

The Electrical Manufacturing Co. Ltd. and anr. Vs. the Crompton Engineering Co. Ltd. and anr.

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Court : Chennai

Decided On : Feb-09-1973

Reported in : (1973)2MLJ424

Appellant : The Electrical Manufacturing Co. Ltd. and anr.

Respondent : The Crompton Engineering Co. Ltd. and anr.

Judgement :

V.V. Raghavan, J.

1. The defendants in O.S. No. 6 of 1972 (A.A.) are appellants.
2. The suit is for an order (1) that the agreement dated nth July, 1962, between, the parties providing for a reference to-arbitration in respect of matters in dispute to which the agreement relates be filed into Court; (2) determining the questions of difference between the parties-to which the agreement dated nth July, 1962, applies and (3) appointing an arbitrator with a direction to proceed, with the arbitration in respect of matters-in dispute between the parties and pass an award in favour of the plaintiffs. The first defendant is a Company incorporated under the Indian Companies Act having its Registered Office at No. 136, Jessore Road, Calcutta. The second defendant is a Company incorporated under the Indian Companies Act having its Registered Office at No. 51, Canal East Road, Calcutta.

The Crompton Engineering Company (Madras) Ltd. hereinafter referred to as the plaintiff entered into an agreement dated nth July, 1962, with the Electrical ., hereinafter referred to as the first defendant, whereunder the first defendant agreed to fabricate all requirements of steel towards substation structures of the plaintiffs in three different areas viz. Bhilai Bodghat area, Jabalpure - Narasinghpuf area and Korba-Amarkantak area at the rates specified in paragraph 12 of the said agreement. The said agreement inter alia contained the following terms and conditions:

(i) Cromptons, (the plaintiffs herein), are to provide the Electrical ., with all the steel and zinc required for fabrication and galvanization of towers and structures ordered from time to time by the plaintiffs.

(ii) The Electrical .) the first defendant herein), shall provide free of charge sufficient separate space for the storage of the steel and zine entrusted to them by Cromptons,

(iii) The Electrical . (the first defendant herein), shall maintain proper accounts of steel and zinc received from Cromptons and send to Cromptons fortnightly statement of receipts, issues and stocks of steel and zinc.

(iv) The said Electrical ., (the first defendant) shall not in any circumstance use the steel or zinc or any part thereof entrusted to them except for the purpose stipulated in the agreement.

On behalf of the first defendant and as their agents another Company by name E. M. C. Projects (P.) Ltd., Calcutta, hereinafter referred to as the second defendant, was handling some of the matters of the first defendant, in order to maintain with ease and speed, the works which were entrusted to the first defendant and a supplementary agreement dated 8th October, 1965, was executed at Madras between the plaintiffs, the first defendant and the second defendant. The plaintiffs on their part gave a tender on 26th March, 1962, to the Madhya Pradesh Electricity Board, Jabalpure (not a party herein) for fabrication of steel towers and erection thereof in three different areas viz., Bhilai Bodghat area and Jabalpure-Narasinghpur area and Korba-Amarkantak area. The said tender was accepted on

16th February, 1964, by the Madhya Pradesh Electricity Board and a contract was entered into between the plaintiff and the Madhya Pradesh Electricity Board for the fabrication of towers and erection thereof in specified areas. The contract itself provides that the fabrication of the tower members will be got done by the Electrical . (first defendant). The said contract contains a specific Clause (Clause X) to the effect that the plaintiffs are responsible for the steel delivered at the fabricator's works and for affording facilities to the Board's Engineers for inspection of steel stocks etc. Pursuant to the contract entered into by the plaintiffs with the Madhya Pradesh Electricity Board and on the basis of the agreement dated nth July, 1962 the Madhya Pradesh Electricity Board was periodically supplying steel to the first defendant with which the first defendant carried out the fabrication work of the steel towers and supplying the same to the plaintiffs towards their contract with the Madhya Pradesh Electricity Board. According to the plaintiffs, out of the steel supplied by the Madhya Pradesh Electricity Board to the first defendant after carrying out the fabrication work in the two areas referred to, a large quantity of steel was left with the first defendant as the balance of stock. Further in regard to the third work, the Madhya Pradesh State Electricity Board placed an order with the first defendant for supply of stubs which was complied with, but when they were called upon to fabricate and supply tower parts for the third work they defaulted. The plaintiffs' case is that the first defendant misapplied a large quantity of steel supplied to them for which they are bound to account and that they are bound to return to the plaintiffs 3407 metric tons of steel entrusted to them and unused. The first defendant, however, put forward various counter-claims against the plaintiffs and denied their liability to return to the plaintiffs 3407 metric tons of steel. The plaintiffs, therefore, have filed the present application under Section 20 of the Arbitration Act, 1940, for the reliefs mentioned therein contending that the agreement dated nth July, 1962 and the supplemental agreement dated 8th October, 1965 were both executed at Madras, and that the whole cause of action had arisen at Madras within the jurisdiction of the Court. The plaintiffs also filed an Application No. 2762 of 1971 for leave to file the petition in this Court under Clause 12 of the Letters Patent and Section 20 of the Code of Civil Procedure and obtained leave ex parte on 22nd December, 1971.

3. The first defendant filed an Application No. 2011 of 1972 for revocation of the grant of leave made in Application No. 2762 of 1971. In the affidavit in support of the revocation application the first defendant made it clear that the first defendant did not submit to the jurisdiction of this Court, but that the application was filed as a preliminary objection reserving their right to file a written statement and a counter statement if need be. The contention put forward in the application for revocation is that the agreements were not executed at Madras and that even if the agreements had been executed in Madras the steel had to be entrusted to the first defendant at Calcutta where the factory of the first defendant was situate, that the claim related to unused steel supplied to the first defendant and inspection into the first defendant's accounts regarding fabrication of the components., utilisation of the steel therefor and allied -questions and to counter-claims of the first defendant for damages, that the subject matter of the present suit to be referred to the Arbitrator relates to works to be done outside this Court's jurisdiction and that consequently this Court has no jurisdiction to entertain the application tinder Section 20 of the Act. The further contention put forward is that the plaintiffs had obtained leave to sue by misleading the Court in stating that the whole cause of action for the suit had arisen at Madras. The applicant, therefore, contended that it is a fit case for revocation of the leave already granted ex parte.

4. On behalf of the plaintiffs a counter-affidavit in Application No. 2011 of 1972 was filed wherein the bona fides of the first defendant was questioned in so far as the first defendant applied for extension of the time in filing the written statement but instead filed the present application. It was further pointed out that the agreement dated nth July, 1962 was executed only at Madras, that application under Section 20 of the Arbitration Act could be filed only in this Court within whose jurisdiction the agreement was executed. The further contention raised was that the fact that the entire agreement had to be performed only at Calcutta, or that the accounts of the first defendant were maintained at Calcutta or that the manufacture of towers and storage of steel was only in Calcutta or that the alleged breach of contract took place at Calcutta and that the arbitration work will have to be done only outside the jurisdiction of this Court, are all matters which are irrelevant and that this Court alone has jurisdiction to entertain the application under Section 20 of the Arbitration Act and the prayer in the application was only

for the appointment of an Arbitrator.

5. The learned Judge held that the subject-matter of the reference included the execution of the contract between the parties under which the disputes had arisen and that the agreement having been executed at Madras this Court has jurisdiction to decide the question forming the subject matter of the reference. In the result, the application for revocation was dismissed and the present appeal has been filed against the order refusing to revoke the order granting leave to sue these defendants.

6. Before dealing with the legal contentions put forward we shall first refer to the salient features of the controversy between the parties. The plaintiff entered into a contract with the Madhya Pradesh Electricity Board, Jabalpure, for fabrication of steel towers and erection thereof in three different areas viz., Bhilai Bodghat area, Jabalpure-Narsinghpur area and Korba-Amarkantak area. The plaintiffs entered into an agreement dated 11th July, 1962 with the first defendant whereunder the fabrication of steel towers and erection thereof as also the manufacture of components was undertaken to be done by the first defendant-company. Under the terms of the contract the Madhya Pradesh Electricity Board, Jabalpure, had to supply steel at the fabricator's works and the first defendant has to carry out the fabrication work of the steel towers with the said supply and that all unused steel and zinc delivered to the first defendant shall be returned to the plaintiffs at Sealdah, Eastern Railway or at the option of the plaintiffs compensate them in respect of such steel and zinc at such rate as may be agreed upon. The case of the plaintiffs is that the first defendant defaulted in the construction of the steel towers in the third place of work and that a large quantity of unused steel had to be accounted for by the first defendant to the plaintiffs in terms of the contract which was not done. The plaintiffs relying on the above clause of the agreement relating to Arbitration have filed the present suit claiming the return in specific specie of 3407 metric tons of steel entrusted to the first defendant and unused or to pay the plaintiffs the value of the said steel at the prevailing market rate in case the first defendant is unable to deliver the said quantity of steel in specie. The reliefs claimed in the present suit are for the agreement dated 11th July, 1962 to be filed into Court and for appointing an Arbitrator with a direction to proceed with the

arbitration of the matters in dispute between the parties and pass an award. We may in this connection refer to the specific allegation in paragraph 39 of the plaint where the plaintiffs claimed a return in specie of 3407 metric tons of steel, being the surplus with the defendants out of the steel entrusted to them for the fabrication of steel towers etc. and the allegation in paragraph 43 that 'in the event of the first defendant not being able to deliver the plaintiffs 3407 metric tons of steel, the first defendant is liable to pay the plaintiffs the value of the said steel at the prevailing market rate and also to recoup the plaintiffs the damages that may be sustained for fabrication of the steel in carrying out the contract with the Madhya Pradesh Electricity Board'. We have, therefore, to consider the question whether this Court under the provisions of the Arbitration Act of 1940 has jurisdiction to entertain the suit and make an order appointing an Arbitrator to decide the dispute between the parties.

7. Sri V.K.T. Chari, the learned Counsel for the appellants contends that the Arbitration Act is a self-contained enactment, that under Section 20 of the Arbitration Act, 1940, the Court, in which an arbitration agreement entered into between the parties before the institution of any suit with respect to the subject-matter of the agreement shall be the Court as defined under Section 2 (c) of the Arbitration Act, 1940, and that the provisions of the Civil Procedure Code relating to filing of suits on the basis of the defendant's residence or the provisions of clause 12 of the letters patent of the High Court, Madras have no application in such cases.

8. We shall now examine this contention : The law of Arbitration prior to 1940 was substantially contained in two enactments viz., the Indian Arbitration Act, 1899 and the Second Schedule to the Code of Civil Procedure, 1908. The operation of the 1899 enactment was limited to the Presidency Towns and to such other areas; as extended by the appropriate provincial Government. The scope of the enactment is confined to arbitration by agreement without the intervention of Court. The Second Schedule to the Code of Civil Procedure related to arbitration outside the operation of the scope of the 1899 Act and for the most part it related to arbitration in suits and to arbitration without the intervention of the Court. The object of the Arbitration Act, 1940, is to consolidate and amend the law relating to

arbitration. It may be seen that the Indian Arbitration Act, 1899 (II of 1899) is based on the English Act, 1899 (52 and 53 Victoria chapter 49) and many sections in the Indian enactment are taken verbatim from the English Act. In order to understand the scope of Section 20 of the Arbitration Act, 1940, it will be necessary to refer to the relevant provisions of the Indian Arbitration Act, 1899. The relevant part of Section 2 therein ran as follows:

2. Subject to the provisions of Section 23 this Act shall apply only in cases where if the subject matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise be instituted in a Presidency town.

The terms of Section 2 show that two conditions must be present before the provisions of the Arbitration Act can be applied to an agreement to refer matters in dispute to arbitration viz., (1) that there should not be any suit pending in respect of these matters and (2) that the case must be one in respect of which if either party wanted to file a suit, the suit could be instituted in a Presidency Town. It is only to such cases that the Arbitration Act, 1899, applied. In other cases the provisions of the Second Schedule to the Code of Civil Procedure were made applicable.

9. We shall next take into account the provisions of the Second Schedule to the Code of Civil Procedure. As observed already, the Second Schedule will apply to all cases where the Arbitration Act, 1899, is inapplicable and clause 17 of the Second Schedule is relevant in this context. The position under the Second Schedule is not in any way different.

10. We shall next analyse the various provisions of the Arbitration Act, 1940, which, as already stated, is a consolidating enactment relating to arbitration and which repeals the 1899 Act and the Second Schedule to the Code, with special reference to the use of the word 'Court' in the above provision. The Arbitration Act, 1940, contains 7 Chapters. Chapter I is introductory which includes Sections 1 and 2. Chapter II relates to arbitration without intervention of a Court and Sections 3 to 19 are comprised therein. Chapter III relates to Arbitration with intervention of a Court where there is no suit pending and Section 20 is the only section in that chapter. Chapter IV deals with Arbitration in suits and comprises Sections 21 to

25, while Chapter V relates to general provisions and Sections 26 to 38 are comprised therein. Chapter VI relates to appeals comprising Section 39 and Chapter VII is a miscellaneous Chapter containing Sections 40 to 48.

11. Section 2 (a) defines 'Arbitration Agreement' as meaning a written agreement to submit present or future difference to arbitration whether an arbitrator is named therein or not.

12. Section 2 (c) defines 'Court' as meaning 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....

13. In Section 8 (2) it is provided that if the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire.

14. The proviso to Section 9 makes a reference to the Court which may set aside any appointment as sole arbitrator.

15. Section 11 refers to 'The Court' which may, on the application of any party to a reference, remove an arbitrator or an umpire.

16. Section 12 deals with a power of a Court to appoint an Arbitrator to fill up any vacancy.

17. Section 14 (2) states that the award may be filed into Court and the Court shall give notice of filing the award.

18. Section 15 gives the power of the Court to remit the award for reconsideration and Sub-clause (2) fixes the time for submitting the award.

19. Section 17 gives power to the Court to pass a judgment according to the award and also provides that a decree shall follow.

20. Section 18 gives power to the Court to pass interim orders to make the award effective.

21. Section 19 gives power to the Court to supersede an arbitration where the award becomes void or is set aside.
22. Section 20 deals with an application to file in Court an arbitration agreement. Sub-clause (2) of Section 20 runs as follows:
20. (1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.
23. Sub-clause (3) of Section 20 gives power to the Court to issue of notice to the parties to show cause why the agreement should not be filed.
24. Sub-clause (4) of Section 20 deals with the power of the Court to make an order that the agreement be filed.
25. Sub-clause (5) of Section 20 provides that the arbitration shall proceed in accordance with and shall be governed by the other provisions of this Act so far as they can be made applicable.
26. Sections 21 to 25 deal with the power of the Court in a pending suit.
27. Section 28 gives power to Court to enlarge the time for making an award. Section 31(1) and (2) runs as follows:
31. (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.

Section 33 provides that any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide all questions on affidavits. Section 41 runs as follows:

41. Subject to the provisions of this Act and of rules made thereunder--

(a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under this act, and

(b) the Court shall have, for the purpose of and in relation to. arbitration proceedings, the same power of making orders in respect of any of the matters-set out in the Second Schedule as it has. for the purpose of, and in relation to any proceedings before the Court.

In the Second Schedule the powers of the Court are defined.

Clause 1 relates to preservation, interim custody or sale of any goods which are the subject-matter of the reference.

2. Securing the amount in difference in the reference.

3. The detention, preservation or inspection of any property or thing which is the subject-matter of the reference.

4. Interim injunctions or the appointment of a receiver.

The contention of the learned Counsel is that the Arbitration Act is a self-contained enactment and Section 20 based upon Clause 17 of the Second Schedule to the Code lays down four conditions for its application, viz., (1) The arbitration agreement should have been entered into; (2) The agreement must have been entered into prior to the filing of the suit with respect to the subject-matter of the agreement or any part of it; (3) That a difference had arisen between the parties to* which the agreement applied and (4) That the Court to which the application is made has jurisdiction over the matter to-which the agreement related. If anyone of the four conditions is absent, the filing of the application and the order passed

therein will be without jurisdiction.

28. We shall now refer to the provisions of the Civil Procedure Code relating to the filing of suits and consider how far the provisions therein will be applicable to an application filed under Section 20 of the Arbitration Act, 1940. Under the scheme of the Code of Civil Procedure actions may be divided into (a) those which relate to immovable property, (b) those which relate to movable property and (c) mixed actions partly relating to immovable and partly relating : to movable property. Sections 16, 17 and 18 of the Code of Civil Procedure relate to actions covered by categories (a) and (c) referred to above, while Sections 19 and 20 of the Code of Civil Procedure deal with actions falling under category (b). We are not here concerned with a suit relating to immovable property. We have, therefore, to consider the scope of suits falling under Sections 19 and 20 of the Code of Civil Procedure. Section 19 of the Code deals with suits for compensation to person or movable property where the plaintiff has an option to file a suit either in the place where the wrong is committed or where the defendant personally resides or carries on business or personally works for gain, but the suit falling under Section 19 has to be one for compensation for wrong done to the person or to the movable property. If the suit is not for compensation, Section 19 will be inapplicable and the only section which will apply will be Section 20 of the Code. The opening words of Section 20 themselves show that Sections 15 to 19 have to be read along with Section 20 of the Code. Section 20 of the Code has been designed to secure that justice may be brought as near as possible to every man's hearth-stone and that the defendant should not be put to the trouble and expense of travelling long distances in order to defend himself in cases in which he may be involved and therefore if Section 20 of the Code applies the defendant's residence or his carrying on his business is the test. Where, out of a plurality of defendants a few of them reside within the jurisdiction of the Court and some of them outside the jurisdiction of the Court, leave of the Court has to be taken to proceed with the suit against the defendants, who do not reside within the Court's jurisdiction. Section 20 (c) of the Code provides for the institution of a suit in a Court within whose jurisdiction the cause of action wholly or in part arises. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to establish if traversed in order to support his right to

the judgment of the Court. In other words, it means the whole bundle of material facts which it is necessary for the plaintiff to prove in order to entitle him to succeed in the suit.

29. The above provisions of the Code of Civil Procedure viz. Sections 16, 17 and 20 are inapplicable where the question arises as to matters within the local limits of the Ordinary Original Civil Jurisdiction of this Court. Such matters are governed by the Letters Patent of this Court.

30. Under clause 12 of the Letters, Patent of this Court, barring certain suits specified at the end of the clause the High Court is empowered to try the-following suits in the exercise of its Original Civil Jurisdiction:

(1) Suits for land or other immovable property;

(2) Suits other than those for land.:

(a) if the cause of action has arisen., wholly within the local limits of the. Ordinary Original Jurisdiction of the High Court;

(b) Where the cause of action has arisen in part only within the City limits if the leave of the Court is obtained; and

(c) if the defendant at the commencement of the suit dwells or carries on. business or personally works for gain, within such limits.

We are here concerned with suits falling under the second category. The jurisdiction, to this Court is sought to be given on the ground that a part of the cause of action for the suit arise within the jurisdiction of this Court and consequently the leave under clause 12 of the Letters Patent to institute the suit on the Original Side of this Court has to be applied for. In this case according to the plaintiff, the cause of action for the suit has arisen in part within the jurisdiction of this Court and therefore an application for leave was applied for -and granted. In dealing with such application for leave to sue under this clause this Court is also entitled to take into consideration the question of convenience.

31. Both in Section 20 of the Code and clause 12 of the Letters Patent the words 'cause of action' for the suit are used. We are of opinion that the same meaning has to be given to the said words when construing the expression 'cause of action' occurring in clause 12 of the Letters, Patent.

32. Relying upon the definition of the word 'Court' occurring in Section 2 (c) of the Act, the contention raised by Mr. V.K.T. Chari is that the subject-matter of the reference and the subject-matter of the suit being a claim for return in specie of the unutilised 3407 metric tons of steel entrusted with the first defendant in Calcutta no suit on the Original Side of this Court could have been filed and that consequently this Court has no jurisdiction to entertain the suit. In other words, the contention is that if a suit had been filed without resorting to the arbitration machinery for recovery of specific goods entrusted outside its jurisdiction this Court could not have entertained such a suit. Further there being no dispute regarding the execution of the agreement, it is not open to the plaintiffs to base their cause of action for the suit on the place of the execution of the agreement which is no doubt within the jurisdiction of this Court. On the other hand, the contention of Mr. Swaminathan, who appeared for the respondent is that the cause of action for the suit consists of a bundle of essential facts necessary for the plaintiff to prove before he can succeed in a suit and one of the essential facts, namely, the execution of the agreement having risen within the jurisdiction of this Court when the agreement was executed the suit was rightly instituted and leave of the Court which is required under the Letters Patent to be obtained prior to the filing of the suit as part of the cause of action arose outside the jurisdiction of this Court has been obtained.

33. So the question which arises is whether in the case of a specific entrustment with the defendant of goods, for a purpose under a contract and a wrongful conversion by him, the cause of action for such a suit is the place where the entrustment was made and wrongful conversion took place or the place where the contract in respect of the work was signed. Assuming that there is no dispute as to the place of execution of the contract, the question will still remain, whether the cause of action for such a suit arose where the contract was executed or at the place where the entrustment was made and the alleged wrongful conversion took

place.

34. Whatever may be the position under the general law, the position is very clear under the provisions of the Arbitration Act, 1940. The provisions of the Arbitration Act make a difference between (1) existence or validity of an arbitration agreement and (2) matters to which the agreement relates. Section 33 of the Act provides for any party to an arbitration agreement or any person claiming under him seeking to challenge the existence or validity of an arbitration agreement and for the determination of the contest under Section 33 of the Act. Section 31 (4) is an overriding provision which provides that where any application under this Act had been made in a Court competent to entertain it, that Court alone shall have the jurisdiction over the arbitration proceedings and all subsequent applications arising out of that application and the arbitration proceedings shall be made in that Court and in no other Court. The application under Section 33 of the Act, if at all, has to be filed before proceedings are taken under Section 20 of the Act. That not having been done, the execution of the agreement is not a matter in dispute at all. Therefore, the contention in the present case is that the jurisdiction to determine disputes in the matter to which the agreement relates has to be found only in the Court where the entrustment of the goods took place and the conversion made and not at the place of execution of the agreement.

35. Sub-clauses (1) to (4) of Section 20 of the Arbitration Act, 1940 falling under Chapter III are based upon paragraph 17 of the Second Schedule of the Code of Civil Procedure. Sub-clause (5) of Section 20 has newly been added. Our attention was drawn to paragraphs 39 and 43 of the plaint where the return of the entrusted steel in specie is referred to and the further provision that in case the said steel is not available its money equivalent should be paid is also referred to. In the cause of action paragraph viz, 44, a reference has been made to the execution of the agreement dated 11th July, 1962 between the first defendant and the plaintiff at Madras and the execution of the supplemental agreement dated 8th October, 1965, where the second defendant also agreed to work on behalf of the first defendant, which agreement was also executed at Madras. In paragraph 44 of the plaint the plaintiffs further stated that 'in the circumstances the whole of the cause of action had arisen in Madras and within the jurisdiction of the Hon'ble Court'. On

the aforesaid clause in the plaint it is contended that the wrongful conversion of the specific goods entrusted, which took place outside the city limits and the same misapplied which is denied by the defendant, is a dispute between the parties which has to be decided by the arbitrator appointed in pursuance of the application filed under Section 20 of the Act. The matter in dispute does not relate to the execution of the agreement and in this context the place of the execution of the agreement has no relevance. Mr. V.K.T. Chari, the learned Counsel appearing for the appellant, however, referred to a few decisions to assist us in appreciating the questions raised by him. We shall first refer to the decision in *M. Venkatasamiappa v. Srinidhi Ltd.* (1950) 1 M.L.J. 709, which arose under Section 14 of the Arbitration Act and the decisions of the other Courts following the said decision. The facts in that case are as follows : The respondent a limited company with its office at Madras (and also a subsidiary office at Bangalore) carried out various works in Bangalore for the Public Works Department of the Government of India. The appellant, a resident of Bangalore was a sub-contractor supplying at the outset labour and thereafter various materials for the work which the respondent was executing at Bangalore. The appellant claimed that in respect of these dealings with the respondent he was entitled to be paid a sum of Rs. 36,000. The respondent, however, asserted that if the accounts between the parties were looked into it would be found that far from their owing any money to the appellant, he would be found liable to pay a large sum of money to them. The dispute between the parties were referred to arbitration by an agreement executed at Madras and the arbitrators chosen were residents of Madras. The arbitrators ultimately gave an award whereunder they directed the appellant to pay the respondent a sum of Rs. 22,346. The arbitrators then filed a petition under Section 14 (2) of the Arbitration Act on the Original Side of this Court praying that the award be received, that notice of the filing of the award be issued to the parties and that a decree in terms of the award be passed. On these facts the question which arose for consideration was whether the Court in Madras has jurisdiction to receive the award and whether the Court in Bangalore is only the Court having jurisdiction over the subject-matter in dispute. The trial Judge Subba Rao, J., as he then was observed as follows:

36. 'As aforesaid the dispute between the respondents was that the first respondent claimed a sum of Rs. 36,000 from the second respondent under the contract whereas the second respondent claimed that if the accounts were looked into, a large amount would be due to him. Admittedly the second respondent is a registered firm having its office at No. 292, China Bazaar Road, Madras. The first respondent, if he had wanted, could certainly have filed the suit with regard to the subject-matter of the reference on the Original Side of this High Court. Clause 12 of the Letters Patent governs the limits of the original jurisdiction of this Court. Under the said clause in regard to suits other than those for land, the High Court is empowered to review, try and determine suits of every description if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain within such limits. As admittedly the second respondent carries on business in Madras, the plaintiff could have filed the suit on the Original Side of this Court, in which case the subject-matter of the reference would have been the subject-matter of a suit pending in this Court. In that view the Court has jurisdiction to receive the award filed under Section 14 of the Arbitration Act'. The appeal against the said decision was heard by Horwill and Balakrishna Ayyar, JJ.

37. Horwill, J., observed as follows:

Section 2 (c) does not purport to prescribe the Court in which the award should be filed. It restricts the meaning of the word ' Court' to the class of civil Courts that can decide the questions forming the subject- matter of the reference if they had arisen in a suit properly before the Court. The difficulty in the construction of this section arises only from the circumstance that the word' Court' could have meanings which would vary with the subject-matter of the reference. In the present ' case, for example, District Munsif's Courts would not be Courts within the definition. If now we have regard to Section 31 (1) to ascertain in which Court, as the word is defined in Section 2 (c), the award has to be filed we find that it is the Court that has jurisdiction over the subject-matter of the award, the omission of any reference to residence being presumably for the reason that in filing an award there is no plaintiff and no defendant. If the subject-matter of the reference alone determines jurisdiction, then this appeal admittedly will have to be allowed.

Balakrishna Ayyar, J., concurred with the above opinion. In the course of the judgment the learned Judge observed as follows:

It is only when the subject-matter of the dispute itself makes the jurisdiction dependent on residence, that the question of residence need arise at all. It is needless to say more about this aspect, because it does not really arise and was not argued. In any case, regard being had to the phraseology of the Act, the question of residence in such cases would it seems to us, become relevant only should it arise out of, or in connection with the subject-matter of the dispute and the reference.

The learned Judge later observed as follows:

Mr. Viswanatha Aiyar, the learned Advocate for the respondent next argued that the parties before us had agreed to have their differences settled by arbitration in Madras and that this agreement between them would give jurisdiction to this Court, because, according to him, that agreement would be part of the cause of action. In respect of this contention we have to observe that the agreement which the appellant and the respondent entered into has not been placed before us. Besides, according to Section 2 (c) and Section 31 (1) the Court which would have jurisdiction would be, not the Court or the place in which the agreement was entered into, by the Court which would have jurisdiction in respect of the questions forming the subject-matter of the reference.

38. After referring to Form 125 (d) of the Original Side Rules of the High Court, the learned Judge observed as follows:

Mr. Viswanatha Aiyar pointed to the requirement in this paragraph that the place where the agreement to refer to arbitration was entered into should be specified in the appropriate place and stressed the words ' within the aforesaid jurisdiction ' occurring there and argued that if the place where the agreement was entered into is Madras, that fact would give jurisdiction to this Court. In respect of this reasoning we would first state that Mr. Viswanatha Aiyar himself conceded that Section 20 is not directly applicable and that he referred to it only by way of analogy. We consider that this analogy is not sufficiently close.

Section 20 (1) applies.

to a Court having jurisdiction in the matter to which the agreement relates, whereas in Section 31 (1) the Court having jurisdiction is not the Court having jurisdiction in the matter to which the agreement relates, but the Court having jurisdiction in the matter to which the reference relates (*Italics is ours*). Besides, we do not think that it would be right to construe a statute with reference to forms prescribed not by the Legislature, but by this Court on its administrative side.

We may observe that though the above-decision dealt with a case under Section 14 of the Arbitration Act, their Lordships referred to Section 20 of the Act and in that view it has a material bearing.

39. In *Inder Chand Jain v. Pooran Chand Bansi Dhar*, the petitioners filed their application in the Court at Delhi under Sections 32 and 33 of the Indian Arbitration Act denying the existence and validity of the alleged agreement under which the Bombay firm had caused the matters in dispute to be referred to arbitration. The Bombay firm raised the objection that the Delhi Courts had no jurisdiction to entertain the application. The Delhi Court upheld the objection and the correctness of that order came up before the Punjab High Court. *Falshaw, J.*, relying upon the judgment of the Madras High Court in *Venkataswamiappa v. Srinidhi Ltd.* (1950) 1 M.L.J. 709, remanded the petition to the trial Court for dealing with the question of jurisdiction in the first instance.

40. The next decision referred to is *Vissamseth Chandra Narasimhan v. Ramdayal Rameswarlal and Ors.* : AIR 1966 AP134, by *Narasimhan, J.*, as he then was. There a question arose under Section 14 (2) of the Arbitration Act and the question was whether by reason of the agreement which stated 'that the only Court which has jurisdiction to decide disputes between the parties was the High Court at Calcutta precluded the District Munsif, Vijayawada, from passing a decree in terms of the award. The learned Judge relying upon *M. Venkataswamiappa v. Srinidhi Ltd.* (1950) 1 M.L.J. 709, held that the Court at Vijayawada alone had jurisdiction over the subject-matter in dispute.

41. The learned Counsel next referred to the decision reported in S.P. Consolidated Engineering Company (P.) Ltd. v. Union of India and Anr. : AIR1966 Cal259 , where the present question was considered but no decision given. The question that arose in that case was whether the Calcutta High Court had jurisdiction to make an order under Section 20 of the Arbitration Act. The applicant was a contractor, who executed certain works for the South Eastern Railway under a contract, who after completion of the works, made a claim for payment including the claim for refund of initial and subsequent security deposits and when the claim was disputed by the Government the contractor invoked the arbitration clause and called upon the general manager to appoint an arbitrator in terms of the arbitration clause. The general manager not having complied with the above requisition, the contractor made his application under Section 20 for filing the arbitration agreement and for an order of reference. The Government's case was that the contract was signed outside the jurisdiction of the Court, works under the contract were performed outside the jurisdiction of the Court and that no part of the cause of action arose within the jurisdiction of the Court. The learned Judge held that no facts necessary for the formation of the contract in the instant case arose within the jurisdiction of the Calcutta High Court. Applying the doctrine that a debtor should seek a creditor to make payment wherever the creditor is 'the learned Judge held that the defendant's head Office of the Railway being situate within the jurisdiction of the Calcutta High Court, that Court has jurisdiction to entertain the application. Dealing with the argument based on Section 20 and 2 (c) of the Arbitration Act, the learned Judge observed as follows:

Mr. Sen has also contended that the jurisdiction of the Court to entertain application under Section 20 of the Arbitration Act has been laid down in the Act itself. Section 20 gives a Court having a jurisdiction in the matter to which the agreement relates jurisdiction to entertain the application. In Section 2 (c) the words 'the Court' is defined. It means the civil Court having jurisdiction to decide a question forming the subject-matter of the reference, if the same had been the subject-matter of a suit. Jurisdiction is determined therefore with reference to the matters to which the agreement relates which may be equated to 'the subject matter of the reference'. If the civil Court as defined in Section 2 (c) is competent to entertain the subject-matter of the reference, then alone the Court is competent

under Section 20 to entertain the suit. 'Subject-matter of the agreement' or 'subject-matter of the reference' in Mr. Sen's submission is the bundle of facts that constitute the cause of action. If such cause of action wholly or in part arises within the jurisdiction of the Court then only the Court is competent to entertain an application under Section 20 of the Indian Arbitration Act. It may not entertain a suit on the ground that the defendant resides or personally works for gain or carries on business at the place within the jurisdiction of the Court. If no part of the cause of action has arisen within the jurisdiction of the Court, the Court is not competent to entertain an application under Section 20 even though the party described as defendant resides or personally works for gain or carries on business within the jurisdiction of the Court. Had this subject-matter of the agreement or reference been the subject-matter of a suit the Court might have been competent to entertain such suit on the ground that the defendant resides or personally works for gain or carries on business within the jurisdiction of this Court under clause 12 of the Letters Patent. But that is not so in the case of an application or suit under Section 20 of the Arbitration Act. There is, however, a decision of Kania, J., in the case reported in *Carsetji Jamshedji Ardaseer Wadia v. R.D. Shiralee* : AIR1943 Bom32 , which held that jurisdiction of this Court can be invoked on the ground that the defendant opposite party resides or personally works for gain or carries on business within the jurisdiction of this Court. It is unnecessary in the instant case to give my decision on the point raised by Mr. Sen and I do not decide the same. The point is important and may have to be considered in a case in which a decision on the point is called for.

Thus it is seen that the point was discussed but no decision was given and the matter was left open and therefore the said decision cannot be of assistance to us.

42. In *Virendra Saigal v. Sumatilal Jammalal* : AIR1970 Delhi14 , which related to an application under Section 34 of the Arbitration Act Andley, J., had to consider the effect of Section 2 (c) and Section 31 of the Act. The learned Judge held that if an award has in fact been filed in any Court which has no jurisdiction in the matter to which the reference relates, such filing would not give jurisdiction to 'the Court under Sub-section (2) of Section 31 and the learned Judge further held that the filing of the application under Section 34 of the Arbitration Act in the civil suit for

accounts filed by the petitioner is not such an application which could confer jurisdiction on the Delhi Courts under Sub-section (4) of Section 31 of the Act. This case is also not one arising under Section 20 of the Act.

43. The learned Counsel next referred to *Union of India v. Surjeet Singh Atwal* : [1970]75ITR603(SC) , The appeal before the Supreme Court arose against an order of the Subordinate Judge First Class, Delhi, under Section 20 of the Act by the Union of India for filing the arbitration agreement in Court and to make a reference of the dispute to the officer mentioned in the agreement. The respondent viz., the contractor ignoring the arbitration clause filed a suit on the Original Side of the Calcutta High Court for recovery of Rs. 50,000 and the Union of India made an application under Section 34 of the Act for the stay of the trial of the suit. The suit was consequently stayed and the matter was referred to the arbitration of the Superintending Engineer, Calcutta Aviation Circle, C. P. W. D. Calcutta. Before the arbitrator the Union of India made its counter claim for a sum of Rs. 3,09,164 and the contractor objected to the entertainment of the counter claim. The stay of trial of the suit which was granted by the Calcutta High Court was later vacated and pending the suit of the contractor the Union of India filed an application under Section 20 of the Act in the Court of the Subordinate Judge, Delhi, for getting the agreement of reference filed in the Court and for making the reference of the disputes between the parties to the arbitration of the Superintending Engineer, Central Circle No. 1 C.P.W.D. Calcutta. That application was opposed on the ground that the Delhi Court has no jurisdiction to entertain the application, as an application under Section 34 of the Act for stay of trial of the suit was filed in the Calcutta High Court and that consequently any subsequent application relating to arbitration under the agreement should be filed only in the Calcutta High Court. The Subordinate Judge, Delhi, held that the Delhi Court had jurisdiction, as the contract of the parties was concluded at Delhi and the contract was signed at Delhi. On appeal to the Punjab High Court Mahajan, J. set aside the order of the Subordinate Judge and held that the Delhi Court has no jurisdiction to entertain the application under Section 20 of the Act. The appeal to the Supreme Court under Special Leave had to consider the correctness of the view of Mahajan. Ramaswami J., who delivered the judgment on behalf of the Court held that the application for stay under Section 34 of the Act filed in the Calcutta High Court

cannot be treated as an application in a reference under Section 31 (4) of the Act and that consequently the view of the Subordinate Judge First Class, Delhi, that the application under Section 20 of the Act was maintainable in his Court is correct and the order of Mahajan, J., was set aside. This decision also does not deal with the present matter in controversy.

44. In *V.N. Krishna Iyer v. V.N. Subbarama Iyer and Anr.* 62 M.L.J. 550 : I.L.R. 55 Mad. 689 : A.I.R. 1932 Mad. 462, Reilly and Anantakrishna Ayyar, J., dealt with a case falling under paragraphs 20 and 21 of Schedule 2 to the Code of Civil Procedure. There an application for a decree in terms of an award was filed in the Court of the Subordinate Judge, Palghat. The properties comprised in the award being partly situated within British India and partly outside in a native State, the question that arose was whether the Subordinate Judge's Court Palghat, which had unlimited monetary jurisdiction, can entertain the application. Anantakrishna Ayyar, J., who delivered the judgment on behalf of the Bench observed at page 465, column 2, as follows:

The question of jurisdiction to entertain the application under para. 20, Schedule 2, Civil Procedure Code, has thus to be first considered and decided by us and having regard to the considerations mentioned above. We think that our answer should be 'that the lower Court had no jurisdiction to entertain the application to file the award in the present case.

Dealing with the words 'subject-matter of the award', the learned judge held that the expression would seem to imply the whole matter dealt with and decreed by the award and not any particular portion affecting any particular party and consequently the Court could not pass a decree as per the award nor could it pass a decree dealing with those portions of the property that were within its jurisdiction. This case is not of much assistance to us in the present context.

45. In *Guardian Assurance Company Ltd. v. Thaku Shiva Mangal Singh* A.I.R. 1937 All. 2108 the question related to the filing of an agreement of reference to arbitration. The applicant insured with the defendant-company certain ornaments against burglary and house-breaking at any time within a specified period and the agreement further provided that if any question of difference arose between the

insured or any claimant upon this policy and the company as to the meaning and effect of this policy or as to any claim by or any right or liability of either part by virtue thereof, the same shall be referred to arbitration and the award shall be binding and conclusive on the parties to the reference. The application out of which the appeal came up before the Court was made under paragraph 17 of Schedule 2 of the Code. The defendant-Company carried on business at Calcutta and the contract was accepted at Calcutta. The burglary was at the plaintiff's residence in Muttra and the application for filing the agreement was made to the Subordinate Judge at Muttra. The question are whether the Subordinate Judge's Court at Muttra, had jurisdiction to entertain the application. The learned Judges ultimately held that neither the Arbitration Act nor the U.P. Amendment Act (Arbitration) I of 1912 was applicable to Muttra Court, that the contract of insurance was accepted at Calcutta, that a part of the cause of action arose at Calcutta and that a suit could have been brought at Calcutta to which suit the provisions of the Arbitration Act would be applicable and not the provisions of Schedule 2 of the Civil Procedure Code.

46. In *Bithal Das Khanna v. Shir Math Das Khanna and Anr.* A.I.R. 1949 All. 360 the question which arose was whether the award of an arbitrator dividing the properties between the two brothers and relating to houses of a zamindari consisting of several villages and a request for passing of a decree in terms of the award could be made to the Court within whose jurisdiction the houses alone are situate, the zamindari being outside the Court's jurisdiction. Their Lordships held that the civil Judge was competent to entertain the award even in respect of the zamindary property and declared the title of the parties.

47. The learned Counsel referred to the judgment of the Full Bench in *Palaniappa Chettiar and Anr. v. Krishnamurthy Chetty and Ors.* : AIR1968 Mad1 . which considered the question whether an order granting leave to sue in forma pauperis by a single Judge of the High Court is a judgment within the meaning of clause 15 of the Letters Patent. There the learned Judges considered the scope of clauses 12, 13 and 15 of the Letters Patent. This judgment is, in our opinion, of no assistance in dealing with Sections 20 and 2 (c) of the Arbitration Act.

48. The learned Counsel for the respondent by way of analogy referred to the decision of the Patna High Court In Monghyr Electric Supply Company Limited (In liquidation). In re 37 Clomp. Cases 184. That case related to jurisdiction of the Court, in entertaining an application for winding up under the provisions of the Companies Act. There an agreement was entered into between Monghyr Electric Supply Company Limited and the Bihar State Electricity Board, whereby the undertaking of the Company was taken over by the Board, providing for arbitration in respect of difference on the point of valuation of any particular item. The supply Company wrote letters in 1960 to the Board for itemised valuation by the Company which was rejected by the Board in June, 1962. A question of limitation arose as to when an application under Section 20 of the Arbitration Act started and the learned Judge discussed the question of limitation. The present controversy did not arise for consideration before the learned Judge and therefore the above decision has no material bearing.

49. Our attention was drawn to a recent judgment of the Delhi High Court reported in S.O. Malik v. Union of India : AIR1972 Delhi211 . The facts therein are that the petitioner filed an application under Section 20 of the Arbitration Act praying that the respondent, Union of India be directed to file into Court the Arbitration agreement and the disputes between the parties be referred to arbitration. Objection was taken by the Union of India, who was the respondent that the Delhi Court has no jurisdiction to entertain the application as clause 20 (3) of the contract dealing with jurisdiction of Courts stated that the Courts of the place from where the acceptance of tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the contract. Khanna, J. referred to Sections 2 (c) and 31 (1) of the Arbitration Act and clause 20 of the arbitration agreement and held at the Kanpur Court which was specified in clause 20 of the arbitration agreement where a part of the cause of action arose was the only place which had jurisdiction to entertain the application under Section 20 and that the Delhi Court had no jurisdiction to entertain the application. This decision turned upon the construction of clause 20 of the agreement.

50. As observed by us already there is no direct authority on the question that arises for consideration in this appeal. The only decisions that have a material

hearing on the question is the one in *M. Venkataswamiappa v. Srinidhi Limited* (1950) 1 M.L.J. 709. and *S.P. Consolidated Engineering Company Limited v. Union of India and Anr.* : AIR1966 Cal259 . While the question that arose in the first case was with reference to Section 14 of the Arbitration Act, the question in the specific form in which it is now put forward was raised in the later case, but no decision there on was given and the matter was left open. Having regard to the language of the definition of the word 'Court' under Section 2 (c) of the Act and construing the words ' with respect to the subject-matter of the agreement occurring in Section 20 (1) of the Act and the circumstances that the factum of execution of the agreement at Madras not being in question, we are of opinion that the subject-matter of the agreement is not the execution of the agreement, but [the place where the alleged misuse of the surplus steel supplied to the first defendant took place viz., Sealdah, which is within the jurisdiction of the Calcutta High Court and that it is the Calcutta High Court that has jurisdiction to entertain the application under Section 20 and proceed to determine the application in accordance with section' 20 of the Act. Our conclusion is fortified by the plaint allegation in paragraphs 39 and 43 of the plaint already referred to by us above. The cause of action paragraph claiming the place of execution of the agreement as being the place where the entire cause of action had arisen does not set out the correct position. The aforesaid allegation in the cause of action paragraph has been made with a view to give jurisdiction to this Court. There being no controversy regarding the place of execution of the agreement that allegation cannot, in our opinion, confer jurisdiction to this Court to entertain the present application filed under Section 20 of the Act.

51. We therefore, set aside the judgment of the learned Judge and allow the appeal. The appellant will be entitled to his costs.