

N.K.C. Projects Pvt. Ltd. and anr. Vs. Utility Energytech and Engineers Pvt. Ltd. and anr.

N.K.C. Projects Pvt. Ltd. and anr. Vs. Utility Energytech and Engineers Pvt. Ltd. and anr.

SooperKanoon Citation : sooperkanoon.com/462691

Court : Allahabad

Decided On : Mar-24-2009

Reported in : 2009(85)AWC1880

Judge : S.K. Singh and ;Pankaj Mithal, JJ.

Appellant : N.K.C. Projects Pvt. Ltd. and anr.

Respondent : Utility Energytech and Engineers Pvt. Ltd. and anr.

Disposition : Appeal dismissed

Judgement :

S.K. Singh and Pankaj Mithal, JJ.

1. The short point involved in this first appeal from order is whether in view of the arbitration Clause 26.4 contained in the agreement providing Mumbai to be the place of arbitration and that arbitration shall be subject to jurisdiction of the Courts at Mumbai only, the jurisdiction of the Courts at Jhansi to entertain an application for interim measure under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter for short 'Act') stand excluded.

2. The appellant moved an application under Section 9 of the Act before the District Judge, Jhansi seeking interim protection that the respondents be restrained from encashing the bank guarantees furnished by the appellant as securities for the purposes of civil contract awarded to be carried out at Jhansi. The said application which was registered as Misc. Case No. 31 of 2009, after notice to the other side, was disposed of by the order impugned with the direction that the Court at Jhansi has no jurisdiction in view of the arbitration Clause 26.4 of the contract agreement and therefore, the appellant may prefer the application before the Principal Court at Mumbai.

3. Heard, Sri A. K. Gupta and Sri O.P. Lohia, learned Counsel in support of this appeal and perused the record.

4. The submission of the learned Counsel for the appellant is that irrespective of the jurisdiction conferred upon the Mumbai Courts by the agreement, the application for interim protection under Section 9 of the Act is maintainable even at Jhansi where at least part of the cause of action had arisen.

5. To test the above submission let us first examine the arbitration Clause 26.4 of the agreement, the relevant part of which is reproduced below:

The venue of arbitration shall be Mumbai and the language of arbitration shall be English. The arbitration shall subject to jurisdiction of the Courts at Mumbai only.

6. This clause not only provides that Mumbai shall be the place of arbitration but also that the Courts at Mumbai alone shall have jurisdiction in respect to arbitration between the parties. Admittedly vide Clause 26.4 of the agreement all disputes concerning arbitration between the parties have been subjected to the exclusive jurisdiction of the Courts at Mumbai only. It is a recognised principle of law that whenever there is a specific clause in the agreement conferring jurisdiction on particular Court to decide the matter then it automatically ousts the jurisdiction of the other Court. Therefore, in the instant case the jurisdiction of any other Court other than of courts at Mumbai in respect to arbitration stand excluded and arbitration or any proceedings in relation thereto are supposed to be maintained in the Courts at Mumbai only.

7. Now Section 9 of the Act envisages movement of an application for interim measure/protection before a Court not only during the arbitral proceedings or after the declaration of the arbitral award but also before the initiation of such arbitral proceedings which are in contemplation.

8. Learned Counsel for the appellant accepts that during the course of the arbitral proceedings and subsequent to the making of the award an application for the interim protection under Section 9 of the Act can be maintained in the Courts at Mumbai only. He also accepts that even an application under Section 11(6) of the Act, if necessary, for the appointment of an arbitrator would lie in the Courts at Mumbai, i.e., before Bombay High Court. The question therefore is whether an application under Section 9 of the Act for interim protection in contemplation of arbitration proceedings can be maintained before any other Court other than the Courts of Mumbai.

9. The answer to the above question is contained in Section 42 of the Act which provides that notwithstanding anything contained elsewhere in law where an application 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 subject to that Court only and in no other Court. This clearly means that the intention of the Legislature is to confer jurisdiction with regard to the subject-matter of arbitration in one particular Court and where two or more Courts may be having jurisdiction, the Court wherein any application is made first shall alone have jurisdiction over the matter. The purpose of enacting Section 42 of the Act is obviously to avoid institution of simultaneous proceedings at two places or in two different courts and to have all matters arising out of a particular arbitration agreement decided by one Court. Thus, eventually when during the course of arbitral proceedings and after making the arbitral award it is accepted that the Courts at Mumbai alone have jurisdiction, it does not appear to reason to confer the same very jurisdiction to any other Court particularly to Courts at Jhansi to deal with the same subject-matter before the commencement of the arbitral proceedings. Therefore, we are of the opinion that in view of the arbitration Clause 26.4 of the agreement, the jurisdiction of Courts at Jhansi stand impliedly excluded and it is only the Courts at Mumbai that are empowered to take

cognizance of the subject-matter not only during arbitral proceedings or after the making of arbitral award but even before the initiation of arbitral proceedings so that the uniformity in the forum of adjudication is maintained.

10. The view which we have taken above also finds support from the decision of the Apex Court in *Jindal Vijaynagar Steel (J.S.W. Steel Ltd.) v. Jindal Praxair Oxygen Co. Ltd.* : (2006)11SCC521, wherein it has been observed that the rule of forum convenience is expressly excluded by Section 42 of the Act which mandates that all future actions be filed only in the Court where the first application with regard to an arbitration was filed. The necessary corollary of the same would be that when the Court in which future actions in the matter is to be taken is known with certainty before hand then in that case the initial action ought to be confined to the said pre-determined Court only. Therefore, where the parties themselves have chosen a particular place to be the place for arbitration and proceedings connected thereto (refer Clause 26.4 of the agreement) and the agreement specifically provides for a dispute resolution meeting to be held at a particular place and for the proceedings thereafter to be within the jurisdiction of the Courts of that particular place, we are of the view that by virtue of the mandate of Section 42 of the Act all proceedings in connection with the arbitration shall lie before that particular Court only.

11. Therefore, even if the part of cause of action, covered by arbitration clause, arises at Jhansi as per the definition of the Court contained in Section 2(e) of the Act, but a conjoint and harmonious reading of the provisions of Section 2(e), Section 9 and Section 42 of the Act to make the scheme of the Act workable lead us to hold that the Court having jurisdiction to entertain applications under Section 9 of the Act during the arbitral proceedings or after the making of the award alone would have exclusive jurisdiction over such an application even if it is moved before the start of the arbitration proceedings.

12. In view of the aforesaid facts and circumstances and the reasons given we are of the considered view that the jurisdiction of the Court at Jhansi to entertain an application under Section 9 of the Act in relation to a subject-matter which is governed by the arbitration clause stand completely ousted by virtue of Clause

26.4 of the agreement and the Courts at Mumbai alone have the exclusive jurisdiction. Therefore, the courts below has committed no error in passing the impugned order and in relegating the appellant to the jurisdiction of the Mumbai Court.

Accordingly, the appeal lacks merit and is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com