

Cityscape Developers Pvt. Ltd. Vs. Alka Builders Pvt. Ltd.

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Court : Kolkata

Decided On : Dec-07-1999

Reported in : (2000)1CALLT346(HC)

Judge : Ruma Pal and ;Dipak Prakash Kundu, JJ.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 2, 9;;[Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 4;;[Indian Partnership Act, 1932](#) - Sections 47 and 69;;[Arbitration Act, 1940](#) - Section 11;;[Industrial Disputes Act, 1947](#)

Appeal No. : Civil Appellate Jurisdiction A.P.O. No. 40 of 1999

Appellant : Cityscape Developers Pvt. Ltd.

Respondent : Alka Builders Pvt. Ltd.

Judgement :

R. Pal, J.

1. This appeal has been preferred from three orders dated 18th May 1998, 18th January 1999 and 21st January 1999. All three orders were passed in connection with an application made by the respondent No.1 under section 9 of the [Arbitration and Conciliation Act, 1996](#) (hereinafter referred to as the Act), The orders were passed in the background of the facts which are briefly noted.

2. The appellant company was granted the right to develop land on Tollygunge Circular Road by establishing a multistoried commercial complex (hereafter referred to as the complex) by the Calcutta Municipal Corporation. Under this agreement which is dated 18th June, 1987, after the existing stall holders were relocated in the complex, the balance area would be at the disposal of the appellant. The appellant would be entitled to allot the balance area to prospective lessees even before the completion of construction. The Corporation would grant leases to such lessees as would be selected by the appellant. All premium realised from such prospective lessees would be the absolute property of the appellant. After completion of the construction, the complex is to be handed over to the Corporation.

3. Possession of the land was given by the Corporation to the appellant. The appellant did not have enough money to complete the project. It entered into an agreement for this purpose with the respondent No.2. Disputes arose between the respondent No.2 and the appellant. The appellant and the respondent No.2 then entered into an agreement on 1st August, 1992 with the respondent No.1 to complete the project (hereafter referred to as the Joint Venture Agreement). Under the agreement, the respondent No.1 was to arrange finance and complete construction. There would be a sharing of profits from the construction in the ratio of 60:20:20 between the appellant and each of the two respondents respectively. Pending repayment of the investments made, the respondent No.1 would be entitled to nominate Arun Kumar Bhutoria as a Director of the appellant and 20 shares in the appellant would also be subscribed to by the said Bhutoria. The parties to the Joint Venture Agreement agreed that they :

'shall be at liberty to negotiate with the prospective lessee/lessees. It is hereby confirmed that the party who will bring the highest offer of premium shall be before the committee which will be formed by the Board in a resolution.'

4. It is the respondent No.1's case that it procured the Investments as agreed and the construction of the complex was almost complete. The respondent No. 1 became apprehensive, according to, it for good reason, that the appellant was surreptitiously entering into agreements with prospective lessees of stalls in the

complex and siphoning off the profits.

5. As the agreement dated 7th August, 1992 between the appellant and the respondent Nos.1 and 2 contained an arbitration clause, an application under section 9 of the Act was filed on 14th May 1998 by the respondent for :

'(a) Special Officer/Receiver be appointed to make inventory of the New Allpore Market Complex situate at Block 'M', New Allpore Market Complex, Calcutta-700 053, and thereafter take symbolic possession thereof;

(b) Receiver/Special Officer be directed to carry out the acts as mentioned in paragraph 60 hereinabove:

(c) Receiver/Special Officer be directed to take symbolic possession of the undealt with area by 96.941 sq.ft. of space situated at New Allpore Market Complex:

(d) Injunction restraining the respondent No.1 and its directors, officers and agents from dealing with or disposing of and/or encumbering in any manner the remaining 96,941 sq.ft. space situate at the said properties fully described in paragraph 36 hereinabove except with the consent in writing of the petitioner;

(e) Injunction restraining the respondents from dealing with disposing of and/or granting of any part of the remaining 96,941 sq.ft. of area in New Allpore Market Complex without written consent of the petitioner.

(f) Direction be given for deposit of all amounts or lease premium and other revenues of the said project in the account of Bank of Maharashtra. S.P. Mukherjee Road Branch and payment of outstanding loans and liabilities of the respondent No.1 by operating the said Account:

(g) Direction be given for payment of outstanding loans, if any, of the respondent No.2 out of the revenue to be collected and upon repayment the respondent No.2 be directed to deliver up the share certificates pertaining to 80 equity shares in the respondent No. 1 and the respondent No. 1 be directed to effect appropriate reduction of the share capital by such 80 shares;

(h) Direction be given for deposit of amount of TDS with the Income Tax Department and payment of all statutory liabilities of the respondent No.1 in respect of the said Joint Venture project at New Allpore Market Complex:

(i) Injunction restraining the respondents from depositing any income or revenue including monthly rent as arising out of the said New Allpore Market Complex in any bank account other than current account No.650 maintained with Bank of Maharashtra, S.P. Mukherjee Road Branch, Calcutta;

(j) Ad-Interim order in terms of prayer above;

(k) Such further or other order or orders be passed and/or directions be given as this Hon'ble Court may deem fit and proper.'

6. An ex-parte order was passed on the same date after granting leave under clause of the Letters Patent in terms of prayer (a). The learned Judge appointed Joint Special Officers for the purpose of making an inventory of the complex and to ascertain what shop rooms if any were available for letting out or for sale and the rents that had been collected. The Joint Special Officers were also to take symbolical possession of 96,941 sq.ft. of the space and to give effect to the order with police help if necessary. An ad-interim order of injunction was also passed restraining the respondents from dealing with or disposing of any part of the complex without further orders of the court.

7. The summer vacation of the High Court commenced soon after this. The appellant made an application for vacating the ex parte order on 18th May 1998 before the vacation Bench basically on the ground that this court did not have the jurisdiction to entertain the application since it related to property outside the jurisdiction of this court. No interim order was passed as prayed for, either to recall the order dated 14th May, 1998 or to stay further proceedings under section 9 of the Act. The court said that the agreement between the parties was a Joint Venture agreement which provided for the share of the profits between the parties. If it was a partnership agreement then the immovable property belonging to the partnership might be treated as moveable and the fact the property was outside the jurisdiction of the court would not be relevant. But if the Joint Venture agreement was not a

partnership, then as the property was outside the jurisdiction of the court, the application under section 9 could not be entertained. As the matter required investigation the order dated 14th May 1998 was not vacated. This is the first order which is the subject matter of this appeal.

8. After the re-opening of the court several further orders were passed by the interlocutory court on 3rd June 1998; 19th June 1998, 2nd July 1998, 23rd July 1998, 24th July 1998 and 23rd September 1998. The order dated 14th May 1998 as well as the subsequent orders were appealed against by the appellant. The issue of jurisdiction was sought to be raised by the appellant in the appeal. The appeal was disposed of on 18th November, 1998 by modifying the orders appealed against and also stating :

'We are not inclined to go into the question as to whether this court has Jurisdiction to entertain the application under section 9 of the said Act because no appeal has been preferred from the order dated 18th May, 1998.'

9. In the meanwhile the appellant filed a suit being TS No.72 of 1998 before the Civil Judge. 24-Pgs. challenging the Joint Venture agreement and an interim order was passed by the Civil Judge restraining the respondent No. 1 from taking any benefit under the agreement Upon the matter being mentioned before the interlocutory Judge, on 11th November 1998, the appellant's director was directed to remain personally present in court. The learned Judge not only stayed the order of injunction passed by the Civil Judge but also restrained the appellant from proceedings with the suit filed by it. A second appeal was preferred (APOT 840 of 1998). The Appellate Court modified the order appealed against only in so far as the learned Judge had restrained the appellant from proceeding with the suit filed by him.

10. By a subsequent order the learned Judge directed the Director of the appellant to personally deposit Rs. 70,000/- in the court on account of certain scrap material which the appellant had transferred. A third appeal was preferred from this (APOT 864 of 1998). The Appellate Court stayed the order.

11. On 18th January 1999 the respondent No.1 mentioned the matter before the learned Judge complaining of the conduct of the security guards in the complex. The Joint Special Officers also filed a report On the basis of the submissions of the respondent No. 1 and the report an order was passed directing :

'(a) The Joint Special Officers shall investigate as to whether the complaint by the plaintiff with regard to the conduct of the security guards in preventing prospective buyers from viewing the portion of the premises which has been directed to be sold as aforesaid is correct. If so, the Joint Special Officers are directed to discharge the present security guards and appoint other security guards in their place and stead ;

(b) The Joint Special Officers are directed to take necessary steps so as to allow the ten employees of the respondent company who have been kept out to attend to their duties forthwith. They shall also be entitled to payment of their back wages, if any, which shall be paid by the Joint Special Officers from and out of the funds lying in their hands;

(c) The said Bhattacharjee is directed to forthwith make over possession of the cheques and cash of the respondent company lying in his hands to the Joint Special Officers.'

12. This order is also the subject matter of this appeal.

13. The third order which has been challenged in this appeal and which was passed on 21st January 1999 recorded an undertaking on behalf of the Advocate of the Director of the appellant to deposit all monies including cash and cheques of the appellant to the Joint Special Officers.

14. Before considering the substance of the appeal, the preliminary objections raised by the respondent No. 1 to the maintainability of the appeal are taken up for consideration. The first objection is that a composite appeal from several orders did not He. The order dated 18th May 1998 had been passed by Barin Ghosh-J whereas the other orders challenged were passedby S.K. Sinha-J. The second objection is that nothing had been decided by the order dated 18th May 1998 and

that the order was not a Judgment within the meaning of Clause 15 of the Letters Patent. Reliance has been placed on an unreported Bench decision in Binaguri Investment Pvt. Ltd. v. Goutam Roy & Ors. (Judgment dated 11.8.98 in G.A. No. 2720 of 1998 in APOT No. 545 of 1998) in this regard.

15. Neither of the objections have any merit. Section 9 of the Act inter alia provides :

'9. Interim measures by Court.--A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court:--

(ii) For an interim measure of protection in respect of any of the following matters, namely :--

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) Interim Injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient.

And the court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceeding before it.'

16. Given the fact that the only reliefs grantable under section 9 are interim an interim order on such an application may sometimes partake of finality. Examples

of such 'final' orders in this case is the direction for the appointment of Joint Receivers, the directions for discharge of the Security Officers, the direction to employ the persons claiming to be workers and the payment of back wages to them etc. Each of the orders under appeal are reliefs granted under section 9 in the same proceedings between the same parties. The orders are in effect composite relief granted, each subsequent order modifying or adding to and in furtherance of the original order. It is true that the order dated 18th May, 1998 was passed on an application made by the appellant to vacate the ex parte interim order dated 14th May, 1998 but such an application according to the principles underlying Order XXXIX Rule 4 of the Code of Civil Procedure is by way of opposition to the initial application and part of the same proceeding.

17. Because of the very nature of the proceeding under section 9, the learned Judge should have at least formed a prima facie view as to whether this court had the Jurisdiction to grant any relief when the issue was raised. By refusing to vacate the interim order dated 14.5.98 the court must be taken to have rejected the contention raised by the appellant that it lacked the territorial Jurisdiction to entertain the application under section 9 at all. Because the issue of Jurisdiction was not decided, further 'final reliefs were granted on the application. Orders marched from strength to strength-from an inventory and symbolic possession of the complex to the operation of accounts, maintenance of the complex, employment of personnel and sale of stalls by the Joint Receivers. The appellant was seriously prejudiced by the several orders and the respondent No. 1 in effect achieved the entire relief claimed without the issue of Jurisdiction being even prima facie determined. Each of the orders could, in our view, come within those classes of orders which have, in the case of *Shah Bahulal Khimji v. Jayahen* : : [1982]1SCR187 , been recognised as Judgments for the purpose of clause 15 of the Letters Patent.

18. The unreported decision in *Binaguri Investment Pvt Ltd. v. Goutam Roy & Ors.* (Judgment dated 11.8.98 in G.A. No. 2720 of 1998 in APOT No. 545 of 1998) is distinguishable as that was a case where a suit had been filed. An application was made for dismissal of the suit on the ground of lack of territorial jurisdiction. The learned Judge directed that the issue would be heard along with the suit, The

differences between that case and the one before us lies in the fact that none of the reliefs prayed for in the suit had been granted before determining the issue of Jurisdiction. It was in those circumstances that the court rejected the appeal from the order of the learned Judge deferring the decision on the issue of Jurisdiction. In tills case several 'final orders' have been passed without even taking a prima facie view on the issue of Jurisdiction thus seriously jeopardising the appellant. It also makes no difference that the order dated 18th May, 1998 was passed by B. Ghosh J. and the others by S.K. Sinha J. Apart from the fact that Barin Ghosh J. was entertaining the application during the vacation, the orders were in fact passed by the same court, and in the same proceeding. If separate appeals were to be preferred each time a different Judge happened to pass an order in the same matter by reason of a temporary change of determination, the situation would be anomalous. Separate appeals may result in conflicting orders with regard to the same subject-matter apart from leading to unnecessary duplication of litigation. The preliminary objections are accordingly rejected.

19. As far as the merits of the case are concerned, the appellant has submitted that the application under section 9 could not have been filed in this court because of the definition of the word 'court' in section 2(e) of the Act. Section 2(e) of the Act provides :

'(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 question forming the subject-matter of the arbitration if the same had been the subject-matter of the suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;'

20. Clauses of the Joint Venture agreement as well as the agreement between the appellant and the Corporation have been referred by the appellant to contend that the application was in fact a 'suit' for land outside the Jurisdiction of this court within the meaning of Clause 12 of the Letters Patent. It is contended that the actual object of the application filed by the respondent No. 1 was to affect immoveable property outside the jurisdiction of the court. Several decisions have

been cited to contend that this court did not have the jurisdiction. These will be considered later in the Judgment. It is also submitted that there was no scope for the learned Judge to consider the joint venture agreement as a partnership agreement. It is submitted that this case had not been made out by the respondent No. 1 in its application under section 9 at all. Even if it were held to be a partnership then the suit would not be maintainable because of section 69 of the Partnership Act. Finally it is contended that the assets of a partnership whether moveable or immoveable can be treated as moveable, only when there was an action for dissolution of partnership and not in a case where the agreement was sought to be specifically enforced.

21. As far as the order dated 18th January, 1999 is concerned the appellant submitted that the order was passed on mentioning by the respondent No.1 without any application and without giving the appellant any chance to defend. The appellant also submitted that the court could not terminate the service of persons appointed by the appellant more particularly when they were not parties to the arbitration agreement. According to the appellant the court also had no Jurisdiction to direct the Special Officer to determine whether persons were employees of the appellant or not. Reliance has been placed on Rajasthan SRT Corpn. v. Krishna Kant : : (1995)IILLJ728SC . According to the appellant the grievance of the persons claiming to be the appellant's employees had in fact been referred to the Industrial Dispute Authorities. The appellant's contention is that by directing the employment of persons, the court was in fact enforcing a contract of personal service in civil proceedings which it had no jurisdiction to do and which was contrary to the law laid down in Jitendra Nath v. M/s. Empire of India & Ceylon Tea Co. : : (1989)IILLJ572SC ; J. Tiwari v. Jwala Devi Vidya Mandl: : AIR 1981 SC122 and Ram Bahadur v. State of Bihar : : 1975 CriLJ269 .

22. Incidentally, one of the arguments raised by the appellant in the course of the argument was that the court could not grant relief without determining whether there was, prima facie at least, a valid arbitration agreement or not. The issue must be taken to have been determined against the appellant at this stage as the respondents application under section 11 of the Arbitration Act before this court was allowed by a judgment and order dated 17th September, 1999 and the matter

has been referred to the Chief Justice of this court for appointment of an Arbitrator. The appellant had also sought to raise the issue of Jurisdiction in that application. But the learned Single Judge rejected the contention on the ground that unlike section 9 the issue of jurisdiction was not relevant to an application under section 11 of the Act as reference under section 11 can only be made to the Chief Justice of the High Court.

23. According to the respondent No.1 the issue of jurisdiction was no longer open as the propriety of the order dated 14th May, 1998 had been appealed against by the appellant and the Appellate Court had not held that the court had wrongfully assumed jurisdiction. It is further submitted that the agreement between the parties did not relate to title or possession to immoveable property but was merely a financial arrangement. The decisions in *Asia Foundations & Construction Ltd. v. State* : AIR 1986 Guj 185 head note B; *New Horizons Ltd. v. Union of India* : : (1995)1SCC478 and *Smriti Jaiswal v. Roml Jaiswal* : : AIR1999 Cal123 were relied on to contend that the joint venture agreement was akin to partnership. It is said that ultimately the relief was for accounts and to a share in the profits. According to the respondent No. 1 section 47 of the Partnership Act provided for this. Reference is also made to an order passed in another appeal on 18th May, 1999 where the only question which has been left to the arbitrators is the question of distribution of the profits. It is stated by the order dated 18th May, 1998 earlier orders dated 17th June, 1998 and 23rd September, 1998 had been directed to be implemented. Both these orders had been confirmed on appeal on 18th November, 1998. Lastly it is submitted that about 40 orders had been passed by the learned single Judge and the matter had even reached the Supreme Court. The orders had been partially implemented and advertisements had already been issued for allotment of the stalls in the complex. It was submitted on the basis of *Kiran Singh v. Chaman Pasa'an* : : [1955]1SCR117 that since the issue of jurisdiction is a waivable right and all the between the disputes had almost been resolved, the court should not interfere with the proceedings at this stage.

24. On the merits of the order dated 18th January 1999 relating to the employees, the Respondent No. 1 stated that the employees were not covered by the Industrial Disputes Act. It is also submitted that no appeal had been preferred from

that part of the order relating to the employees nor was there any averment in the stay petition in this regard. According to the respondent No. 1 :

'The parties to the Joint Venture have a say in the day to day administration and management of the affairs of the Joint Venture. The balance of convenience and the ends of Justice demand that the employees who are loyal to Alka should be allowed to function. If not for anything else, but for the purpose of off-setting the presence of the employees who are loyal to Amal Bhattacharjee.'

25. It is further submitted that the court had not decided whether the persons were employed or not but only directed payment to persons on the master rolls of the appellant.

26. The persons who are claiming to be employees of the appellant were given leave to intervene in the proceeding and they have substantially adopted the arguments of the respondent No.1.

27. Reading section 9 with section 2(e) of the Act. It is clear that this court could entertain the respondent No. 1's application provided it had the territorial jurisdiction to do so. The territorial jurisdiction of this court as a Court of original Jurisdiction, has been prescribed by Clause 12 of the Letters Patent. The relevant extract of Clause 12 lays down that the High court-

'(i) in the exercise of its ordinary original civil Jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the court shall have been first obtained, in part, within the local limits of the ordinary original Jurisdiction of the said High Court.'

28. Thus if the matter is a suit for land unless the land is within the territorial limits of this court, the court would have no Jurisdiction. According to the appellant the land in question is the complex which admittedly is beyond the court's Jurisdiction.

29. In an unreported decision in C.S. No.493 of 1999 (21st Century Construction Pvt. Lid. & Anr. v. Smt. Saraswatt Dalmia & Ors. Judgment dated 27th October,

1995 this court has held :

'it is generally accepted principle now a days that the only method for determining whether the facts of a particular case fall within the meaning of the words 'suit for land' is to refer the essential nature of the relief sought. In other words does a suit in substance involve a controversy about land or immoveable property? is the court called upon to decide conflicting claims to such property? Will the decree or order prayed for bring about change in the title or possession to such land? Will the court in granting the relief claimed have to decide the question of title to, management of land or other immoveable property? If the answers to any of these is in the affirmative then the suit would be a suit for land (See : Mooljt Jaitha & Co. v. K.S. & W. Mills Co. : AIR 1950 FC 83, 105 para 81; T.B.K.S. Maharaj & Ors. v. Mayapore Sri Chattanya Math & Ors. : : AIR1983 Cal420)'

30. The court will have to ascertain what the primary object of the suit is by scrutinizing the application under section 9.

31. As noted prayer (a) has already been granted and the Receivers have made an inventory in the complex. As far as prayer (b) is concerned, paragraph 60 of the application which the Special Officer has been asked to carry out reads :

'60. It is Just and convenient that a Receiver/Special Officer be appointed for the purpose of carrying out the following functions :

(a) in case any of the parties to the Joint venture refuse to execute any agreement for leases the Special Officer be authorised and directed to execute necessary lease for and on behalf of the respondent No.1 in favour of the concerned lease.

(b) To take symbolic possession of the unsold areas in the buildings fully described in the Schedule annexed hereto and Including in annexure 'H'.

(c) For this purpose the Receiver may be authorized and directed to place his padlocks after taking possession of the vacant area.

(d) After realisation of the lease pemium/sale proceeds the Receiver be directed and authorised to first pay off all statutory dues, loans and advances, labour

contractors, supplier and other creditors.

(e) To forthwith take control of all the bank accounts in the name of the respondent No. 1 and thereafter transfer the balance lying in other banks to the bank of Maharashtra, S.P. Mukherjee Road Branch and thereafter close all the accounts with other banks.

(f) Receiver be empowered to operate the bank account of the respondent No. 1 maintained with the Bank of Maharashtra.

(g) After liquidation of all the liabilities, distribute the balance lying in the bank account of the respondent No. 1 between the petitioner, the respondent Nos. 1 and 2 in the ratio of 60:20:20.

(h) Upon payment of loan and interest to cancel the 90 shares held by the respondent No. 1 in the respondent No. 1 and reduce the share capital of the respondent No. 1 to that extent.

(i) Have the finishing work completed within the period of three months.

(j) Make necessary payments for the purpose of maintenance of the building and payment of lease rentals to the Calcutta Municipal Corporation. Out of maintenance charges, electricity charges, rents etc. from the lessees in the complex and the balance profits to be distributed as per the share of profit mentioned in the agreement dated 7th August, 1992.

(k) Take possession of all the statutory records and other relevant documents of the respondent No. 1 including the sanctioned building plan, books of accounts, share register, bank statements etc. and thereafter maintain the same.'

32. It appears to us that many of the reliefs prayed would affect the control and management of property outside the Jurisdiction of this court. No doubt prayers (f), (g), (h) and (i) relate to deposit of payment of monies and transfer of shares but these also relate to Income either from the leases of the stalls in the complex or the maintenance of the complex. The object of the application under section 9 is not primarily to obtain accounts. The question of accounts would arise only after

the leases and sales of stalls are complete. On the basis of reasoning aforesaid it must be held, at least prima facie, that the application is in substance a suit for land and this Court did not have the jurisdiction to entertain the same.

33. The appellant is perhaps not Justified in the grievance that the learned Judge who passed the order dated 18th May 1998 raised the issue of partnership which was not the case made out by the respondent No.1 in its application. There appears to be substance in the submission of the respondent No.1 that a Joint Venture agreement may be akin to a partnership [See Asia Foundations & Constructions Ltd. v. State of Gujarat: AIR 1986 Guj 185]. As said in New Horizon Limited v. Union of India & Ors.: : (1995)1SCC478 :

'The expression 'Joint Venture' is more frequently used in the United State. It connotes a legal entity in the nature of a partnership engaged in Joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject-matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses (Black's Law Dictionary, 6th Edn.. P.839). According to Words and Phrases, Permanent Edn., a Joint venture is an association of two or more persons to carry out a single business enterprise for profit (P.117, Vol. 23). A Joint venture can take the form of a corporation wherein two or more persons or companies may join together. A joint venture corporation has been defined as a corporation which has Joined with other individuals or corporations within the corporate framework in some specific undertaking.'

in that case it was found :

'The company is in the nature of a partnership between the Indian group of companies and the Singapore based company who have jointly undertaken this commercial enterprise wherein they will contribute to the assets and share the risks.'

34. How far the principles of partnership law will be applicable to the joint venture in question is a moot point.

35. In *Smt. Smriti Jaiswal v. Romi Jaiswal* : AIR 1999 Cal 124, Ansari J. speaking for the Bench said :

'A suit for dissolution of partnership and accounts cannot be treated as a 'suit for land', even if its assets consist of immoveable properties and, therefore, a suit for dissolution and account is maintainable in a court within whose Jurisdiction cause of action has arisen in whole or in part, though that the court has no territorial Jurisdiction over the assets of the firm which are immoveable properties.'

36. The learned single Judge will have to consider whether the principle will be applicable to a case when the action is not for dissolution but for enforcement of an agreement to develop land outside the jurisdiction of this court Prima facie, we are of the view that the principle enunciated in *Smriti Jaiswal v. Romi Jaiswal* will not apply to this case. However, if the learned single Judge ultimately decides in favour of the respondent No. 1 he will have to further decide whether the facts on the basis of which Jurisdiction of this court have been sought to be attracted are parts of the cause of action. If so, the learned Judge will need to ascertain whether the facts pleaded are in fact correct.

37. In the application under section 9, the Jurisdiction of the court was sought to be attracted on the basis that-

(i) The agreement dated 7th August 1992 was executed in the office of the respondent No. 1 within the court's jurisdiction.

(ii) Finance was arranged by the respondent No. 1 within the jurisdiction.

(iii) The sanction plan was revised within the jurisdiction.

(iv) Sales promotion was carried out by the respondent No. 1 from his office within the jurisdiction.

(v) Payments have been received within the jurisdiction.

(vi) Agreements with the lessee have been entered into at the petitioner's office where also all payments were received. Breach of the agreements took place partly outside and partly within the Jurisdiction.

38. The learned single Judge will have to consider whether these factors are sufficient to exclude the law laid down in *Morgan Stanley v. Kartick Das* : : (1994)4SCC225 that the action must be filed where the company has its registered office. The appellant's registered office is outside the jurisdiction of this court.

39. At this stage it is sufficient for us to hold, prima facie, that this court did not have the jurisdiction to entertain the application under section 9. This finding is sufficient to stay further proceedings in the application under section 9 until the issue of jurisdiction is determined finally by the learned single Judge. The appellant could not be said to have waived the right to object to this court's jurisdiction as the issue had been raised at the very outset and at every stage. This court has expressly left the issue of jurisdiction open when disposing of the appeal from the order dated 14th May, 1998. Nor does it matter that the application under section 9 had almost worked itself out and that the stalls had been directed to be sold by this court. This, in my view, brings out with clarity the need for the single learned Judge to have decided the issue of jurisdiction at the outset.

40. As far as the order dated 18th January 1999 is concerned. irrespective of whether this court otherwise has the Jurisdiction to entertain the question relating to the disputes of employment of workers, the fact remains that the reliefs grantable under section 9 are limited and the rights of persons not parties of the arbitration agreement cannot be determined in this proceeding. For the reasons aforesaid, the appeal is allowed. The order dated 18th January, 1999 is set aside and as far as the appeal from the order dated 18th May, 1998 is concerned we direct that no further order shall be obtained by the respondent No. 1 under section 9 until the issue of jurisdiction is heard and determined by the learned single Judge.

The appeal is disposed of accordingly. There will be no orders as to costs.

D. P. Kundu, J.

41. I agree.

42. Appeal disposed of

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