

J.G. Engineers Pvt. Ltd. Vs. Union of India (Uoi) and ors.

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Court : Kolkata

Decided On : Jun-18-2002

Reported in : (2002)3CALLT106(HC)

Judge : Kalyan Jyoti Sengupta, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 4, 24 and 42

Appeal No. : G.A. Nos. 426 and 1118 of 2002 and A.P. No. 140 of 1998

Appellant : J.G. Engineers Pvt. Ltd.

Respondent : Union of India (Uoi) and ors.

Judgement :

Kalyan Jyoti Sengupta, J.

1. The application for vacating the order of attachment in connection with this application and the execution application are taken up for hearing as the preliminary point of maintainability of the application has been taken up by Mr. Roy Chowdhury. He submits that this Court has no jurisdiction as everything has taken place outside the territorial limit of this Court. Therefore, Mr. Chatterjee's client should have put in execution of this award before the appropriate Court where causes of action have arisen.

2. Mr. Chatterjee has drawn my attention to a fact that at the time of the arbitration proceedings an application was made in this Court and asked for continuation of the same Arbitrator who was appointed by the department, and was sought to be removed on the ground of retirement. That application was made in this Court and an appropriate order was passed by Justice Sujit Kumar Sinha (as His Lordship then was). Pursuant to the aforesaid order arbitration proceedings has been completed meaning thereby all the litigating parties have accepted the aforesaid order and that order had reached its finality. Therefore, in view of Section 42 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the said Act), once an application at any point of time under Part-I of this Act has been made then that Court shall have the jurisdiction to the exclusion of all other Courts or for the subsequent steps which might be taken. Therefore, I feel it necessary to put the exact language of Section 42 of the said Act which is as follows :-

'42. Jurisdiction.-Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.'

3. It is clear from the aforesaid Section that in view of earlier application being made, this Court has alone jurisdiction amongst others to entertain this execution application. The question of jurisdiction is relatable to question of waiver, and question of jurisdiction can be and or is deemed to have been waived by virtue of Section 4 of the said Act in this case, which says as follows :-

'4. Waiver of right to object.-A party who knows that - (a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.'

4. Under such circumstances, I hold that this execution application is perfectly maintainable as this Court is having jurisdiction. Mr. Roychoudhury submits that this execution application cannot also be maintained in view of his client taking an application for setting aside the award under Section 24 before the District Court at Guwahati. In my prima facie view, in view of aforesaid finding and observation, the application taken out by Union of India before that Court cannot be termed to be a valid application in order to stall this execution application. Had this application been pending in this Court, then perhaps I would have vacated the order which has already been passed on this execution application or for that matter I would have dismissed this application. Therefore, I am unable to accede to the request of Mr. Roychoudhury for vacating the interim order already passed.

5. Mr. Roychoudhury submits upon instruction that his client will make an application for return of the proceedings pending before the appropriate Court in Guwahati. Mr. Chatterjee submits that his client has already taken out an application for dismissal of that application on the question of jurisdiction. Since Mr. Roychoudhury has assured this Court to take a positive steps. I direct the interim order of attachment to continue for a period of 8 (eight) weeks from date. Therefore, this application is adjourned till 10 (ten) weeks for the time being.

In the event appropriate department puts in some fund with the Reserve Bank of India, covering the amount attached, then liberty is given to mention before this Court at any point of time.

All parties are to act on a xeroxed signed copy of this dictated order on the usual undertaking.