



Advocates
& Solicitors

Application for appointment of an Arbitrator can only be moved before the Court having territorial jurisdiction

M/s Ravi Ranjan Developers Pvt. Ltd v. Aditya Kumar Chatterjee

Case No.	SLP (C) No. 17397-17398/2021
Date	24 March 2022
Court	Supreme Court of India
Coram	Hon'ble Ms. Justice Indira Banerjee Hon'ble Mr. Justice A.S. Bopanna

1. BRIEF FACTS:

- 1.1 M/s Ravi Ranjan Developers Pvt. Ltd. (“**Appellant**”) and Aditya Kumar Chatterjee (“**Respondent**”) entered into a Development Agreement (“**the Agreement**”) dated June 15, 2015, for the development of the property at Muzaffarpur, Bihar. The Agreement provided for dispute resolution by the way of Arbitration. The Agreement mentioned that the Arbitral Proceedings were to be conducted in accordance with the provision of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”), and the sitting of the tribunal shall be at Kolkata.
- 1.2 Due to certain differences, a dispute arose between the parties and on April 24, 2019 the Agreement was terminated by the Respondent however, this termination was denied by the Appellant. Pursuant to this, the Respondent sent notice to the Appellant at its registered office in Patna, Bihar invoking the Arbitration Clause under the Agreement.
- 1.3 In furtherance to this, on January 15, 2021, a petition was filed by the Respondent under Section 11(6) of A&C Act for the appointment of an Arbitrator in the Hon’ble High Court at Calcutta (“**Calcutta High Court**”).
- 1.4 The Calcutta High Court by an order dated August 13, 2021 appointed a sole Arbitrator in the matter and completely disregarded the affidavit of the Appellant wherein objection to the territorial jurisdiction of the Court was made. The Appellant then filed an application for review against the impugned order which was subsequently rejected by the Calcutta High Court vide order dated October 4, 2021.
- 1.5 Aggrieved by order of the Calcutta High Court, the Appellant filed an appeal before the Hon’ble Supreme Court of India (“**Supreme Court**”).

2. ISSUES RAISED:

- Whether the Calcutta High Court had jurisdiction to entertain the application filed by the Respondent and appoint an Arbitrator under Section 11(6) of the A&C Act?

3. SUBMISSIONS OF THE APPELLANT:

- 3.1 The Appellant in response to the argument raised by the Respondent regarding the consent of his in the appointment of the Arbitrator contended that, he by the virtue of filling the review petition of the said order of appointment had rejected the impugned order.
- 3.2 Further, by placing the reliance on the *Kiran Singh and Ors. v. Chaman Paswan and Ors.*,¹ the Appellant argued that the order passed by the Court without having the jurisdiction could be challenged at any stage of the proceedings, irrespective of any consent given by any party.
- 3.3 The Appellant further strongly challenged the jurisdiction of the Calcutta High Court. It was argued that the definition of the Court has to be read in accordance with Section 2(1)(e) of the A&C Act.
- 3.4 It was contended by the Appellant that the Court can exercises jurisdiction when the Respondent voluntarily resides or has an acquired property within the local jurisdiction of that Court. The Court can also entertain a matter when the cause of action arose within its territorial limit. Relying on these arguments it was submitted that in present case the registration and the execution of the Agreement was done by

¹ AIR 1954 SC 340.

the parties in Muzaffarpur, which was outside the territorial limits of the Calcutta High Court therefore Court cannot exercise its jurisdiction.

- 3.5 Lastly the Appellant, by placing reliance upon Section 42 of the A&C Act, argued that since the therefore jurisdiction of Calcutta High Court cannot be invoked by the Respondent.

4. SUBMISSIONS OF THE RESPONDENT:

- 4.1 The Respondent had argued that the appointment of the Arbitrator was done with the consent of the Appellant and hence the Appellant could not challenge the said appointment.
- 4.2 The Respondent further contended that the Calcutta High Court holds a valid jurisdiction to entertain the application under Section 11(6) of the A&C Act by the virtue of being the seat of the Arbitration.
- 4.3 The Respondent by placing reliance on the *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and Ors.*², argued that once a seat of Arbitration is designated in an Arbitration Agreement then the Court of the seat holds exclusive jurisdiction and the supervisory power over all the disputes arising out of or in connection with the Arbitration Agreement. Relying on this, it was submitted that as Calcutta has been designated seat of the Arbitration hence the Calcutta High Court will have exclusive and territorial jurisdiction in the matter.

5. DECISION OF THE COURT:

- 5.1 The Hon'ble Supreme Court while keeping in mind the legislative intent of the A&C Act opined, that the definition of 'Court' under Section 2(1)(e) must be harmoniously read with Section 11(6) to find a competent High Court which has territorial jurisdiction and can appoint the Arbitrator under Section 11(6) of A&C Act.
- 5.2 The Hon'ble Supreme Court was of the view that, while deciding the territorial jurisdiction of the High Court under Section 11(6) the Courts cannot be completely oblivious to the places such as residence/business of the Respondents or the place where the cause of action arose because such an action would provide an undue advantage to the opposite party.
- 5.3 The Hon'ble Supreme Court further differentiated between the seat and venue of Arbitration. The Supreme Court was clear on the position that consent of parties cannot confer jurisdiction to a Court that inherently lacked jurisdiction to decide the given matter.
- 5.4 It was further observed by the Hon'ble Supreme Court that the parties had merely consented to make Kolkata as their venue of Arbitration and not the seat of Arbitration. Therefore, the High Court of Calcutta lacked the inherent jurisdiction to decide the matter of appointment of the Arbitrator under Section 11(6) of the A&C Act.
- 5.5 Thus, the Hon'ble Supreme Court had set aside the order of the High Court of Calcutta dated August 13, 2021 on the ground that the High Court lacked the jurisdiction to do so.

6. PSL OPINION:

² (2017) 7 SCC 678.

- 6.1 Through this judgment a very interesting question of law was clarified that the High Court has territorial jurisdiction when it comes to entertaining the application for the appointment of the Arbitrator under Section 11(6) of the A&C Act. Thus, if cause of action does not arise in Court's territory, an application for appointment of arbitrator cannot be moved. While supporting the existing jurisprudence a differentiation between the seat and venue of the Arbitration was drawn by the Court. Through this judgment it was clarified that the seat is more specifically related to the supervisory and exclusive jurisdiction of the Court while the venue is mere the place of Arbitration.