, 1940 submitted his award and on the basis of the award, upon hearing both the sides, the learned Civil Judge (Senior Division), Raigunj passed a decree.

2. Previously, the learned Trial Judge allowed the application u/s 17 of the Arbitration Act, 1940 ex parte and against such decree, the petitioner filed a revision being C.O. No. 3770 of 2006. While disposing the said revision, this Hon'ble Court passed an order of remand directing the learned Trial Judge to consider the question of jurisdiction first and that if the Court considered that it had jurisdiction to entertain the said application u/s 17 of the said Act of 1940,

the learned Trial Judge should dispose of the said application u/s 17 of the Arbitration Act, 1940 within two months from the date of communication of the order.

3. Thereafter, upon hearing both the sides and on consideration of the materials on record, the learned Trial Judge allowed the application u/s 17 of the 1940 Act holding that the Court had jurisdiction, and accordingly, a decree was passed. Being aggrieved, this application has been preferred by the opposite party / petitioner herein.

4. Now, the question is whether the impugned order should be sustained.

5. Upon hearing the Learned Counsel for the parties and on going through the materials on record, I find that the plaintiff/opposite party herein did not adduce any evidence in support of the application u/s 17 of the 1940 Act for decision on jurisdiction. Upon analysis of the materials on record, the learned Trial Judge had observed that the cause of action arose within the jurisdiction of the learned Civil Judge (Senior Division), Raigunj and thereafter, he allowed the said application.

6. Mr. Aninda Mitra, learned Senior Advocate appearing for the petitioner has contended that the defendant / petitioner herein has the Head Office at Salt Lake City and the local Divisional Office is at Siliguri under the District of Darjeeling. The entire transaction originated from the Divisional Office at Siliguri and the Letter of Intent was issued from that office at Siliguri.

7. Mr. Mitra has also contended that from the paper Annexure - F at page no. 101, it would appear that one, Niranjan Barman had received the Letter of Intent on December 29, 1987 on behalf of the plaintiff from the office of the defendant at Siliguri. So, the cause of action arose at Siliguri which was out of the jurisdiction of the concerned Court.

8. Mr. Mitra has contended that the site for construction was at Dhumdangi (Haptiagach) which is situated outside the jurisdiction of the learned Civil Judge (Senior Division), Raigunj. As such, the said Court had no jurisdiction to allow the application u/s 17 of the Act. Thus, the learned Judge had no jurisdiction to entertain the application u/s 17 of the 1940 Act.

9. Mr. Mitra has also contended that the Arbitrator did not serve any notice upon the defendant / petitioner herein as to filing of the award and even, the learned Trial Judge did not issue any notice u/s 14(2) of the 1940 Act after receipt of the award from the arbitrator.

10. He has also contended that as per materials on record, the learned Arbitrator did not file the said award before the learned Civil Judge (Senior Division), Raigunj, but, before the District Judge, Uttar Dinajpur and so such filing did not mean that the award had been filed before the proper Court. He has contended that the learned Trial Judge issued notice upon the defendant on June 11, 2004. It is pertinent to mention that the plaint u/s 17 of the 1940 Act was filed before the learned Trial Judge on April 29, 2004. Thereafter, on June 11, 2004, the

learned Trial Judge passed order to the effect "issue of a request letter requesting the learned District Judge, Uttar Dinajpur for necessary direction upon the Sheristadar for production of such award before this Court on the next date". This order indicates that no direction was given for filing the award with the learned Civil Judge (Senior Division), Raigunj. Subsequently, on June 11, 2004, the learned Trial Judge passed an order to the effect that "the original award dated March 23, 2004 is received today. Let it be kept with the record".

11. Mr. Mitra has, thus, contended that as per order-sheet, the said award was to be filed before the learned Trial Judge but not done. The notice u/s 14(2) of the Arbitration Act had been issued upon the petitioner before the award was received. Thus, he has contended that the provisions of Section 14(2) of the 1940 Act had not been complied with. In view of the fact that as per scheme of Section 14(2) of the said Act, after receipt of the award, the notice u/s 14(2) of the said Act of 1940 was to be served upon the defendant / petitioner herein.

12. Under the circumstances, Mr. Mitra has contended that the learned Civil Judge (Senior Division), Raigunj had no jurisdiction to deal with the matter and that in fact, no notice was served upon the petitioner u/s 14(2) of the 1940 Act. So, the impugned order cannot be sustained.

13. Mr. Mitra has also contended that the petitioner should be given a chance to file a petition of objection to the award. If the Hon"ble Court finds that the learned Trial Judge has jurisdiction to deal with the matter, an opportunity should be given accordingly to file an objection. He has pointed out that as per observations of this Hon"ble Court in C.O. No. 3770 of 2006, it has been recorded that the stage has not "come to challenge the award itself and the award can be challenged at a stage as contemplated under the Arbitration Act, 1940". So, in view of the observations of this Hon"ble Court in the said Civil Revision, the learned Judge, after holding that the Court has jurisdiction to deal with the matter, should give an opportunity to file a written objection to the application u/s 17 of the Act of 1940.

14. Mr. Mitra has contended that according to the provisions of Section 119(b) of the Limitation Act, 1963, the period of limitation to file an application for setting aside an award u/s 30 of the Act of 1940 is 30 days and such period of limitation shall commence to run from the date of service of the notice of the filing of the award. The provision of Section 14(2) of the 1940 Act having not been followed in the instant case, the impugned order is liable to be set aside.

15. Thus, Mr. Mitra has contended that the learned Civil Judge (Senior Division), Raigunj was not the competent Court having jurisdiction over the matter and that the notice u/s 14(2) of the Act had not been issued by such Court after receipt of the award. Even, if the notice was, otherwise, valid, the impugned judgment and order would be without jurisdiction and void.

16. Mr. Mitra has also contended that the learned Trial Judge was wrong in decreeing the suit by holding that the plaintiff's place of business is at Raigunj

and as such, the application u/s 17 of the 1940 Act would be maintainable, at that Court. In order to decide the jurisdiction, the place of residence, office or business of the defendant or the cause of action is the factor and not the place of residence of the plaintiff. The defendant's principal office being situated at Bidyut Bhavan, Salt Lake and the other Divisional Office of the defendant having been situated at Siliguri, District Darjeeling and the site of construction being situated outside the jurisdiction of the learned Civil Judge (Senior Division), Raigunj, the learned Trial Judge had no jurisdiction at all to deal with the matter. So, the impugned order should be set aside.

17. On the other hand, Mr. B.B. Sarkar, learned Advocate appearing on behalf of the opposite party has supported the impugned order and submitted that the learned Trial Judge has rightly held that the Letter of Intent had been duly received at Raigunj by the plaintiff. The award also had been filed before the learned District Judge, Raigunj and as such, the cause of action arose within the Court of the learned Trial Judge.

18. He has also contended that notice u/s 14(2) of the 1940 Act had been duly served upon the defendant.

19. Mr. Sarkar has contended that the defendant issued letters by Registered Post with A/D dated January 2, 1992 to the plaintiff vide Annexure-B to the opposition appearing at page no. 65 onwards and those letters were sent to the plaintiff at Raigunj and as such, the learned Trial Judge has jurisdiction to deal with the matter.

20. Mr. Sarkar has also pointed out that the original defendant appearing in the suit has admitted the fact of receiving the notice and the jurisdiction of the Court at Raigunj. The subsequent additional written statement filed by the petitioner later on being contrary to the earlier written statement cannot be considered. Thus, Mr. Sarkar has supported the impugned order.

21. Upon due consideration of the submissions of the learned Advocates of both the sides, it is pertinent to mention that when the petitioner was substituted, it was given an opportunity to file the additional written statement and accordingly, the additional written statement was filed by the petitioner and such additional written statement was accepted by the learned Trial Judge.

22. Objections to jurisdiction are to be considered at the earliest opportunity according to Section 21 of the C.P.C. In order to appreciate the jurisdiction, the provisions of Section 20 of the C.P.C. are very much relevant and as such, the said Section 20 is quoted below:-

20. Other suits to be instituted where defendants reside or cause of action arises.- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or

carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

[Explanation].- A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

23. Admittedly, the Head Office of the defendant is situated at Salt Lake City, Kolkata and the Divisional Office of the defendant is situated at Siliguri, District Darjeeling. Admittedly, the Letter of Intent was issued from the Divisional Office of the defendant at Siliguri. One, Niranjana Barman had received the Letter of Intent by signing on the issuing Register of Letters of the defendant maintained at Siliguri (vide Annexure-F at page no. 101) on December 29, 1987. Admittedly, the site for construction is situated outside the jurisdiction of the Court below. Therefore, the Letter of Intent is the most vital document to decide the jurisdiction of the Court.

24. The contention of the plaintiff that such Letter of Intent was received at Raiganj has been vehemently objected to by the defendant. So, there is a controversy where the Letter of Intent was received by the plaintiff, whether at Siliguri or at Raiganj. The learned Trial Judge on consideration of the affidavits and annexures has come to a conclusion that such Letter of Intent had been received by the plaintiff at Raiganj, but, in support of such conclusion, I do not find any materials. So, the conclusion arrived at by the Court below has, therefore, no basis at all. Niranjana Barman did not file any affidavit in support of the contention of the plaintiff that he had received the same at Raiganj.

25. Mr. Sarkar has referred to the decisions reported in M/s. National Hydroelectric Power Corporation Ltd. Vs. M/s. Sova Enterprises, Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas and Co. and Others, State of Orissa and Another Vs. Prathibha Prakash Bhavan, , A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, and thus, he has submitted that the contract entered into between the parties at place where corporation had its subordinate office - No stipulation of conferring exclusive jurisdiction to a particular Court - Cause of action arising in relation to transaction entered into at subordinate office - Civil Court at place where subordinate office was situated not debarred from entertaining suit.

26. With due respect to Mr. Sarkar, I am of the view that the defendant may have a subordinate office at Raiganj, but, there is no material that any cause of

action had arisen from that subordinate office in respect of the matter under consideration. The entire matter of construction and subsequent correspondences had been dealt with or made by the Divisional Office of the defendant at Siliguri. Therefore, prima facie, no cause of action arose at the subordinate office of the defendant at Raigunj. That subordinate office may be for other purpose of the defendant, such as, for distribution of energy, issuance of bills, collection of charges from the consumers, etc.

27. Since, the question of jurisdiction has been vehemently objected to by the defendant, I am of the view the appropriate recourse by the Court below would have been to allow the parties to adduce evidence in support of their respective contentions for decision on the question of jurisdiction and then upon analysis of the evidence, the Court below should have come to the conclusion as to the jurisdiction of the Court. Since such a recourse was not adopted by the learned Trial Judge, I am of the view that the matter should be remanded back to the learned Trial Judge for decision whether the Court has jurisdiction to deal with the matter. In such a situation, I am of the view that it will not be wise to discuss the decisions referred to by Mr. Sarkar in support of his contention. The entire matter should be left to the learned Trial Judge to decide afresh.

28. The contention of Mr. Sarkar is also that initially, when the defendant filed the written statement, no question of jurisdiction was raised and as such, when the present defendant/opposite party had been substituted, subsequently, it cannot raise a plea contrary to the stand taken by the earlier defendant.

29. He has also submitted that the position of the present defendant is that it had stepped into the shoes of its predecessor. So, it cannot take a contrary stand.

30. In support of his contention, Mr. Sarkar has referred to the decision of Surendra Narain Sarbadhikari & ors. v. Bholanath Roy Chaudhuri reported in 47 CWN 899 and thus, he has submitted that the question of jurisdiction as raised by the present defendant in its additional written statement, cannot be accepted.

31. With due respect to Mr. Sarkar, I am of the view that the said decision will not be applicable in the instant case because that was related to a matter of adoption and the question was when the original defendant claimed to be governed by the Mitakshara School of Hindu Law in the written statement and the substituted party claimed to be governed under the Dayabhaga School of Hindu Law in the written statement filed by him. In that context, it was held that the substituted party could plead against the pleadings of the original party through whom he was substituted. In the instant case, when the present defendant had been formed by the amendment of the law of the land, it had been added as party and it is not, in fact, a case of substitution. Accordingly, the present defendant was allowed to file the additional written statement. So, it can raise appropriate defence stand according to the situation.

32. Moreover, in the earlier written statement filed by the W.B.S.E.B. it did not state anywhere that the Letter of Intent was not received at Siliguri, but received

at Raigunj or elsewhere. So, it cannot be stated that the present defendant had deviated from the stand taken by the W.B.S.E.B. Therefore, there is no question of contradiction in the written statements filed by the W.B.S.E.B. and the W.B.S.E.D.C.L. Therefore, I am of the view that the present defendant can well maintain its defence stand and the question of jurisdiction can well be raised by the present defendant.

33. When the matter was initially disposed of ex parte by the Court below, a revision was preferred and this Hon'ble Court in C.O. No. 3770 of 2006 had observed that the learned Court below should consider the question of jurisdiction first and then upon consideration on this situation, if the Court thought that it had jurisdiction to entertain the said application u/s 17 of the 1940 Act, he should proceed with the matter in accordance with law and dispose of the same within two months from the date of communication of the order. Since the learned Trial Judge has simply jumped to the conclusion that the cause of action arose at Raigunj and as such, the Court has jurisdiction to entertain the matter, the findings of the lower Court, in my view, cannot be supported.

34. Mr. Sarkar has referred to the decisions reported in Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, , Oil and Natural Gas Corporation Ltd. Vs. Nippon Steel Corporation Ltd., 7 Engineering Construction Corporation, Ltd. Vs. Madras Port Trust, Madras and Another, Secretary to Government of Karnataka and another Vs. V. Harishbabu, , Chhotelal Vs. Jamnadas, Madan Lal Vs. Sunderlal and Another, Kumbha Mawji Vs. Union of India (UOI), & Ramtaran Das Vs. Adhar Chandra Das and Others, on the point of notice u/s 14(2) of the 1940 Act.

35. Mr. Mitra has also contended much on this point. He has contended that the service of notice is essential and the defendant/opposite party is entitled to file an objection within 30 days from the date of service of notice. So, the service of notice u/s 14(2) is a vital issue to be determined in the matter.

36. Since I am determined to remand the matter, I think it will not be prudent to discuss such issue. If the Court below determines that it has jurisdiction to proceed with the matter, then it would consider whether the notice u/s 14(2) of the Act has been served upon the defendant.

37. In that view of the matter, I am of the opinion that the impugned judgment and order cannot be supported. The learned Court below has failed to proceed with the matter as per direction given in C.O. No. 3770 of 2006. So, I have no other alternative but to remand the matter for decision afresh on the question of jurisdiction. The impugned order, therefore, cannot be sustained.

38. The application is allowed.

39. The impugned judgment and order is hereby set aside. The learned Court below is directed to frame an issue on the question of jurisdiction of the Court to deal with the matter first and he shall dispose of the said issue within a period of

two months from the date of communication of this order. If it finds that it has jurisdiction to proceed with the matter, it shall dispose of the application u/s 17 of the 1940 Act in accordance with law.

40. It is also recorded that I have not decided anything as to service of notice u/s 14(2) of the 1940 Act upon the petitioner. This matter is also left with the Court below having jurisdiction for decision in accordance with law.

41. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.