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Duroflex (P) Ltd. Vs. Technology Information, Forecasting and Assessment Council

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Court : Kerala

Decided On : Aug-16-2007

Reported in : 2007(4)ARBLR206(Kerala)

Judge : J.B. Koshy and; V. Giri, JJ.

Acts : [Arbitration Act, 1940](#); Arbitration Rules; [Arbitration and Conciliation Act, 1996](#) - Sections 2(1) and 34; Code of Civil Procedure (CPC) - Sections 20

Appeal No. : Arb. A. No. 31/2006

Appellant : Duroflex (P) Ltd.

Respondent : Technology Information, Forecasting and Assessment Council

Advocate for Def. : K.S. Hariharaputhran, Adv.

Advocate for Pet/Ap. : Joseph Markose and; Mithun Markose, Adv.

Judgement :

J.B. Koshy, J.

1. The appellant, a private limited company, having its registered office at Alleppey entered into an agreement with the respondent. In the agreement there is a clause

for arbitration. Clause XVII of the agreement reads as follows:

XVII. Arbitration and Jurisdiction--

a. If any dispute or difference arises between the parties hereto as to the construction, interpretation, effect and implication of any provision of this agreement including the rights or liabilities or any claim or demand of any party against other or in regard to any matter under these presents but excluding any matters, decisions of determination of which is expressly provided for in this agreement, such disputes or differences shall be referred to the sole arbitration of the Secretary of the Department of Science & Technology, Government of India, or that of his nominee and his decision will be final and shall be binding on all the parties. A reference to the arbitration under this clause shall be deemed to be submission within the meaning of the [Arbitration Act, 1940](#) and the rules framed thereunder for the time being in force.

b. If the 'Company' does not make any claim or demand or raise any dispute or difference in terms of Sub-clause 'a' of this clause within six months from the date on which such claim or demand arises, the 'Company' shall deem to have waived and abandoned such claim or demand or the right to raise such dispute or difference against 'Tifac'.

c. The venue of the arbitration shall be at Delhi.

Based on the above agreement some claims were raised against the appellant-company by the respondent-society. Finally, arbitral award was passed (Annexure B) for a sum of Rs. 1,20,61,000 with interest. A petition was filed under Section 34 of the [Arbitration and Conciliation Act, 1996](#) (hereinafter referred to as 'the Act') for setting aside the arbitral award. The District Court, Alleppey, came to the conclusion that no part of cause of action has arisen within the jurisdiction of the Alleppey Court and the venue of arbitration is fixed at Delhi. Finding that the Alleppey Court has no jurisdiction the application was dismissed. Prima facie the procedure adopted by the Alleppey Court is not correct because even* if there is no jurisdiction it should have returned the petition for filing in the proper court instead of dismissing the same.

2. The main contention raised in the appeal is that the Alleppey Court has got jurisdiction in view of Section 20(a) of the Civil Procedure Code as well as the definition of court under Section 2(1)(e) of the Act. Now, we will refer to the definition of 'court' under Section 2(1)(e) which is as follows:

2(1)(e) 'court' 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 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.

Here, the arbitral claim was filed by the claimant against the appellant-company having its registered office at Alleppey. If there was no arbitral clause, the only remedy available to the respondent was to file a suit and then in view of Section 20(a) of the CPC a suit could have been filed in Alleppey Court also. Section 20(a) of the CPC reads as follows:

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;

Since the registered office is situated at Alleppey the claimant can file the suit in Alleppey. Hence, the Alleppey Court has also got jurisdiction. In this connection we refer to the Full Bench decision of the Delhi High Court in Ram Rattan Bhartia v. Food Corporation of India : AIR1978 Delhi183 , wherein at paragraph 25, after considering various decisions, it was held as follows:

In view of our discussion on the various points, noted above, our answer to the reference is that apart from a court having jurisdiction to entertain the proceedings under the Act within whose jurisdiction the cause of action to sue arises, the court within the local limits of whose jurisdiction the defendant or each of the defendants at the time of the commencement of the suit, actually and voluntarily resides, or

carries on business or personally works for gain, will also have jurisdiction to entertain the proceedings under the Act in terms of Clauses (a) and (b) of Section 20 of the Code.

We also note that in the arbitration agreement there is no exclusion of jurisdiction by the court in Alleppey or conferment of exclusive jurisdiction on the courts in Delhi. It is true that by agreement, parties agreed that the place of arbitration shall be at Delhi. But at the same time there is no mention about the court where the petition to set aside the award should be filed. In *Asianet Satellite Communications Ltd. v. D Net Malayalam Digital Pvt. Ltd.* Arb. A. No. 10 of 2006, a Division Bench of this Court where one of us (Koshy, J.) was a party, held that if two or more courts have got jurisdiction the parties are free to file suits in any of the courts. While dismissing the Special Leave Petition (SLP No. 18867/2006) from the judgment in *Asianet Satellite Communications Ltd.* the Apex Court observed as follows:

We are of the opinion that in a case where both the courts have jurisdiction and the parties have voluntarily agreed to get their disputes adjudicated upon at one of the two courts of competent jurisdiction then, in that case, it cannot be said that particular court has no jurisdiction.

It is true that as said in *Shriram City Union Finance Corporation Ltd. v. Rama Mishra* : (2002)9SCC613 , where two or more courts have jurisdiction to try a suit, parties can by an agreement choose one of such courts for adjudication of their dispute and if there is such an express agreement, suit filed in a different court would be invalid. In this case Alleppey Court has jurisdiction to deal with the subject matter of the dispute. If the respondent files civil suit, in view of Section 20(a) Alleppey Court can also have jurisdiction and there is no exclusion of jurisdiction of Alleppey Court in the agreement. It is also not agreed that parties can approach the court at Delhi. If a suit was filed by the respondent with the same subject matter as that involved in the arbitration it could have been filed in Alleppey as the defendant company/appellant was in Alleppey. Hence, we are of the opinion that Alleppey Court has jurisdiction to deal with the subject matter and the order of the District Court, Alleppey is set aside and the Alleppey Court is

directed to dispose of the matter as expeditiously as possible, if possible within three months.

3. It is also stated by the learned Counsel for the appellant that to prove their bona fides they are prepared to deposit the principal amount awarded in Alleppey Court and they have no objection in withdrawal of the amount by the respondent subject to furnishing an undertaking that if finally the award is set aside or varied the amount will be refunded to the appellant depending upon the decision. Appellant is allowed to deposit the amount as above. It is also submitted that they are also willing to compromise the matter. The matter is remitted back to the Alleppey Court. Parties are free to settle the matter also. We are not expressing any opinion on the merits of the case.

4. Parties are directed to appear before the Alleppey Court on 10.09.2007.

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