SBQ Steels Limited Vs Goyal MG Gases Private Limited

Court: Madras High Court

Date of Decision: Dec. 10, 2012

Acts Referred: Arbitration and Conciliation Act, 1996 â€" Section 2(1)(e), 36, 42, 9
Civil Procedure Code, 1908 (CPC) â€" Section 16, 17, 18, 19, 20
Companies Act, 1956 â€" Section 433, 434
Negotiable Instruments Act, 1881 (NI) â€" Section 138

Citation: (2013) 1 MLJ 410

Hon'ble Judges: P.R. Shivakumar, J

Bench: Single Bench

Advocate: S.R. Ragunathan for M.V. Anil Kumar, for the Appellant; A.R.L. Sundaresan for S.L. Sudarsanan and C.P.G. Yoganand, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.R. Shivakumar, J.
This original application has been filed praying for an injunction restraining the respondents 1 and 2 from presenting a

total number of thirty three cheques bearing Nos. 688426 (dated 1.1.2012), 688429 (dated 1.4.2012) to 688460 (dated 1.11.2014) for

collection/encashment pending disposal of the arbitral proceedings. The averments made by the applicant in the affidavit filed in support of the

application, can be briefly stated as follows:

(i) The applicant M/s. SBQ Steels Limited, having its Registered office in Chennai, has established a steel plant in Andhra Pradesh. An agreement

came to be entered into between the applicant and M/s. Goyal MG Gases Private Limited, the first respondent at Chennai for the supply of

Oxygen and Nitrogen gases and liquid argon, which are required for the Steel Melt Shop of the applicant''s factory. The said agreement was styled

as ""Build, Own and Operate basis"" shortly known as ""BOO"". The first respondent was expected to incur the entire cost of the project for setting

up the gas plant. However, in accordance with the terms of the agreement, the applicant placed Rupees Two Crores at the disposal of the first

respondent as an interest free commitment in 2008. As per the agreement, the applicant has to bear the cost of civil work and provide other

facilities like land, water, electricity etc. for the gas plant. After the agreement, the first respondent informed the applicant of certain financial

assistance availed from their bank, namely the 2nd respondent bank and as per the request of the first respondent, a tripartite agreement was also

entered into among the applicant, first respondent and second respondent on 25.5.2009. In accordance with the said tripartite agreement, the

applicant had handed over 60 post-dated cheques drawn on Indian Bank, Harbour branch, Chennai in favour of the second respondent in respect

of A/c No. 728276905 on the understanding that the monthly payment was to be made directly into an escrow account maintained with the

second respondent in New Delhi.

(ii) By a subsequent amended agreement dated 5.3.2010, the 60 post-dated cheques, each one of them valued at Rs. 35,00,000/- already given

by the applicant, had become state and were liable to be returned to the applicant. The first respondent even before starting the commercial

production, presented some of the cheques, which had been given as security. Though initially the applicant was given to understand that the

applicant had to spend about a sum of Rs. 1 Crore for civil work, applicant was forced to spend nearly Rs. 12 Crores towards the cost of civil

work and various other capital expenses. Even then, the first respondent was not in a position to commence production within the expected time,

resulting in heavy loss to the applicant. Even after the commission of the gas plant with inordinate delay, the quality and pressure of the gas supplied

were poor, which severely affected the machineries installed by the applicant for manufacturing steel, besides causing production loss and huge loss

due to increased production cost. Because of the failure on the part of the first respondent to achieve the standard in the supply of gas, the

applicant was forced to give instructions for stopping payment of the cheques. Subsequently, the second respondent requested the applicant to

issue fresh cheques and directed remittance of payments payable by the first respondent to the credit of escrow account. Accordingly, the

applicant had been remitting the amounts payable by the applicant to the first respondent into the escrow account. Under the said circumstances,

the applicant apprehends that the post-dated cheques would be unauthorisedly presented for collection even though there is no liability on the part

of the applicant to make payment.

(iii) Furthermore, due to the order passed by the Hon''ble Supreme Court banning the mining of the iron ores in the States of Karnataka and

Andhra Pradesh, the applicant had to shut down its steel melting plant from 11.8.2011 on account of force majeure situation. Now the applicant

understands that the agreement itself is void, unreasonable and would not be binding on the applicant.

(iv) In addition, the first respondent having committed breach of the contract, hurriedly filed an application u/s 9 of the Arbitration and Conciliation

Act, 1996 before the High Court of Delhi at New Delhi. The said petition is being resisted on the question of jurisdiction on the premise that no

part of the cause of action had arisen within its territorial jurisdiction. The High Court of Delhi passed an order directing the first respondent to

supply gases in terms of the agreement and at the same time restraining the applicant from purchasing gases from third parties. Since the agreement

was signed in Chennai and nothing is required to be performed in New Delhi and the plant is also in Andhra Pradesh, the maintainability of the said

application before the Delhi High Court is challenged on the ground of lack of jurisdiction. While so, the first respondent issued a notice dated

5.4.2012 invoking the arbitration clause under the agreement dated 7.8.2008. In addition, the first respondent also issued a notice on the same day

for the applicant''s winding up under Sections 433 and 434 of the Companies Act, 1958. Immediately, applicant sent a reply refuting the

allegations found in the notice and nominating its Arbitrator. Meanwhile, the applicant was served with a notice u/s 138 of the Negotiable

Instruments Act, 1881 informing the presentation and dishonour of five cheques. Out of a sum of Rs. 87,68,164/-, the actual liability of the

applicant for the period between December 2010 and April 2012, the applicant paid a sum of Rs. 25,00,000/- on 21.4.2012 to the second

respondent through the escrow account, since the tripartite agreement requires the applicant to remit any amount payable to the first respondent

directly to the escrow account maintained with the second respondent and not to pay directly to the first respondent. As the first respondent,

instead of returning all the 60 post-dated cheques to the applicant, had presented five cheques for encashment and on their return, had issued

notice u/s 138 of the Negotiable Instruments Act, 1881, in order to avoid any kind of embarrassment, the applicant enclosed a demand draft of

Rs. 1,75,00,000/- even though the amount payable was Rs. 62,68,164/-. The same was done, as the applicant was under the threat of being

prosecuted. As such, an excess sum of Rs. 1,12,31,836/- was paid to the first respondent, regarding which the applicant reserves its right to seek

for adjustment in respect of the future transactions.

(v) The applicant apprehends that the other cheques may also be presented by the first respondent to make a wrongful gain with its intention to

extort money. Now the Arbitral Tribunal has also been constituted and the first date of hearing had also been fixed as 29.5.2012. On receipt of the

notice for the first hearing, the applicant intimated the second respondent by a letter dated 9.5.2012 not to entertain the request of the first

respondent for encashment of any of the cheques and not to hand over any of those cheques to the first respondent. During the shut down period

and when no production was carried on, there was no liability to make payment towards the cheques. Even the MTOP ""minimum take or pay

conditions stipulated in the contract are in the nature of penalty. In addition, the cheques have also been cancelled and stop payment instructions

have also been given. The act on the part of the first respondent in presenting the cheques and issuing notices u/s 138 of the Negotiable Instruments

Act, 1881 and also for the winding up of the applicant company is intended to injure and harm the applicant and thereby coerce the applicant to

concede to the unreasonable demands of the first respondent. Since the Arbitral Tribunal is yet to commence the hearing, the applicant has no

other alternative than to approach this Court u/s 9 of the Arbitration and Conciliation Act, 1996 for the relief of injunction in the nature stipulated

supra.

2. The respondents 1 and 2 have filed separate counter affidavits disputing the various contentions raised by the applicant relating to the merits of

the dispute, which has already been referred to an Arbitral Tribunal consisting of three Hon''ble retired Judges of the Supreme Court. In addition,

the first respondent, in their counter affidavit have contended that the present application by the applicant u/s 9 of the Arbitration and Conciliation

Act, 1996 is barred u/s 42 of the said Act, since a previous application filed u/s 9 of the Arbitration and Conciliation Act, 1996 was entertained by

the Delhi High Court regarding the subject matter of the arbitration and orders were passed on merits, wherein no objection had been raised on the

question of jurisdiction. As such, it was requested on behalf of the first respondent that the question of maintainability of the Original Application in

this Court, should be taken up as a preliminary issue. Besides raising the objections on the merits of the dispute, the second respondent has also

raised a preliminary objection regarding the maintainability of the original application in this Court contending that the application is barred u/s 42 of

the Arbitration and Conciliation Act, 1996. Hence, this Court had to hear the parties on the above said preliminary objection.

3. Accordingly, the arguments advanced by Mr. S.R. Ragunathan, learned counsel appearing for Mr. V. Anil Kumar counsel on record for the

applicant and by Mr. A.R.L. Sundaresan, learned senior counsel appearing for Mr. S.L. Sudharsanam, counsel on record for the first respondent

and by Mr. C.P.G. Yoganand, learned counsel for the second respondent on the above said preliminary objection were heard and the materials

placed were also considered.

4. The point that arises for consideration in this original application is ""Whether the original application is barred u/s 42 of the Arbitration and

Conciliation Act, 1996?

5. The affidavit filed in support of the original application itself contains a reference to an application filed by the first respondent herein on the file of

the Delhi High Court, New Delhi u/s 9 of the Arbitration and Conciliation Act, 1996 relating to the subject matter of arbitration, admittedly pending

before the Arbitral Tribunal consisting of three Hon''ble retired Judges of the Supreme Court. It is also not in dispute that the said application filed

by the first respondent before the Delhi High Court, New Delhi is an application filed first in point of time in respect of the dispute, which is the

subject matter of arbitration and that the applicant also entered appearance in the said application before the Delhi High Court. In view of the

same, Mr. A.R.L. Sundaresan, learned senior counsel appearing for the first respondent has contended that Section 42 of the Arbitration and

Conciliation Act, 1996 clearly bars the present application, as another Court, namely the Delhi High Court, New Delhi, has already entertained an

application u/s 9 of the Arbitration and Conciliation Act, 1996 in respect of the very same dispute, which is the subject matter of arbitration

pending before the Arbitral Tribunal.

6. Per contra, Mr. S.R. Ragunathan, learned counsel for the applicant would contend that the bar contemplated u/s 42 of the Arbitration and

Conciliation Act, 1996 would apply only if the previous application was filed in a Court having jurisdiction and if the previous application was filed

in a Court having no jurisdiction, the same would not attract the bar provided u/s 42 of the Act for the entertainment of any application u/s 9 by

another Court having jurisdiction. Learned counsel for the applicant would contend further that the negotiation for original agreement were held in

Chennai and the agreement itself was executed in Chennai; that the subsequent amended agreement was also entered into at Chennai; that the

plants are established in Andhra Pradesh and not within the territorial jurisdiction of the High Court of Delhi; that none of the part of the contract is

agreed to be performed within the jurisdiction of the Delhi High Court; that except the fact that the registered office of the first respondent is in

New Delhi, no part of the cause of action arose within the jurisdiction of Delhi High Court to clothe the Delhi High Court with jurisdiction to

entertain an application u/s 9 of the Arbitration and Conciliation Act, 1996 in respect of the subject transaction between the parties; that the

application filed by the first respondent before the Delhi High Court and pending on the file of the Delhi High Court should be held to be one filed

in a Court having no jurisdiction and that hence the same would not constitute a bar for a proper Court, namely this Court, having jurisdiction to

entertain the present original application u/s 9 of the Arbitration and Conciliation Act, 1996.

7. The second respondent is non committal and in a way he sails with the first respondent. The learned senior counsel for the first respondent

contended that though the amended agreement dated 5.3.2010 was specifically stated to have been entered into at Chennai, since the place of

execution of the original agreement was not Chennai and it was partly executed in Chennai and partly executed in New Delhi, part of the cause of

action should be held to have arisen within the jurisdiction of the High Court of Delhi. The learned senior counsel has also pointed out Clause 9.5

of the Escrow Account Agreement dated 25.5.2009 to which the applicant, the first respondent and the second respondent were parties and

contends that by the said clause, the parties have agreed that the Courts or Tribunals in New Delhi shall have exclusive jurisdiction to settle any

dispute that may arise out of or in connection with the agreement. Learned senior counsel for the first respondent has contended further that even

though the amendment to the agreement was made on 5.3.2010 at Chennai, it could not be termed as a total innovation of the earlier agreement

and the cause of action, which arises as per the original agreement, will not get extinguished by the agreement providing amendment to the original

agreement. Learned senior counsel for the first respondent also pointed out the fact that Clause 9.5 of the Escrow Account Agreement dated

25.5.2009 was not touched by the subsequent agreement dated 5.3.2010 amending some of the clauses of the original agreement dated 7.8.2008.

It is also the further contention of the learned senior counsel for the first respondent that in the application filed by the first respondent before the

Delhi High Court, the applicant herein had accepted notice without raising objection regarding jurisdiction and also pleaded for protection on

merits. Pointing out the same, the learned senior counsel has contended that when the other Court, namely the Delhi High Court, is seized of an

earlier application filed by the first respondent u/s 9 of the Arbitration and Conciliation Act, 1996 relating to the very same subject matter, unless

and until the said application is successfully resisted on the ground of absence of jurisdiction, the bar u/s 42 of the Arbitration and Conciliation Act,

1996 shall stand attracted towards the present original application and that hence the present application should be dismissed as barred u/s 42 of

the said Act.

8. Section 42 of the Arbitration and Conciliation Act, 1996 is reproduced here under for better appreciation.

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.

Section 42 of the Act is found in Part I of the Act. Section 9 is also in Part I of the Act. Hence, there cannot be any doubt that an application u/s 9

is also one specifically referred to in Section 42 of the Arbitration and Conciliation Act, 1996. Section 9 of the Act enables a party to the

arbitration agreement to apply to a Court either before initiation of arbitral proceedings or during the pendency of the arbitral proceedings or at any

time after making the arbitral award but before the award is enforced in accordance with Section 36 of the Act for interim measures. The Section

does not specify the Court to which such an application by a party will lie.

9. In this regard, we have to refer to the definition of the term "Court" found in Section 2(1)(e) of the Act. Section 2(1)(e) reads as follows:

Court"" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil

jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a

suit, but does not include any civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

10. A reading of the said definition will make it clear that the Principal Civil Court referred to in the said clause is the principal civil Court having

jurisdiction to decide the questions forming the subject matter of jurisdiction, if the same had been the subject matter of a suit. In other words, the

said Court shall have the jurisdiction to entertain a suit in the absence of the arbitration agreement. Then we have to refer to the relevant provisions

found in the CPC and Clause 12 of the Letters Patent.

11. Sections 16 to 18 of the CPC deal with the jurisdiction of the Courts in respect of suits relating to immovable properties. Section 19 deals with

the suits for compensation for wrong to persons or movables. Hence, those Sections are not relevant. Section 20 of the CPC alone is relevant.

Section 20 reads as follows:

20. Other suits to be instituted where defendants reside or cause of action arises.-Subject to the limitations aforesaid, every suit shall be instituted

in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily

resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries

on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or

carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Section 20 provides for the following:

(i) Where the defendant, if there is only one defendant, or each one of the defendants, where there are more than one defendant, actually and

voluntarily resides, or carries on business, or personally works for gain, within the local limits of a Court, then the suit can be instituted in such

Court;

(ii) Where there are more than one defendant, if any one of the defendants, actually and voluntarily resides and carries on business, or personally

works for gain within the local limits of the jurisdiction of Court, then a suit can be instituted in such Court provided either the leave of the Court is

obtained or the defendants who do not reside or carry on business or personally works for gain within the said jurisdiction acquiesce in such

institution of the suit.

(iii) In case the cause of action, wholly or in part arises within the local limits of the jurisdiction of a Court, then the suit can be filed in such Court.

12. Clause 12 of the Letters Patent is also similar to Section 20 of the CPC subject to a slight deviation from clause "c" of the condition found in

Section 20 of the Code of Civil Procedure. In other civil Courts wherein suits are filed on the ground that the part of the cause of action arose

within the jurisdiction of the said Court, no leave is required to be obtained from the said Court, whereas in case of the Madras High Court

governed by the Letters Patent, leave of the Court should be obtained for filing the suit in the High Court, if only part of the cause of action has

arisen within its jurisdiction. Such restrictions cannot be read into the definition of the "Court" found in Section 2(1)(e) of the Arbitration and

Conciliation Act, 1996, which simply refers to the Court to decide the questions forming subject-matter of arbitration, if the same had been the

subject-matter of a suit. We can"t read the requirement of getting the lave of the Court in case of arisal of part of cause of action alone within the

jurisdiction of the High Court into the said provision. Suffice to state that a suit could have been validly filed in the High Court within whose

jurisdiction cause of action in full or part has arisen. Furthermore, we cannot assume that a qualification requiring prior leave for institution of the

suit in the High Court of Madras in case part of the cause of action alone arose within its jurisdiction, is also made a requirement for bringing a suit

before the Delhi High Court, which is not a chartered High Court covered by Letters Patent. The learned counsel for the applicant has not pointed

out any provision applicable to the Delhi High Court, which requires that the leave of the Court should have been first obtained in case part of the

cause of action alone had arisen within its jurisdiction. Even otherwise, at the cost of repetition, it is made clear that reading such a requirement into

the definition of the ''Court'' found in Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 will amount to over stretching the said definition,

which could not be the intention of the legislature. When a Court is empowered to entertain a suit after granting leave, it cannot be said that such

Court does not have the jurisdiction.

13. Of course, the learned counsel for the applicant is also conscious of the said position and that is the reason why the learned counsel for the

applicant was content with contending that no pan of the cause of action did arise within the jurisdiction of the Delhi High Court and hence the

application filed by the first respondent on the file of the Delhi High Court is an application filed in a Court having no jurisdiction and the same will

not attract the bar provided u/s 42 of the said Act. Factually, the above said contention of the applicant cannot be countenanced. In the original

agreement dated 7.8.2008, there is no indication regarding the place of its execution. The applicant contends that the agreement was entered into

in Chennai. On the other hand, the first respondent contends that the agreement was signed both in Chennai and in Delhi. Furthermore, the

tripartite agreement dated 25.5.2009 regarding escrow account to which the petitioner, first respondent and second respondent are parties, shall

no doubt recites the place of agreement to be in Chennai. But Clause 9.5 of the said agreement reads as follows:

9.5 Jurisdiction:

9.5.1 The Borrower agree that the Courts or Tribunals in New Delhi shall have exclusive jurisdiction to settle any disputes which may arise out of

or in connection with this Agreement and that accordingly any suit, action or proceedings (together referred to ""Proceedings"") arising out of or in

connection with this Agreement may be brought in such Courts or the Tribunals and the Borrower irrevocably submits to and accepts for

themselves and in respect of their property, generally and unconditionally, the jurisdiction of those Courts or Tribunals.

It shows that the parties have chosen the jurisdiction of the Delhi Court as the Court having exclusive jurisdiction to decide the dispute between the

parties arising out of or in respect of the tripartite agreement. Even the subsequent amendments to the agreements did not touch the above said

clause. In the affidavit filed in support of the application, the applicant has also admitted that the escrow account is maintained with the second

respondent in New Delhi and that the monthly payments were to be made directly into the escrow account maintained with the second respondent

in New Delhi. That shows that payment was agreed to be made in New Delhi, in other words, performance of part of the obligation was to be

made in New Delhi.

14. In addition, it can''t be contended that the parties have selected totally an unconnected Court as the Court having the jurisdiction to decide the

dispute between the parties. As per Section 20(b) of the Code of Civil Procedure, a suit can be filed in a Court within the local limits of whose

jurisdiction the defendant resides. Admittedly, a dispute has arisen between the applicant and the first respondent. In case the applicant wants to

file a suit against the first respondent or both the respondents, it can file the suit in a competent Court in New Delhi, since the place of

residence/place of business of the respondents are in New Delhi and as pointed out supra, part of the cause of action also arose in New Delhi.

Therefore, it can''t be said that by entering into an agreement, the parties have chosen to confer a jurisdiction on a Court, which would not have

otherwise jurisdiction to entertain a suit regarding the dispute between the parties. When more than one Court can entertain a suit regarding the

dispute between the parties, the parties by mutual agreement can select one of such Courts as the Court having exclusive jurisdiction and thereby

oust the jurisdiction of the other Courts. The parties by selecting the Courts in New Delhi under Clause 9.5 of the escrow agreement, have

exercised the said option of selecting of one of the Courts and ousting the jurisdiction of others. Therefore, on facts, the contention of the applicant

that the application filed by the first respondent before the Delhi High Court is one filed in a Court having no jurisdiction, has got to be

discountenanced.

15. The applicant has also enclosed a copy of the Original Miscellaneous Petition filed by the first respondent u/s 9 of the Arbitration and

Conciliation Act, 1996 before the Delhi High Court. Therein the cause of action for filing the petition has been stated as follows:

The cause of action for filing the present petition has arisen substantially at New Delhi. Negotiations between the parties culminating in the

Agreement dated 7.8.2008 had taken place at New Delhi. The Agreement dated 7.8.2008 was signed by the Petitioner at New Delhi. The

contractually agreed venue of the arbitration is at New Delhi. Various correspondences were exchanged at New Delhi....

The said petition was dated 7.3.2012. A copy of the order dated 26.3.2012 made in the said petition has also been enclosed in the typed set of

papers. A reading of the said order shows that the applicant herein, which figured as the respondent in the said petition before the Delhi High

Court, took notice and made its submissions on the merits of the case opposing the grant of interim measures pending disposal of the said petition.

Extracting the relevant part of the said order will be helpful to understand the scope of objections raised before the said Court. It reads:

Notice. Counsel for the respondents accepts notice and seeks time to file reply, counsel further submits that the apprehension of the petitioner is

unfounded as respondents have neither stopped the ingress and egress of the petitioner nor electricity and water supply has been disconnected nor

the respondents shall do so in future..... counsel for the respondents submits that the pressure and quality of the gas supplied by the petitioner is

not as per the agreement.

.....

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Having referred to Article- 18 of the agreement, which is reproduced above, subject to the conditions that petitioner will continue to supply the

gases as per the terms of the agreement and maintain the pressure of gases, respondents are restrained from taking supply of Oxygen and Nitrogen

gases from any other supplier. Respondent shall also be bound by the statement made by their counsel in Court today.

A reading of the above said order will make it clear that though notice was taken in the petition filed by the counsel for the first respondent herein

before the Delhi High Court, namely Original Miscellaneous Petition No. 236 of 2012, without even raising objection regarding the jurisdiction, the

application seems to have been resisted on merits. Hence, the contention of the learned senior counsel for the first respondent that the applicant

herein having failed to raise objection regarding the jurisdiction of Delhi Court to entertain the said Original Miscellaneous Petition, is not entitled to

question the jurisdiction of the said Court in the present original application filed in this Court has got to be countenanced. Furthermore, the comity

of Courts will require this Court not to venture to go into the question whether the Delhi High Court has got jurisdiction to entertain the original

miscellaneous petition No. 236 of 2012 pending on its file. If this Court ventures to do so, it will amount to usurping the powers of the Delhi High

Court to decide on its jurisdiction. Admittedly, the said Original Miscellaneous Petition, which was filed earlier in point of time regarding the dispute

forming the subject-matter of arbitration is pending on the file of the Delhi High Court. Unless and until the Delhi High Court rejects the petition

holding that it does not have jurisdiction to entertain that petition, the bar provided u/s 42 of the Arbitration and Conciliation Act, 1996 shall stand

attracted.

For all the reasons stated above, this Court comes to the conclusion that the present original application filed by the applicant u/s 9 of the

Arbitration and Conciliation Act, 1996 cannot be maintained in view of the fact that similar petition O.M. P. No. 236 of 2012 filed earlier on the

file of the Delhi High Court by the first respondent herein is pending. Section 42 of the Arbitration and Conciliation Act, 1996 provides a bar for

entertaining such an application by any other Court. Hence the present original application is liable to be dismissed holding that it is not

maintainable.

Accordingly, the present original application is dismissed as not maintainable. However, it is further observed that, in case the petition filed before

the Delhi High Court is dismissed at a later point of time on the ground of want of jurisdiction, then this order shall not be an impediment for the

applicant to file a fresh petition. There shall be no order as to cost.