
Mr. Ligusri Jeoquim Menezes Vs Shriram Insight Share Brokers Ltd.

C.O. No. 1918 of 2012

Court: Calcutta High Court

Date of Decision: Aug. 21, 2013

Citation: (2014) 1 WBLR 719

Hon'ble Judges: Subhro Kamal Mukherjee, J

Bench: Single Bench

Judgement

Subhro Kamal Mukherjee, J.

This is a revisional application under Article 227 of the Constitution of India challenging an order passed by

the learned Additional District Judge, Second Court at Barasat, District - North 24-Parganas, in Miscellaneous Case No. 166 of 2010. By the

order impugned the learned Trial Judge overruled an objection raised by this petitioner as to the maintainability of the petition u/s 34 of the

Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act) at Barasat Court.

2. Admittedly, the petitioner is a resident of the State of Goa. He is residing at Plot No. 25, House No. 1365, Housing Board Colony, Alto-

Porvorim, Goa.

3. The opposite party, namely, Shriram Insight Share Brokers Limited, is a member of the National Stock Exchange.

4. The petitioner entered into an agreement with the opposite party for purchasing certain shares.

5. I am informed that this petitioner, who is a resident of the State of Goa, never came to Kolkata in his life. He entered into the agreement at Goa.

All transactions were at Goa. I am, further, informed that the opposite party has an office at Salt Lake, but the petitioner gave all his instructions to

the Goa Branch Office of the opposite party.

6. Disputes and differences cropped up. Therefore, the matter was referred to the Arbitral Tribunal in terms of the National Stock Exchange Bye-

laws.

7. It was provided in such Bye-laws that the seats of Regional Arbitration in relation to the disputes arising out of the States of Maharashtra,

Gujarat, Goa, Daman, Diu, Dadra & Nagar Haveli and Madhya Pradesh would be at Mumbai.

8. In fact, the Arbitral Tribunal held its meetings at Mumbai. The Arbitrator made and published his award.

9. Taking advantage of the fact that the opposite party has its head office at Salt Lake within the Judgeship of the learned District Judge of District

North 24-Parganas, an application u/s 34 of the said Act for setting aside the said arbitral award was filed at Barasat, the headquarters of District,

North 24-Parganas.

10. The petitioner approached the Barasat Court with a prayer to decide the issue as to the maintainability of the application u/s 34 of the said Act

before the Barasat Court.

11. The learned Trial Judge by the order impugned declined to accept the prayer made by the petitioner. Hence this revisional application.

12. u/s 2(1)(e) of the Arbitration and Conciliation Act, the 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.

13. Regulation 5.3A of the said Bye-laws provides that it has to be read along with Bye-law 17 of Chapter XI of the Bye-laws of the National

Stock Exchange. It is, also, provided that in matters where the national stock exchange is a party to the dispute, the Civil Courts at Mumbai shall

have exclusive jurisdiction and in all other matters, proper courts within the area covered under the respective Regional Arbitration Centre shall

have jurisdiction in respect of the arbitration proceedings falling/conducted in that Regional Arbitration Centre.

14. The Supreme Court of India in Bharat Aluminium Company and Others Vs. Kaiser Aluminium Technical Service, Inc. and Others etc. etc., ,

inter alia, held that the Court where the arbitration took place would have supervisory control over the arbitral process. Moreover, both the Court

within whose jurisdiction the subject matter of the suit is located and the Court within the jurisdiction of which the dispute resolution, that is,

arbitration was located, would have jurisdiction.

15. Following the decision in BALCO (supra) ordinarily both the Courts having jurisdiction over the seat of arbitration and the Court where the

subject matter of the suit is situated would have jurisdiction.

16. In BALCO (supra) while interpreting Section 2(1)(e) of the said Act, the Apex Court cautioned that the expression ""subject-matter of the

arbitration"" should not be confused with the expression ""subject-matter of the suit"".

17. The Supreme Court of India in BALCO (supra) observes that ""We are of the opinion, the term ""subject-matter of the arbitration"" cannot be

confused with ""subject-matter of the suit"". The term ""subject-matter"" in Section 2(1)(e) is confined to Part I. It has a reference and connection with

the process of dispute resolution. Its purpose is to identify the Courts having supervisory control over the arbitration proceedings. Hence, it refers

to a Court which would essentially be a Court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be

construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected

by the learned Counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction

to two Courts i.e. the Court which would have jurisdiction where the cause of action is located and the Courts where the arbitration takes place.

This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the

parties. Therefore, the Courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For

example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a

party from Mumbai and the other from Kolkata) and the Tribunal sitting in Delhi passes an interim order u/s 17 of the Arbitration Act, 1996, the

appeal against such an interim order u/s 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration

proceedings and the Tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed

either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction i.e.

the Court within whose jurisdiction the subject-matter of the suit is situated and the Courts within the jurisdiction of which the dispute resolution i.e.

arbitration is located.

18. Under the said Bye-laws an exclusive jurisdiction exercisable either by the courts in Mumbai or any other Court within the area covered under

the respective Regional Arbitration Centers shall have the jurisdiction in respect of the arbitration proceedings. The natural and original meaning

would be that where the stock exchange is a party to the dispute, exclusive jurisdiction would be of the Courts at Mumbai. Where the exchange is

not a party to the dispute, the exclusive jurisdiction would be of the Courts within the area covered by the respective Regional Arbitration Centers.

19. Admittedly, the agreement was entered into at Goa. The petitioner, who was the respondent in the application filed u/s 34 of the said Act, is

residing at Goa.

20. Therefore, I am of the considered opinion that the learned Trial Judge committed an error of jurisdiction holding that the Barasat Court has

jurisdiction to decide the application filed u/s 34 of the said Act merely because the Head Office of the applicant in the application u/s 34 of the

said Act has been within the Judgeship of the learned District Judge, North 24-Parganas.

21. The order impugned is, thus, set aside. The learned Trial Judge is directed to return the application filed u/s 34 of the said Act to the applicant

within one month from the date of communication of this order to him to enable the applicant to file such application before the appropriate forum.

22. Liberty is granted to the applicant to file such application before the appropriate forum within one month from the date of return of the

application to the applicant.

23. Mr. Mukherjee, learned Advocate appears for the petitioner, in his usual fairness and, on instructions, submits that the petition shall not take

any objection as to the limitation if such application is filed within one month from the date of return of the application filed u/s 34 of the said Act to

the applicant.

24. All other points are, however, left open. With the aforesaid directions, the revisional application is allowed.