

i.T.i. Ltd., Naini, Allahabad Vs. District Judge, Allahabad and Others

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Court : Allahabad

Decided On : May-15-1998

Reported in : 1998(3)AWC2244

Judge : S.R. Singh, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 2, 9, 27(2), 32(2), 33(4), 34 and 42; [Bengal, Agra and Assam Civil Courts Act, 1887](#) - Sections 8(2)and 24(1); [General Clauses Act, 1897](#) - Sections 3(17); [Arbitration Act, 1940](#) - Sections 2, 5, 11, 14(2), 20, 31, 31(4); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 92

Appeal No. : C.M.W.P. No. 39970 of 1997

Appellant : i.T.i. Ltd., Naini, Allahabad

Respondent : District Judge, Allahabad and Others

Advocate for Def. : S.K. Singh, Adv. and ;S.C.

Advocate for Pet/Ap. : C.P. Gupta, Adv.

Judgement :

S.R. Singh, J.

1. Present petition has its advent to this Court begging answer to the question whether the Additional District Judge is a Court within the meaning of Section 2(e)

of the [Arbitration and Conciliation Act, 1996](#) and if not, can the District Judge transfer the application moved for setting aside the Arbitration Award under Section 34 of the said Act.

2. The minimal facts as bear on the controversy involved in this petition, are that the petitioner is a Government of India Undertaking and company engaged in the business of manufacture, sale and supply of telephones and transmission equipments, apparatus and other allied components and M/s. K.V. Electronics (respondent No. 3) was engaged in the venture of supplying various components and assemblies of telephones and transmission equipments to the petitioner as per indents [purchase and supply orders) issued from time to time by the petitioner. It transpires that a dispute between the petitioner and the third respondent arose in the year 1995 regarding over-payment of about Rs. 12.81 lacs by the petitioner to the third respondent as a consequence of few purchase orders of the years 1991, 1992 and 1993. The dispute was referred to the arbitration for adjudication in pursuance of the Arbitration Clause encapsulated in the covenant on the respective purchase orders and Sri M.K. Sakeeja, Addl. General Manager (C.N.S.) of the petitioner's company was appointed as sole Arbitrator vide order dated 9.2.1996. The Arbitrator gave award on 10.3.1997 to the effect that M/s. K.V. Electronics (the respondent No. 3) will pay Rs. 12,31,500.95 p. to the petitioner. Dissatisfied by the award dated 10.3.1997, the 3rd respondent filed an application dated 19.5.1997, under Section 34 read with Section 16(VI) of the [Arbitration and Conciliation Act, 1996](#) (In short the 'Act') in the Court of District Judge for setting aside the said award. The Munsarim scribed a report on the said application that it should have been filed before the civil Judge. The District Judge, however, differed with the report and overruled the objection of the Munsarim and held vide order dated 25.5.1997, that the application was rightly presented in the Court of District Judge and directed the application/petition to be registered and transferred to the Court of Illrd Addl. District Judge, Allahabad for disposal.

3. On 28.8.1997, an objection having the complexion of preliminary objection, was raised before the Illrd Addl. District Judge, Allahabad that the said Court had no jurisdiction to entertain the application. The Addl. District Judge by his order dated

28.8.1997 overruled the objection 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, implies that in addition to the District Judge, there may be other principal civil courts of original jurisdiction in a district and Addl. District Judge not being inferior in grade to the District Judge, comes within the purview of the term 'Court' as defined in Section 2(e) of the Act. The petitioner then moved an application under Section 42 dated 16.9.1997 praying therein that the case be remitted to the District Judge for disposal on the hypothesis that since the application for setting aside the award was moved under Part I of the Act in the Court of District Judge and hence that Court alone shall have jurisdiction over the arbitral proceedings and 'the arbitral proceedings shall be made in that Court and in no other Court' as envisaged by Section 42 of the Act. In substance, the plea raised was that since M/s. K.V. Electronics has moved the application under Section 34 of the Act for setting aside the award in question in the Court of District Judge, which is the principal civil court of original jurisdiction, all subsequent arbitral proceedings would be held in that Court. The learned Illrd Addl. District Judge. Allahabad clung to and expressed itself in concurring with the view in his order dated 28.8.1997 and rejected the application vide order dated 8.10.1997, which is the subject-matter of impugment in this petition.

4. I have heard Sri C.P. Gupta, learned counsel appearing for the petitioner and Sri S.K. Singh for Opposite Party No. 3. The question that surfaces for consideration is whether the Court of Addl. District Judge is a 'Court' within the meaning of Section 2(e) of the [Arbitration and Conciliation Act, 1996](#)? If not, can the District Judge transfer to the Court of an Addl. District Judge, an application moved for setting aside the Arbitration award under Section 34 of the said Act

5. Unless the context otherwise requires, the term 'Court', as denned in Section 2(e) of the Act, 'means the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the question forming the subject-matter of 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'. The

term 'Court' as elucidated in Section 2(c) of the [Arbitration Act, 1940](#), meant 'a civil court' having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit'. A Small Causes Court was expressly excluded, except for the purpose of Section 21, from the purview of the term 'Court' as defined in the said Act. By using the words 'means', 'Includes' and 'does not include' in Section 2(e) of the new Arbitration Act, the Parliament has exhaustively explained the meaning of the term 'Court' in that the word 'means' is a term of restriction, while the word 'includes' is a term of enlargement and when both the words 'means' and 'includes' are used together to define a thing, the intendment of the Legislature is to supply restricted meaning to the term (See *Lachcho v. Daman Mal*. AIR 1986 All 303 ; *M/s. Mahalakshmi Oil Mills v. State of A. P.*, AIR 1989 SC 335 : *P. Kasilingam v. P. S. G. College of Technology*, AIR 1995 SC 1395. 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, further restricts the meaning of the term 'Court' defined therein. The statement of objects and reasons as given in the Arbitration and Conciliation Bill, 1955 would point to the fact that one of the main objects, sought to be achieved by the Bill was 'to minimise the supervisory role of Courts in arbitral process'. This object might be overreached by giving an amplified meaning to the term 'Court'. Section 3(17) of the [General Clauses Act, 1897](#) defines the term 'District Judge' as 'the Judge of a principal civil court of original jurisdiction'. The High Court in the exercise of its ordinary original jurisdiction is not included in the term 'District Judge' as defined in Section 3(17) of the [General Clauses Act, 1897](#), albeit the term 'Court' used in the Act includes the High Court in exercise of its original jurisdiction.

6. It admits of no manner of doubt and rather, it is abundantly clear from Section 3(17) of the [General Clauses Act, 1897](#), as well that the 'Court of District Judge' and the expression 'the principal civil court of original jurisdiction in a district' are synonym. The Court of Civil Judge may also be a civil court of original jurisdiction but it would not be 'the principal civil court of original jurisdiction in a district'. The Court of an Addl. District Judge is not doubt, a class of civil court as visualised by Section 3 of the Bengal, Agra and Assam Civil Court Act, 1887, and it exercises the same power as the District Judge in relation to the functions assigned to it by

the District Judge under Section 8(2) of the aforesaid Act but that by itself, would not invest it with the trapping of the principal civil court of original jurisdiction in a district. Section 8 of the aforesaid Act reads as below :

'8. Additional Judges (1) when the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal. State Government may, having consulted High Court, appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them and in the discharge of those functions they shall exercise the same power as the District Judge.'

The word 'principal' means ; the first in importance : chief, main ; and the word 'grade' used in Section 2(e) of the Act is suggestive of status and importance and it does not refer to a, class or particular class inasmuch as the grade of a Court depends on the pecuniary or other limitations of the jurisdiction of the particular Court.

7. The expression 'in the discharge of those functions they shall exercise the same power as a District Judge' used in sub-section (2) of Section 8 of the [Bengal, Agra and Assam Civil Courts Act, 1887](#), is not potent enough to confer in the Court of an Additional District Judge the status of 'the principal civil court of original jurisdiction in a district'. However, regard being had to the provisions of Section 8(2) of the [Bengal, Agra and Assam Civil Courts Act, 1887](#), an Additional District Judge may have the jurisdiction to entertain an application under Section 34 of the [Arbitration and Conciliation Act, 1996](#), which is transferred to his Court by the District Judge under Section 8(2) of the [Bengal, Agra and Assam Civil Courts Act, 1887](#), provided that the transfer of the application by the District Judge to the Court of an Additional District Judge is not inhibited by the former Act. A conspectus of the [Arbitration and Conciliation Act, 1996](#), would indicate that a matter relating to arbitrations and proceedings relating thereto may come up before the Court on applications for orders of interim measure as visualised by Section 9 of the Act ; for assistance in taking evidence as provided in Section 27(2) and for setting aside an arbitral award as provided by Section 34 of the Act. Applications for these

purposes are required to be made to a 'Court' which means the principal civil court of original jurisdiction in a district, or original civil jurisdiction of the High Court, having jurisdiction to decide the question forming the subject-matter of the arbitration if the same had been the subject-matter of a suit. The question that surfaces for consideration is whether the [Arbitration and Conciliation Act, 1996](#), contains any provision which is incongruous with those contained in Section 8(2) of the [Bengal, Agra and Assam Civil Courts Act, 1887](#). Section 42 of the [Arbitration and Conciliation Act, 1996](#), which prescribes the jurisdiction of a Court to entertain an application 'with respect to an arbitration agreement' and all subsequent applications arising out of that agreement and the arbitral proceedings, is couched in the following language.

'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.'

A conjoint reading of Sections 2(e) and 42 of the Act, leaves no manner of doubt that the Parliament intended to make only one Court--the principal civil court of original jurisdiction or, as the case may be, the High Court in exercise of its ordinary original jurisdiction, whichever Court is approached earlier, as the venue for all matters connected with an arbitration agreement ; and award ; and all arbitral proceedings. Sections 2(e) and 42 paraphrased in simple language, would mean that any application 'with respect to an arbitration agreement' will have to be filed in the principal civil court of original jurisdiction in a district, or, as the case may be, in the original civil jurisdiction of the High Court, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit and that Court alone to which the application is filed shall have the jurisdiction over the entire arbitral proceedings to the exclusion of any other Court, having jurisdiction to decide the questions forming the subject-matter of arbitration.

8. The phrase 'with respect to an arbitration agreement' used in Section 42 of the Act is of wide connotation and its embraces within its sweep an application for setting aside an arbitral award on grounds specified in Section 34 of the Act. It may usefully be stated here that arbitral proceedings terminate by the final award or by an order of the Arbitral Tribunal under subsection (2) of Section 32 of the Act. But termination of the arbitral proceedings is subject to Section 33 and subsection (4) of Section 34 as visualised by sub-section (3) of Section 32. Section 42 of the Act would, therefore, be necessarily attracted in relation to an application under Section 34.

9. Section 31(4) of the [Arbitration Act, 1940](#), was couched in a language similar to that of Section 42 of the New Arbitration Act. Section 31 in its entirety is quoted below.

'31. Jurisdiction.--(1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been or may be, filed and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.'

10. Scope and ambit of Section 31 of the [Arbitration Act, 1940](#), was considered by the Supreme Court in *Kumbha Mawji v. Dominion of India*, AIR 1953 SC 313. In that certain agreement was entered into between the parties at Calcutta in respect of a work which was to be carried in Assam. Differences having arisen between the parties, the dispute was referred to two Arbitrators as per arbitration clause in the agreement and the arbitrators having differed, the matter was referred to an umpire as per stipulation in the agreement. The umpire gave two awards in favour of Kumbha Mawji which were allegedly handed over to Kumbha Mawji for filing in the Court. The Dominion of India moved on 10.8.1949, an application under Section 14(2) of the said Act in the Court of the Subordinate Judge of Gauhati in Assam praying that the umpire might be directed to file both the awards in Court so that the applicant might get an opportunity for filing an objection. On the application, notice was issued to the umpire to file the award in the said Court before 24.8.1949. The umpire sent a letter dated 18.8.1949 to the Subordinate Judge along with copies of the awards in that the original awards were stated to have made over to the parties on 20.7.1949. The Subordinate Judge at Gauhati passed an order on 2.4.8.1949 directing the applicant to file his copy of the award on 3.4.1949 on which date the awards handed over to the Dominion of India was filed in the Court and the matter was being further proceeded with in the court of Subordinate Judge, Gauhati. In the meanwhile on 17.8.1949, i.e., a week after the first application was moved in the Court of Subordinate Judge, Gauhati, under Section 14(2) of the [Arbitration Act, 1940](#), both the awards were filed in the Calcutta High Court on its original side. Notices were thereupon issued to both the parties. An objection to the jurisdiction of the Calcutta High Court was raised on behalf of the Dominion of India that since the application under Section 14(2) of the said Act was first filed in the Court of the Subordinate Judge, Gauhati, that Court alone to the exclusion of all other Courts would have the jurisdiction 'in any reference' within the meaning of Section 31(4). The 'objection was overruled by the learned Commercial Judge of the Calcutta High Court who passed the judgments on the two awards. On appeal, the Division Bench of the Calcutta High Court reversed judgments of the learned Commercial Judge of that Court holding that there was no proper application under Section 14(2) of the [Arbitration Act, 1940](#), and consequently the Calcutta High Court had no justification to deal with

the matter. Construing Section 31(4) of the Arbitration Act, 1940, the Supreme Court in *Kumbha Mawji v. Union of India*, AIR 1953 SC 313, expounded the following propositions with regard to the jurisdiction of the Court :

'Thus it will be seen on a comprehensive view of Section 31 that while the first sub-section determines the jurisdiction of the Court in which an award can be filed, sub-sections (2), (3) and (4) are intended to make that jurisdiction effective in three different ways. (1) by vesting in one Court the authority to deal with all questions regarding the validity, effect or existence of an award or an arbitration agreement, (2) by casting on the persons concerned the obligation to file all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings in one Court, and (3) by vesting exclusive jurisdiction in the Court in which the first application relating to the matter is filed. The context, therefore, of sub-section (4) would seem to indicate that the subsection was not meant to be confined to applications made during the pendency of an arbitration. The necessity for clothing a single Court with effective and exclusive jurisdiction, and to bring about by the combined operation of these three provisions the avoidance or conflict and scramble is equally essential whether the question arises during the pendency of the arbitration or after the arbitration is completed or before the arbitration is commenced. There is no conceivable reason why the Legislature should have intended to confine the operation of sub-section (4) only to applications made during the pendency of an arbitration, if as is contended, the phrase 'in any reference' is to be taken as meaning 'in the course of reference.'

The observation made by the Supreme Court further is that--

'In the context of Section 31, sub-section (4), it is reasonable to think that the phrase 'in any reference' means 'in the matter of a reference.' The word 'reference' having been defined in the Act as 'reference to arbitration', the phrase 'In a reference' would mean 'in the matter of a reference to arbitration'. The phrase 'in a reference' is, therefore, comprehensive enough to cover also an application first made after the arbitration is completed and a final award is made, and in our opinion that is the correct construction thereof in the context. We, are therefore, of the opinion that Section 31(4) would vest exclusive jurisdiction in the Court in

which an application for the filing of an award has been first made under Section 14 of the Act.'

11. In the case of Union of India v. Surjit Singh, AIR 1970 SC 189, the question was whether an application for stay of suit under Section 34 of the [Arbitration Act, 1940](#), would be an application 'in the matter of a reference'. The Supreme Court, after noticing the expositions of law laid down in Kumbha Mawji (supra), held as under :

'There are different sections in the Arbitration Act whereby an application is to be made even before any reference has been made. Section 8 for instance provides for an application to invoke the power of the Court when the parties failed to concur in the appointment of an Arbitrator to whom the reference can be made. So also Section 20 provides for an application to file the arbitration agreement in the Court in which an order of reference to an arbitrator can be made. These are clearly applications interior to the reference but they lead to reference. Such applications are undoubtedly applications 'in the matter of a reference' and may fall within the purview of Section 31(4) of the Act even though these applications are made before any reference has taken place but application under Section 34 is clearly not an application belonging to the same category. It has nothing to do with any reference. It is only intended to make an arbitration agreement effective and prevent a party from going to Court contrary to his own agreement for the dispute is to be adjudicated by a private Tribunal.'

In M/s. Guru Nanak Foundation v. Ratan Singh and sons, AIR 1981 SC 2075, an application was made to Delhi High Court under Section 20 of the [Arbitration Act, 1940](#), for a direction to file the arbitration agreement in the Court, it was registered as a suit which ended in order of reference to the arbitrator. A subsequent application was made to that Court under Section 5 read with Section 11 of the said Act for removal of the arbitrator. On the application being dismissed, matter went to the Supreme Court in appeal. By decision in appeal, the arbitrator was removed and another person was appointed. The appeal was accordingly disposed of. Thereafter, the Supreme Court gave further direction about the manner and method of conducting the arbitration proceedings and fixed the time

for completion of arbitration proceedings. On completion of the arbitration proceeding, the arbitrator approached the Registry of the Supreme Court for filing of award when he was advised by the officer in the Registry that the award be filed in the Delhi High Court. Accordingly, the arbitrator filed the award in the Delhi High Court. Thereafter an application was made before the Supreme Court by one of the parties seeking a direction that the award be filed in the Supreme Court on the premises that the award was made on the directions given by the Supreme Court and, therefore, the Supreme Court alone had the jurisdiction to entertain the award in view of the provisions contained in Section 31(4) of the Arbitration Act, 1940. The Apex Court explained Section 31(4) of the [Arbitration Act, 1940](#), in the following words.

'The non-obstante clause excludes anything anywhere contained in the whole Act or in any other law for the time being in force. If it is contrary to or inconsistent with substantive provisions contained in sub-section (4), to that extent, it carves out an exception to the general question of jurisdiction of the Court in which award may be filed elsewhere provided in the Act in respect of the proceedings referred to in sub-section (4). The provisions contained in sub-section (4), will have overriding effect in relation to filing of the award if the conditions therein are prescribed or satisfied. If these conditions are satisfied, the Court other than the one envisaged in Section 14(2) or Section 31(1) will be the Court in which the award will have to be filed. That is the effect of the non-obstante clause in sub-section (4) of Section 31. Sub-section (4) thus invests exclusive jurisdiction in the Court to which an application has been made in any reference and which that Court is competent to entertain as the court having jurisdiction over the arbitration proceeding and all subsequent applications arising out of reference on the arbitration proceeding shall have to be made in that Court and in no other Court. Thus, sub-section (4) not only confers exclusive jurisdiction on the Court to which an application is made in any reference but simultaneously ousts the jurisdiction of any other Court, which may well have the jurisdiction in this behalf. To illustrate the point if an award was required to be filed under Section 14(2) read with Section 31(1) in any particular Court, as being Court in which the suit touching the subject-matter of award could have been required to be filed but if any application in the reference under the Act has been filed in some other Court, which was competent to entertain that

application, then to the exclusion of the first mentioned Court, the latter Court alone in view of the overriding effect of the provisions in Section 31(4) will have the jurisdiction to entertain the award and award will have to be filed in that Court alone and no other Court will have jurisdiction to entertain the same.'

12. As a result of the foregoing discussion and on regard being had to the definition of the term 'Court' as elucidated in Section 2(e) and the overriding effect of Section 42 of the Act, I am persuaded to the view that the Court of the Additional District Judge is shorn of jurisdiction to entertain an application under Section 34 of the Act and the District Judge cannot, by invoking the provisions contained in Section 8(2) of the [Bengal, Agra and Assam Civil Courts Act, 1887](#), transfer the application for its disposal to the Court of an Additional District Judge. An application for setting aside an award under Section 34 of the Act is as much an application 'with respect to an arbitration agreement' as it is for 'setting aside the arbitral award' and it is a matter of statutory compulsion that such application is made to the principal civil court of original jurisdiction in a district 'or' the High Court in exercise of its ordinary original civil jurisdiction' having jurisdiction to decide the questions forming the subject-matter of arbitration if the same had been the subject-matter of a suit and it is again a matter of statutory mandate that the Court to which the application is made '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 except the appellate court being in seisin over the matter. The power to transfer/assign the application to any other Court, otherwise having jurisdiction to decide the questions forming the subject-matter of arbitration had it been the subject-matter of a suit, has been impliedly taken away by Section 42 of the Act which is couched in a language fraught with overriding effect. I am conscious of the fact that the view I am taking, may result in adding burden to the District Judge but the plain or unambiguous words of the statute, i.e., words which are reasonably susceptible to only one meaning will have to be given effect 'irrespective of consequences'--See *Nelson Motis v. Union of India*. AIR 1992 SC 1981.

13. The case of Ram Kishore Sharma v. Gopinath, 1979 AWC 393, reliance on which was placed by Sri S.K. Singh, appearing for the third respondent, is unavailing by reason of overriding effect of Section 42 of the Act. That was a case arising out of a suit under Section 92 of the Code of Civil Procedure according to which the suit could be instituted and decided only by the District Judge constituting the principal civil court of the original civil jurisdiction. Relying upon the provisions embodied in Section 24(1)(a) of the Code of Civil Procedure which empowers the 'District Court' to transfer, at any stage, any suit, appeal or other proceedings pending before it, for trial or disposal to any of the Courts subordinate to it and competent to try and dispose of the same as well as Section 8(2) of the Bengal, Agra and Assam Civil Courts Act, the Division Bench of this Court held that since Section 92 of the Code did not concern itself with further trial or disposal of the suit once it had been instituted before a proper Court, the District Judge could, under Section 8(2) of the Bengal, Agra and Assam Act and Section 24(1)(a) of the Code, transfer the suit to an Additional District Judge, at any stage, for its trial in accordance with law. As the foregoing discussion has tilted the scale in favour of the view that the powers of Section 8(2) of the Bengal, Agra and Assam civil courts do not permeate down to matters or proceedings under [Arbitration and Conciliation Act, 1996](#), the Division Bench decision copiously cited by the counsel for the respondents, cannot be pressed into service to lend cogency to the impugned order. Another decision on the same wavelength in Smt. Shakuntala Devi v. Amir Hassan, 1986 (2) ARC 112, too cannot be brought to bear to give prop to the falling contention.

14. Sri S.K. Singh appearing for the 3rd respondent then switched over to the submission that the petitioner was hindered in challenging the impugned order dated 8.10.1997 for the reason that he acquiesced to the earlier order dated 28.8.1997 passed by the learned IIIrd Additional District Judge, Allahabad, overruling the preliminary objection about the jurisdiction of the Court. Indubitably, the plea regarding jurisdiction raised by the petitioner was rejected by the IIIrd Additional District Judge, Allahabad vide order dated 28.8.1997, but it cannot, in the circumstances of the case, be said that the petitioner acquiesced to that order in that immediately after the aforesaid order was passed, the petitioner moved an application under Section 42 of the [Arbitration and Conciliation Act, 1996](#), raising

the question of jurisdiction and seeking the Court to remit the case to the Court of District Judge for disposal. That apart, a prayer has specifically been made for quashing the order dated 28.8.1997 as well and the application under Section 42 of the Act, moved by the petitioner, qunitessentially amounted to an application for recall/reconsideration of the matter on the question of jurisdiction--a question which can be canvassed at any stage of the proceedings.

15. In the result, the petition succeeds and is allowed. The impugned orders dated 28.8.1997 and 8.10.1997 are quashed. The learned IIIrd Additional District Judge, Allahabad shall send back the record of the case to the Court of District Judge, Allahabad for its disposal in accordance with law. The parties shall bear their respective costs.

16. After the judgment was delivered, learned counsel appearing for the respondent No. 3 submitted that the District Judge may be requested to dispose of the matter at the earliest.

Considering the submission made by the learned counsel, it is hereby provided that learned District Judge shall endeavour to dispose of the matter as early as possible preferably within a period of four months from the date of receipt of a certified copy of this judgment.

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