

(2024) 05 CAL CK 0064

Calcutta High Court (Appellate Side)

Case No: M.A.T. No. 112 Of 2024, I.A. No. CAN 1, 2 Of 2024

Essar Oil And Gas Exploration
And Production Limited

APPELLANT

Vs

District Magistrate, Shahdara
District, Government Of National
Capital Territory Of Delhi & Ors

RESPONDENT

Date of Decision: May 24, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 226(1), 226(2)
- Arbitration and Conciliation Act, 1996 - Section 11, 16, 21
- Micro, Small and Medium Enterprises Development Act, 2006 - Section 18(1), 18(3)

Hon'ble Judges: T. S. Sivagnanam, CJ; Hiranmay Bhattacharyya, J

Bench: Division Bench

Advocate: V.V.V. Sastry, Rajarshi Dutta, Sumit Agarwal, Akanksha Mukherjee

Final Decision: Dismissed

Judgement

Hiranmay Bhattacharyya, J

- This intra court appeal is at the instance of the writ petitioner and is directed against an order dated 09.01.2024 passed by a learned Single Judge in W.P.A. No. 28661 of 2023.
- By the order impugned, the learned Single Judge refused to entertain the writ petition on the ground of lack of territorial jurisdiction.
- Essar Oil and Gas Exploration and Production Limited (for short "Essar") i.e., the appellant herein was awarded a contract by the Government of India for exploration and development work program in Coal Block situated at Raniganj in the State of West Bengal. Appellant issued work orders in favour of Gargi Travels Pvt. Ltd. (for short "Gargi Travels") i.e., the 3rd respondent herein for providing transportation

services to the appellant. Certain disputes and differences cropped up between the appellant and the 3rd respondent for which the appellant issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (for short "the A & C Act, 1996) thereby nominating an arbitrator. Thereafter, the appellant filed an application under Section 11 of the 1996 Act before this Hon'ble Court praying for appointment of an arbitrator. The said application under Section 11 of the 1996 Act was allowed thereby appointing an arbitral tribunal to adjudicate upon the disputes and differences between the parties.

4. In the meantime, the Micro, Small and Medium Enterprises Council (for short "MSME Council") issued a notice dated 28.01.2023 for Conciliation under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 (for short "2006 Act") with respect to reference filed by the 3rd respondent. By a letter dated 11.04.2023, the District Magistrate, Sahadara District, informed that a conciliation proceeding will be held on 17.04.2023. By an email dated 13.04.2023, the representative of the appellant informed the 1st respondent about certain discrepancies in the letter dated 11.04.2023. The appellant claims that its representative could not attend the conciliation meeting on 17.04.2023 as the notice of hearing was received only on 25.04.2023.

5. The District Magistrate, Shahdara, issued a letter dated 30.08.2023 informing the appellant that the MSME Council has decided to terminate the conciliation proceeding and refer the case under Section 18(3) of the 2006 Act to the Delhi International Arbitration Centre (for short "DIAC") for initiating arbitration proceeding as per the A & C Act, 1996. Thereafter, a notice dated 18.09.2023 was served directing filing of statement of claim within the time limit specified in the said notice. DIAC, by a letter dated 16.11.2023, called upon the appellant and the 3rd respondent to suggest 5 names of Arbitrators from the panel of Arbitrators. Essar filed the writ petition praying for setting aside and/or quashing the letter dated 30.08.2023 issued by the District Magistrate, Shahdara and the letters dated 18.09.2023 and 16.11.2023 issued by the Joint Registrar, DIAC.

6. By the impugned order, the learned Single Judge refused to entertain the writ petition on the ground of lack of territorial jurisdiction but disposed of the writ petition with liberty to Essar to approach the appropriate High Court.

7. Being aggrieved, the writ petitioner has approached this Court.

8. Mr. Datta, learned advocate appearing in support of the appeal referred to a Notification dated 30.07.2007 constituting the MSME Council and contended that the District Magistrate, Shahdara could not have assumed jurisdiction. He further submitted that the initial notice dated April 11, 2023 fixing the date for conciliation meeting before the District Magistrate, Shahdara on 17.04.2023 was addressed to a different entity and not the appellant herein. Mr. Datta submitted that the appellant pointed out such discrepancy in the notice by a communication addressed to the

District Magistrate. In reply to such letter of the appellant, an email was sent on 25.04.2023 attaching the notice sent which reiterated that the date of hearing was 17.04.2023. Mr. Datta contended that the notice fixing the date of hearing on 17.04.2023 is bad in law as the date of hearing was prior to the date of communication by email. He contended that the decision to terminate the Conciliation proceeding and the consequential reference to the Arbitrator by the MSME Council are bad in law.

9. Mr. Datta submitted that an application under Section 11 of the A & C Act, 1996 was filed before the High Court at Calcutta and the same was allowed by this Hon'ble Court and an Arbitrator was appointed. The 3rd respondent herein challenged the appointment of the Arbitrator by filing a Special Leave Petition before the Hon'ble Supreme Court which was dismissed with liberty to the said respondent to raise all permissible objections before the Arbitral Tribunal under Section 16 of the A & C Act, 1996.

10. Mr. Datta further contended that the appellant sent various letters from the territorial jurisdiction of this Court and the impugned decisions were also communicated to the appellant within the territorial jurisdiction of this Court.

11. Mr. Datta concluded by submitting that since a part of the cause of action arose within the territorial jurisdiction of this Court, the impugned order holding that this Court lacks territorial jurisdiction is liable to be set aside and the writ petition has to be decided on merits.

12. Mr. Agarwal, the learned advocate for the 3rd respondent seriously disputed the submissions made by Mr. Datta. He contended that as per the Notification dated 30.09.2020, District Magistrate, Shahdara District is the Chairperson of the MSME Council, New Delhi. He further submitted that the conciliation proceeding under the 2006 Act was initiated by the District Magistrate, Shahdara district within the territorial jurisdiction of New Delhi and the same was also concluded within the territorial jurisdiction of New Delhi. He contended that the MSME Council, New Delhi referred the matter to arbitration. He thus submitted that the cause of action arose wholly outside the territorial jurisdiction of this Hon'ble Court. He submitted that mere receipt and issuance of communication does not give rise to cause of action for filing the instant writ petition. As to what constitutes cause of action, the learned advocate placed reliance on the decisions of the Hon'ble Supreme Court in the case of State of Rajasthan and Others vs. M/s Swaika Properties and Another reported at (1985) 3 SCC 217; National Textile Corporation Ltd. and Others vs. Haribox Swalram and Others reported at (2004) 9 SCC 786 and Oil and Natural Gas Commission vs. Utpal Kumar Basu and Others reported at (1994) 4 SCC 711. He referred to the decisions in the case of Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited (Unit 2) and Another reported at (2023) 6 SCC 401 and Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited & Others reported at (2017) 7 SCC 678 in support of his contention that this Hon'ble

Court lacks territorial jurisdiction to entertain the writ petition.

13. Heard the learned advocates for the parties and perused the materials placed.

14. Article 226(2) of the Constitution of India states that the power conferred by Clause (1) to issue orders, directions or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

15. In view of Clause (2) of Article 226, this Hon'ble Court can exercise powers conferred by Clause (1) of Article 226 if cause of action arises wholly or in part within the territorial jurisdiction of this Hon'ble Court, even if the seat of the authority is outside the territorial jurisdiction of the High Court.

16. This Court has to now consider whether cause of action, in the case on hand, arose wholly or in part within the territorial jurisdiction of this Hon'ble Court.

17. It is well settled that the expression "cause of action" means a bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. An objection as to lack of territorial jurisdiction has to be decided by the Court after taking into consideration the facts pleaded in support of the cause of action without vouching for the truth or otherwise of such facts.

18. In M/s Swaika Properties (supra) it was held that service of notice does not form an integral part of the cause of action in a writ petition praying for quashing of the notification issued under the provision of the relevant statute whereby the notified land stood vested in the State Government free from all encumbrances.

19. In ONGC (supra), it was held that merely because the writ petitioner read the advertisement in Calcutta and submitted its offer from Calcutta and made representation from Calcutta, it does not constitute facts forming an integral part of the cause of action.

20. In National Textiles Corporation Ltd. (supra), it was held that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned.

21. The Hon'ble Supreme Court held thus-

"10. Under Clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person exercising jurisdiction in relation to the territories within which the cause of action,

wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Cause of action as understood in the civil proceedings means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. To put it in a different way, it is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. In *Union of India v. Adani Exports Ltd.* in the context of clause (2) of Article 226 of the Constitution, it has been explained that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned."

(emphasis supplied)

22. The Hon'ble Supreme Court further held that the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action. Therefore, it was held that the Calcutta High Court had no jurisdiction to entertain the writ petition.

23. From the aforesaid discussion it is evident that only the facts constituting an integral part of the cause of action are material for the purpose of deciding as to whether this Hon'ble Court has jurisdiction to entertain the writ petition of the appellant. In other words, the power conferred under Article 226(1) can be exercised by a High Court only if integral part of the cause of action arose wholly or in part within the territorial jurisdiction of that High Court.

24. Upon a bare reading of the writ petition as a whole, this Court finds that the cause of action of the instant writ petition is that the 1st respondent herein assumed jurisdiction illegally in initiating a conciliation proceeding and terminating the same and consequently referring the matter under Section 18(3) of the 2006 Act to DIAC for initiating arbitration. The appellant had prayed for setting aside the order passed by the 1st respondent thereby terminating the Conciliation proceeding and referring the matter for arbitration and quashing the letters/respondents initiated by the 2nd respondent pursuant to such reference. To the mind of this Court, the integral part of the cause of action arose wholly outside the territorial jurisdiction of this Hon'ble Court.

25. The appellant claims to have invoked the jurisdiction of this Court as the appellant company is carrying on its operation at Raniganj within the State of West Bengal; an application under Section 11 of the A & C Act, 1996 was allowed by this Hon'ble Court thereby appointing an Arbitral Tribunal and various correspondences

initiated by the 1st and 2nd respondent were addressed to the appellant company within the State of West Bengal.

26. By applying the guiding tests laid down in National Textiles Corporation (supra), this Court is of the considered view that the facts summarised in the preceding paragraph are neither relevant nor germane for grant of the prayer in the writ petition. This Court, therefore, holds that such facts would not constitute a material, essential or integral part of the cause of action conferring jurisdiction upon this Court.

27. This Court, therefore, holds that Clause (2) of Article 226 of the Constitution of India cannot come to the aid of the appellant herein as facts forming integral part of the cause of action did not arise wholly or even in part within the territorial jurisdiction of this Hon'ble Court.

28. The learned Single Judge was, therefore, right in refusing to entertain the writ petition on the ground of lack of territorial jurisdiction.

29. Mr. Datta would contend that assumption of jurisdiction by the District Magistrate at Shahdara, New Delhi is bad in law in view of the notification issued by the Industries Department of New Delhi dated 30.07.2007. On the other hand Mr. Agarwal, learned advocate for the respondent seeks to justify the action of the said District Magistrate, Shahdara by placing reliance upon the notification issued by the Industries Department, New Delhi dated 30.09.2020. However, in view of the findings rendered by this Court hereinbefore, this Court refrains from making any observation with regard to the aforesaid rival contentions of the parties.

30. There is, however, no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in the case of Gujarat State Civil Supplies (supra) that Chapter V of the 2006 Act would override the provisions of the A & C Act, 1996. Mr. Agarwal would contend that pendency of proceedings before the arbitral tribunal appointed by this Hon'ble Court on an application under Section 11 of the Arbitration and Conciliation Act, 1996 cannot be a bar in proceeding with the reference made by the District Magistrate, Shahdara under Section 18(3) of the 2006 Act to DIAC for initiating arbitration proceeding. In view of the findings rendered by this Court on the issue of entertainability of the writ petition, this Court is not inclined to make any observation on such contention raised by the learned advocate for the 3rd respondent.

31. In Indus Mobile Distribution (supra) it was held that under the law of arbitration, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause even though no part of the cause of action may have arisen at the neutral venue. The Hon'ble Supreme Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration. There is, however, no quarrel to the aforesaid proposition of law but the

same do not have any manner of application as it is not the case of the parties herein that they have chosen a neutral venue for arbitration.

32. For all the reasons as aforesaid, this Court is not inclined to interfere with the impugned order. The appeal accordingly stands dismissed. The application also stands disposed of.

33. There shall be however no order as to costs.

34. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.