

“REPORTABLE”

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 673 OF 2014

(Arising out of SLP (C) No.18980 of 2013)

**Executive Engineer, Road Development
Division No.III, Panvel & Anr.**

... Appellants

Versus

Atlanta Limited

... Respondent

J U D G M E N T

Jagdish Singh Khehar, J.

1. State of Maharashtra, through its Public Works Department, awarded a contract dated 12.7.2000 to the respondent-Atlanta Limited (a public limited company) for the construction of the Mumbra bypass. On 11.5.2005, a supplementary agreement for additional work was executed between the parties. It would be relevant to mention, that the Mumbra bypass falls on National highway no. 4. The construction envisaged in the contract awarded to the respondent-Atlanta Limited was, from kilometer 133/800 to kilometer 138/200. The contract under reference envisaged, settlement of disputes between the parties, through arbitration. Atlanta Limited raised some disputes through a communication dated 1.10.2009. It also invoked the arbitration clause for resolution of the said disputes. The State of Maharashtra as also Atlanta Limited

nominated their respective arbitrators, who in turn, appointed the presiding arbitrator. On the culmination of proceedings before the arbitral tribunal, an award was rendered on 12.5.2012. Almost all the claims raised by Atlanta Limited were granted. In sum and substance, Atlanta Limited was awarded a sum of Rs.58,59,31,595/- along with the contracted rate of interest (of 20 per cent per annum), with effect from 1.10.2009. Atlanta Limited was also awarded a sum of Rs.41,00,000/- towards costs. All the counter claims raised by the State of Maharashtra, before the arbitral tribunal, were simultaneously rejected.

2. On 7.8.2012, the State of Maharashtra moved Miscellaneous Application no. 229 of 2012 and Miscellaneous Application no. 230 of 2012 under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Arbitration Act') before the District Judge, Thane. The State of Maharashtra through the aforesaid Miscellaneous Applications sought quashing and setting aside of the arbitral award dated 12.5.2012.

3. On the same day, i.e., 7.8.2012, Atlanta Limited filed Arbitration Petition no.1158 of 2012 before the High Court of Judicature at Bombay (hereinafter referred to as the 'High Court'), for the setting aside of some of the directions issued by the arbitral tribunal (in its award dated 12.5.2012). Atlanta Limited also claimed further compensation, which according to the respondent, had wrongfully not been considered by the arbitral tribunal.

4. A perusal of the averments made in the foregoing two paragraphs reveal, that on the same day i.e., on 7.8.2012, the State of Maharashtra as also Atlanta

Limited questioned the award of the arbitral tribunal dated 12.5.2012. Whilst the State of Maharashtra questioned the same before the District Judge, Thane; Atlanta Limited raised its challenge before the High Court. Since the same award dated 12.5.2012 was subject matter of challenge before two different courts, Atlanta Limited preferred Miscellaneous Civil Application no. 162 of 2012 under Section 24 of the Code of Civil Procedure, 1908 praying for transfer of Miscellaneous Application no. 229 of 2012, as also, Miscellaneous Application No.230 of 2012 (both filed by the State of Maharashtra) before the District Court, Thane, to the original side of the High Court, for being heard along with Arbitration Petition No.1158 of 2012. The aforesaid Miscellaneous Civil Application No.162 of 2012 was allowed by the High Court on 15.3.2013. The operative part of the order passed by the High Court is being extracted hereunder:

“32. In the light of the above conclusion, the argument that this Court can only direct consolidation of both Petitions without passing any order with regard to their transfer, need not be considered in this case. Apart therefrom, once I find that the Respondents have no objection to consolidation of the proceedings so as to avoid conflicting decisions or simultaneous trial/hearing, then, all the more, the powers to transfer needs to be exercised in this case. It is undisputed that the parties are common to both matters. In both matters the same Award is under scrutiny. In such circumstances, the argument that both Petitions need to be consolidated but before the District Court at Thane cannot be accepted. That would mean two Courts render decisions and more or less on the same issue and may be at the same time. The arbitration petition filed by the Petitioners in this Court is already placed before the Single Judge of this Court and is now adjourned. It would be proper if the proceedings before the District Court, Thane are brought and are heard along with the Petition filed by the Petitioners in this Court.

33. As a result of the above discussion, this application succeeds. It is made absolute in terms of prayer clause (a) with no order as to costs.”

The above determination by the High Court, vide its order dated 15.3.2013, is the subject matter of challenge through Special leave Petition (C) No.18980 of 2013.

5. Leave granted.

6. The contention advanced at the hands of the learned counsel for the State of Maharashtra, while assailing the impugned order of the High Court dated 15.3.2013 was, that it was improper for the High Court to transfer the proceedings initiated by the appellant through Miscellaneous Application No.229 of 2012 and Miscellaneous Application No.230 of 2012 under Section 34 of the Arbitration Act before the Court of the District Judge, Thane to the High Court. In this behalf, the pointed submission of the learned counsel for the appellant was, that only the District Judge, Thane, had the jurisdiction to determine the controversy emerging out of the award of the arbitral tribunal dated 12.5.2012. It was also submitted, that the proceedings initiated by Atlanta Limited through Arbitration Petition no. 1158 of 2012, ought to have been transferred from the High Court to the District Judge, Thane. In order to make good the aforesaid submission, learned counsel for the appellant placed reliance on the definition of the term "Court" expressed in Section 2(1)(e) of the Arbitration Act. Section 2(1)(e) aforementioned is being reproduced hereunder :

"2 – Definitions— (1) In this Part, unless the context otherwise requires,—

(e) "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.”

Drawing the court’s pointed attention to the definition of the term “Court”, it was the vehement contention of the learned counsel for the appellant, that to determine which court would have jurisdiction to decide the subject matter of an arbitral dispute, it was essential to find out the particular court which would have had jurisdiction in the matter, had the dispute been agitated through a civil suit. According to learned counsel, the latter determination, would answer the jurisdictional avenue of the arbitral dispute, in terms of Section 2(1)(e) extracted above. In this behalf it was submitted, that in the absence of any express exclusion clause between the parties, on the subject matter under reference, in order to settle the dispute inter-parties, it would have been imperative for the parties to raise their respective challenges only before the District Judge, Thane.

7. For the above submission, learned counsel also placed reliance on Section 16 of the Code of Civil Procedure. Section 16, according to learned counsel, would be relevant to determine the jurisdictional court, if the dispute had been agitated through a civil suit. Section 16 aforementioned is being extracted hereunder:

“16. Suits to be instituted where subject-matter situate.—Subject to the pecuniary or other limitations prescribed by any law, suits,—

- (a) for the recovery of immovable property with or without rent or profits,

- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation .--In this section "property" means property situate in India."

Relying on Section 16 extracted above, it was asserted by learned counsel, that the original agreement between the parties dated 12.7.2000, and the supplementary agreement dated 11.5.2005, related to the construction of the Mumbra bypass. The said construction is from Kilometer 133/800 to Kilometer 138/200. The aforesaid location of construction, according to the undisputed position between the parties, is within Thane District, and as such, within the territorial jurisdiction of the Sessions Division, Thane. Therefore, according to learned counsel for the appellant, only the "principal civil court of original jurisdiction" in District Thane i.e., the District Judge, Thane, would have jurisdiction in the matter. It was also the submission of the learned counsel for

the appellant, that the toll stations for collecting toll constructed by the respondent-Atlanta Limited, are also located at the venue of the Mumbra bypass. Thus viewed, according to the learned counsel for the appellant, the collection of toll (which inter alia constitutes the subject of dispute, between the parties) is also carried on by the respondents within District Thane, i.e., within the territorial jurisdiction of the District Judge, Thane. Based on Section 16 of the Code of Civil Procedure, and more particularly of clause (d) thereof, it was the pointed submission of the learned counsel for the appellant, that only the District Judge, Thane has the jurisdiction to entertain an arbitral dispute, arising between the rival parties to the present appeal.

8. In order to further support his contention, that the District Judge, Thane alone would have jurisdiction in the matter, learned counsel for the appellant, also placed emphatic reliance on Section 20 of the Code of Civil Procedure which is being reproduced hereunder:

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

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

Explanation --A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi, A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.”

Relying on the above provision, it was asserted, that a reading of Section 20 of the Code of Civil Procedure shows, that a preference has been postulated for certain provisions including Section 16 of the Code of Civil Procedure, which was evident from the opening words of Section 20 of the Code of Civil Procedure, which clearly denoted, that the issue of jurisdiction expressed in Section 20 of the Code of Civil Procedure, would be subject to the overriding effect in the matter of jurisdiction, expressed in the provisions preceding Section 20 (i.e. including Section 16).

9. Learned counsel for the respondent-Atlanta Limited, however, strongly opposed the submissions advanced at the hands of the learned counsel for the appellant, on the issue of jurisdiction. In this behalf, learned counsel for the respondent invited our attention to the reply affidavit filed on behalf of the State of

Maharashtra, to Miscellaneous Civil Application No.162 of 2012 (filed by Atlanta Limited before the High Court), para 8 of the reply affidavit which was pointedly brought to our notice is being extracted hereunder :

“8. In fact it is an admitted position and common ground that both; this Hon’ble Court and the District Court at Thane have jurisdiction in respect of the subject-matter in issue. Peculiarly this Hon’ble Court falls within the definition of the term “Court” under Section 2(e) of the Arbitration Act by virtue of being a High Court in the Mumbai District having Original Jurisdiction, and on the other hand the District Court at Thane being the Principal Civil Court of original jurisdiction in the Thane District also falls within the same definition.”

(emphasis is ours)

In view of the stand adopted in writing by the appellants, in response Miscellaneous Civil Application no. 162 of 2012, it was sought to be asserted, that the appellants had no right to raise the issue of jurisdiction before this Court.

10. Despite the objection noticed in the foregoing paragraphs, it was the vehement contention of the learned counsel for the respondent, that the High Court and not the District Judge, Thane, had the jurisdiction to adjudicate the controversy raised by the rival parties with reference to the award of the arbitral tribunal dated 12.5.2012. In order to make good the aforesaid submission, it was asserted, that the contractual agreement dated 12.7.2000, as also, the supplementary agreement dated 11.5.2005, were executed at Mumbai. Additionally, it was submitted that the parties had mutually agreed, that the seat of arbitration in case of any disputes arising between the parties, would be at Mumbai. Relying on the aforesaid undisputed factual position, learned counsel

for the respondent invited our attention to the determination rendered by this Court in *Bharat Aluminium Company & Ors. vs. Kaiser Aluminium Technical Services Inc & Ors.* (2012) 9 SCC 559, and made pointed reliance to the following observations recorded therein:

“96. xxx xxx xxx xxx

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 Under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 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.

97. The definition of Section 2(1)(e) includes "*subject matter of the arbitration*" to give jurisdiction to the courts where the arbitration takes place, which otherwise would not exist. On the other hand, Section 47 which is in Part II of the Arbitration Act, 1996 dealing with enforcement of

certain foreign awards has defined the term "*court*" as a court having jurisdiction *over the subject-matter of the award*. This has a clear reference to a court within whose jurisdiction the asset/person is located, against which/whom the enforcement of the international arbitral award is sought. The provisions contained in Section 2(1)(e) being purely jurisdictional in nature can have no relevance to the question whether Part I applies to arbitrations which take place outside India.

98. We now come to Section 20, which is as under:

“20. Place of arbitration—(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in Sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding Sub-section (1) or Sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, good or other property.”

A plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any "place" or "seat" within India, be it Delhi, Mumbai etc. In the absence of the parties' agreement thereto, Section 20(2) authorizes the tribunal to determine the place/seat of such arbitration. Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.”

(emphasis is ours)

11. We have heard learned counsel for the parties.

12. We have recorded hereinabove the foundation, on the basis whereof, the present controversy was adjudicated before the High Court. As noticed above, the challenge to the impugned order passed by the High Court, is based on the question of jurisdiction. While the learned counsel for the appellants has placed

reliance on Section 2(1)(e) of the Arbitration Act read with the provisions of Code of Civil Procedure to contend, that the District Judge, Thane, alone would have the jurisdiction in the matter; the contention raised on behalf of the respondent is, that the High Court alone in exercise of its “ordinary original civil jurisdiction”, has the jurisdiction to determine the controversy arising out of the impugned award dated 12.5.2012.

13. In our view, it is not open to the appellants to advance such submission before this Court. Firstly, because the appellants had in paragraph 8 of the reply affidavit filed before the High Court, clearly acknowledged the legal position, that both the High Court as also the District Judge, Thane, in so far as the present controversy is concerned, fall within the definition of the term “Court” under Section 2(1)(e) of the Arbitration Act. And secondly, because the impugned order passed by the High Court expressly notices in paragraph 10, that it was admitted by the rival parties before the High Court, that the High Court on the original side, as also the District Judge, Thane, had the jurisdiction in respect of the subject matter. Relevant part of para 10 of the impugned judgment of the High Court is being extracted hereunder:-

“10. Mr. Vashi, learned counsel appearing on behalf of the Petitioner submitted that in the Affidavit-in-Reply which has been filed in this petition, it is admitted by the Respondents that the place of arbitration in terms of the arbitration clause in the contract was Mumbai. It is also admitted that both, this Court on the Original Side and the District Court at Thane have jurisdiction in respect of the subject matter in issue.”

(emphasis is ours)

It was therefore not open to the appellants to canvass before this Court that the High Court of Bombay in exercise of its “ordinary original civil jurisdiction” could not adjudicate upon the present controversy, on account of lack of jurisdiction. We shall therefore proceed in the first instance, on the premise that both the courts referred to above had jurisdiction in the matter. We shall independently record our reasons for the same, while dealing with the submissions advanced before us. We have chosen to do so, because we are of the view, that an important jurisdictional issue has been raised, which needs to be settled, one way or the other. We shall therefore, decide the controversy on merits, irrespective of the position expressed by the appellant, on the issue of jurisdiction.

14. During the course of hearing before us, learned counsel for the appellant had highlighted for our consideration, the factual/legal controversy which was agitated by the rival parties before the High Court. In this behalf it was further pointed out, firstly, that the respondent’s case before the High Court was, that since the arbitral tribunal had its seat at Mumbai, and the works contract was executed at Mumbai, the original side of the High Court of Bombay was competent to entertain the controversy. On the other hand, the appellants before the High Court had pointed out, that since the works contract relating to the construction and maintenance of the Mumbra bypass on the Mumbai-Pune road (located on national highway no. 4), and the toll collection site were situated within Thane District, the District Judge, Thane, was the “more suitable” court for determining the controversies raised by the rival parties. Secondly, it was pointed out, that before the High Court an application under Section 24 of the

Code of Civil Procedure was filed in the matter pending before the High Court, for transfer of proceedings filed by the respondents. It was submitted, that through the above application, it was not open to the High Court to have transferred the proceedings pending before the District Judge, Thane. It was further pointed out, that before the High Court the appellants had orally submitted, that if the High Court was inclined to invoke its jurisdiction under Section 24 of the Code of Civil Procedure, the proceedings filed by the respondent before the High Court should have been transferred to the District Judge, Thane, and not the other way around. According to the learned counsel, the instant submission has been duly noticed in the impugned judgment. Lastly, it was contended, that Section 24 of the Code of Civil Procedure could not be invoked in a petition filed under Section 34 of the Arbitration Act, and therefore, Section 24 of the Code of Civil Procedure ought not to have been relied upon by the High Court for transferring the proceedings from the Court of District Judge, Thane, to the High Court of Bombay.

15. The following submissions were advanced before us. Firstly, considering clause (c) of the operative part of the award, according to learned counsel it was clear, that enforcement of such a clause in the award was site-specific, since Mumbra bypass is located on the Mumbai-Pune road (on national highway no. 4) and falls in Thane District, the District Judge, Thane, ought to be “natural choice” for consideration of the issues advanced by the appellants, as also the respondent. Secondly, according to the learned counsel for the appellants, the definition of the term “Court” expressed in Section 2(1)(e) of the Arbitration Act uses the expression “subject matter” and not “cause of action”. While “cause of

action” can be referable to places where the works contract is executed, or where arbitration proceedings were conducted; the term “subject matter” used in Section 2(1)(e) of the Arbitration Act is only referable to the subject matter of the works contract, with respect to which the dispute is raised (with respect to which, there was a direction for extension of the concession period, under the award). Accordingly it was submitted, that although the High Court may also have jurisdiction, the District Court Thane is “more natural”, “more suitable” and “more appropriate” for the adjudication of the claims, raised by the rival parties. Thirdly it was contended, that the original side of the High Court of Bombay, vis-à-vis, the District Judge, Thane, is a “superior” Court. According to the learned counsel for the appellants, even if it is acknowledged that the “ordinary original civil side” of the High Court of Bombay as also the “principal Civil Court of original jurisdiction” for the District Thane i.e., the District Judge, Thane, both have jurisdiction in the matter, there were many attributes on the basis of which it could be clearly established, that the original side of the High Court of Bombay, is superior to the Court of the District Judge, Thane. In this behalf it was sought to be pointed out, that the High Court could take cognizance of contempt of its own orders, and furthermore, a judgment delivered by the original side of a High Court operated as a binding precedent. It was submitted, that the District Court, Thane, does not have any such attributes. In the above view of the matter it was submitted, that reliance could be placed on Section 15 of the Code of Civil Procedure, to determine which of the two courts should adjudicate upon the matter. Section 15 is being extracted hereunder:-

“15. Court in which suits to be instituted-

Every suit shall be instituted in the Court of the lowest grade competent to try it.”

Based on Section 15 extracted above it was submitted, that in case jurisdiction could be exercised by two Courts, it was imperative to choose the Court of the lowest grade competent to try the suit. Accordingly, it was contended, that from amongst the original side of the High Court of Bombay and the District Court, Thane, in terms of the mandate of Section 15 of the Code of Civil Procedure, the District Court, Thane, being the Court lower in grade than the original side of the High Court of Bombay, ought to have been chosen to adjudicate upon the matters. It was also pointed out, that the choice of District Court, Thane, would even otherwise be beneficial to the rival parties on account of the fact, that the determination by the said Court, would be open for re-examination before the High Court of Bombay, which exercises supervisory jurisdiction over it.

16. Additionally, it was contended, that the choice would fall in favour of the District Judge, Thane, even on account of the likely expeditious disposal of the matter by the District Judge, Thane, in comparison with the “original side of the High Court of Bombay”. In this behalf it was submitted, that there were only 42 petitions filed under Section 34 of the Arbitration Act before the District Judge, Thane, during the entire year 2012, whereas, there were 1317 petitions filed under Section 34 before the High Court of Bombay, under its “ordinary original civil jurisdiction”, during the year 2012. Referring to the preceding three years, namely, 2009, 2010 and 2011 it was submitted, whereas a very few petitions

were filed under Section 34 of the Arbitration Act before the District Judge, Thane, as many as, 1033, 1443 and 1081 petitions respectively (were filed under Section 34 of the Arbitration Act) were filed during the three years before the High Court of Bombay. Based on the above factual position it was submitted, that it could be expected that the District Judge, Thane, would dispose of the matters under reference within a short period of about five years, whereas it was likely that the disposal of the said matters will take more than two decades if the matters are required to be adjudicated by the original side of the High Court of Bombay. On the instant aspect of the matter also, referring to available data it was submitted, that it takes more than 20 years for a suit to be heard and decided by the High Court of Bombay under its "ordinary original civil jurisdiction", whereas, it does not take more than 5 years for a suit filed before the District Judge, Thane, to be disposed of. Accordingly it was contended, that keeping in view the burden of litigation, the "natural choice" for adjudication of the matters under reference ought to be the District Judge, Thane, rather than the High Court of Bombay.

17. Besides the above submissions, no other contention was advanced before us.

18. We shall first endeavour to address the submissions advanced at the hands of the learned counsel for the appellants, with reference to Section 15 of the Code of Civil Procedure. In terms of the mandate of Section 15 of the Code of Civil Procedure, the initiation of action within the jurisdiction of Greater Mumbai

had to be “in the Court of lowest grade competent to try it”. We are, however, satisfied, that within the area of jurisdiction of Principal District Judge, Greater Mumbai, only the High Court of Bombay was exclusively the competent Court (under its “ordinary original civil jurisdiction”) to adjudicate upon the matter. The above conclusion is imperative from the definition of the term “Court” in Section 2(1)(e) of the Arbitration Act. Firstly, the very inclusion of the High Court “in exercise of its ordinary original civil jurisdiction, within the definition of the term “Court”, will be rendered nugatory, if the above conclusion was not to be accepted. Because, the “principal Civil Court of original jurisdiction in a district” namely the District Judge concerned, being a court lower in grade than the High Court, the District Judge concerned would always exclude the High Court from adjudicating upon the matter. The submission advanced by the learned counsel for the appellant cannot therefore be accepted, also to ensure the inclusion of “the High Court in exercise of its ordinary original civil jurisdiction” is given its due meaning. Accordingly, the principle enshrined in Section 15 of the Code of Civil Procedure cannot be invoked whilst interpreting Section 2(1)(e) of the Arbitration Act. Secondly, the provisions of the Arbitration Act, leave no room for any doubt, that it is the superior most court exercising original civil jurisdiction, which had been chosen to adjudicate disputes arising out of arbitration agreements, arbitral proceedings and arbitral awards. Undoubtedly, a “principal Civil Court of original jurisdiction in a district”, is the superior most court exercising original civil jurisdiction in the district over which its jurisdiction extends. It is clear, that Section 2(1)(e) of the Arbitration Act having vested jurisdiction in the “principal

Civil Court of original jurisdiction in a district”, did not rest the choice of jurisdiction on courts subordinate to that of the District Judge. Likewise, “the High Court in exercise of its ordinary original jurisdiction”, is the superior most court exercising original civil jurisdiction, within the ambit of its original civil jurisdiction. On the same analogy and for the same reasons, the choice of jurisdiction, will clearly fall in the realm of the High Court, wherever a High Court exercises “ordinary original civil jurisdiction”. Under the Arbitration Act, therefore, the legislature has clearly expressed a legislative intent, different from the one expressed in Section 15 of the Code of Civil Procedure. The respondent had chosen to initiate proceedings within the area of Greater Mumbai, it could have done so only before the High Court of Bombay. There was no other court within the jurisdiction of Greater Mumbai, where the respondent could have raised their challenge. Consequently, we have no hesitation in concluding, that the respondent by initiating proceedings under Section 34 of the Arbitration Act, before the original side of the High Court of Bombay, had not violated the mandate of Section 2(1)(e) of the Arbitration Act. Thus viewed, we find the submission advanced at the hands of the learned counsel for the appellants, by placing reliance on Section 15 of the Code of Civil Procedure, wholly irrelevant.

19. Reliance placed on Section 16 of the Code of Civil Procedure, by the learned counsel for the appellants, for the ouster the jurisdiction of the High Court of Bombay is equally misplaced. All that needs to be stated while dealing with the aforesaid contention is, that the controversy between the parties does not pertain to recovery of immoveable property, partition of immoveable property,

foreclosure sale or redemption of immoveable property, determination of any other right to immoveable property, for determination of compensation for wrong to immoveable property and/or for the recovery of moveable property under distraint or attachment. It is only in the aforesaid exigencies that Section 16 of the Code of Civil Procedure could have been invoked. The construction of the Mumbra bypass, would only entitle Atlanta Limited to payments contemplated under the contract dated 12.7.2007, and no more. A brief description of the reliefs sought by the rival parties, in the separate proceedings initiated by them, does not indicate that either of the parties were claiming any right to or interest in any immovable property. Since none of the above exigencies contemplated in Section 16 prevail in the dispute between the rival parties, reliance on Section 16 of the Code of Civil Procedure is clearly misplaced.

20. Insofar as the jurisdiction within the District Thane, is concerned, the “principal Civil Court of original jurisdiction” is the court of the District Judge, Thane. Consequently, within the territorial jurisdiction of District Thane, in terms of Section 2(1)(e) of the Arbitration Act, the challenge could have only been raised before the “principal Civil Court of original jurisdiction” of the district, namely, before the District Judge, Thane. There was no other court within the jurisdiction of District Thane, wherein the instant matters could have been agitated. Therefore, the appellants having chosen to initiate the proceedings before the District Judge, Thane, i.e., in respect of a cause of action falling in the

territorial jurisdiction of the District Thane, they too must be deemed to have chosen the rightful court i.e., the District Judge, Thane.

21. Shorn of the aforesaid determination, our only understanding of the submission advanced at the hands of the learned counsel for the appellants would be, that as a matter of “natural choice”, as a matter of “suitable choice”, as also, as a matter of “more appropriate choice”, the controversies raised by the rival parties ought to be collectively determined by the District Court, Thane, and not by the High Court of Bombay (in exercise of its “ordinary original civil jurisdiction”). In order to supplement the aforesaid contention, learned counsel for the appellant had depicted the quantum of filing of similar petitions before the High Court, as also, before the District Court Thane, and the time likely to be taken for the disposal of such matters by the Courts under reference. There is no statutory provision to our knowledge, wherein the determination of jurisdiction, is based on such considerations. No such provision was brought to our notice by learned counsel. The question of jurisdiction, is a pure question of law, and needs to be adjudicated only on the basis of statutory provisions. In view of the deliberations recorded hereinabove, it may not be wrong to observe, that the submissions advanced at the behest of the learned counsel for the appellants on the issue of jurisdiction, are submissions without reference to any principles known to law. To the credit of the learned counsel for the appellants, it may however be observed, that the above considerations may constitute a relevant basis for transfer of proceedings from one court to the other. Before the above considerations can be examined, there would be one pre-condition, namely, that

the above considerations could be applied for transfer of a case, where statutory provisions (express or implied) do not provide for the exercise of a definite choice. As a matter of expressing ourselves clearly, it may be stated, that inference of legislative intent from statutory provisions, would exclude from the realm of consideration, submissions of the nature relied upon by the learned counsel for the appellant.

22. The first issue which needs to be examined is, whether a challenge to an arbitration award (or arbitral agreement, or arbitral proceeding), wherein jurisdiction lies with more than one court, can be permitted to proceed simultaneously in two different courts. For the above determination, it is necessary to make a reference to Section 42 of the Arbitration Act. The aforesaid provision accordingly is being extracted hereunder:

“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.”

A perusal of Section 42 of Arbitration Act reveals a clear acknowledgment by the legislature, that the jurisdiction for raising a challenge to the same arbitration agreement, arbitral proceeding or arbitral award, could most definitely arise in more than one court simultaneously. To remedy such a situation Section 42 of the Arbitration Act mandates, that the court wherein the first application arising

out of such a challenge is filed, shall alone have the jurisdiction to adjudicate upon the dispute(s), which are filed later in point of time. The above legislative intent must also be understood as mandating, that disputes arising out of the same arbitration agreement, arbitral proceeding or arbitral award, would not be adjudicated upon by more than one court, even though jurisdiction to raise such disputes may legitimately lie before two or more courts.

23. Ordinarily Section 42 of the Arbitration Act would be sufficient to resolve such a controversy. For the determination of the present controversy, however, reliance cannot be placed on Section 42 of the Arbitration Act, because the State of Maharashtra had moved Miscellaneous Civil Application No. 229 and Miscellaneous Civil Application No 230 of 2012 under Section 34 of the Arbitration Act before the District Judge, Thane, on the same day as Atlanta Limited had filed Arbitration Petition No. 1158 of 2012 before the High Court. In this behalf it may be mentioned, that both the parties had approached the courts referred to hereinabove on 7.8.2012. The answer to the jurisdictional question, arising out in the facts and circumstances of this case, will therefore not emerge from Section 42 of the Arbitration Act. All the same it is imperative for us to give effect to the legislative intent recorded under Section 42 aforementioned, namely, that all disputes arising out of a common arbitration agreement, arbitral proceeding or arbitral award, would lie only before one court.

24. The very fact that the appellants before this Court, have chosen to initiate proceedings against the arbitral award before "principal Civil Court of original

jurisdiction in a district” i.e., before the District Judge, Thane, and the respondent before this Court, has raised a challenge to the same arbitral award before the “ordinary original civil side” of the High Court of Bombay, clearly demonstrates, that the underlying principle contained in Section 42 of the Arbitration Act would stand breached, if two different courts would adjudicate upon disputes arising out of the same arbitral award. There can be no doubt, that adjudication of a controversy by different courts, can easily give rise to different conclusions and determinations. Therefore, logic and common sense also require, the determination of all such matters, by one jurisdictional court alone. In the present case, the complication in the matter has arisen only because, the proceedings initiated by the appellants before the District Judge, Thane, and proceedings initiated by the respondent on the “ordinary original civil side” of the High Court of Bombay, were filed on the same day (i.e. on 7.8.2012). Therefore, Section 42 of the Arbitration Act, cannot be of any assistance in the matter in hand.

25. All the same, it is imperative for us to determine, which of the above two courts which have been approached by the rival parties, should be the one, to adjudicate upon the disputes raised. For an answer to the controversy in hand, recourse ought to be made first of all to the provisions of the Arbitration Act. On the failure to reach a positive conclusion, other principles of law, may have to be relied upon. Having given out thoughtful consideration to the issue in hand, we are of the view, that the rightful answer can be determined from Section 2(1)(e) of the Arbitration Act, which defines the term “Court”. We shall endeavour to determine this issue, by examining how litigation is divided between a High Court

exercising “ordinary original civil jurisdiction”, and the “principal civil court of original jurisdiction” in a district. What needs to be kept in mind is, that the High Court of Bombay is vested with “ordinary original civil jurisdiction” over the same area, over which jurisdiction is also exercised by the “principal Civil Court of original jurisdiction” for the District of Greater Mumbai (i.e. the Principal District Judge, Greater Mumbai). Jurisdiction of the above two courts on the “ordinary original civil side” is over the area of Greater Mumbai. Whilst examining the submissions advanced by the learned counsel for the appellant under Section 15 of the Code of Civil Procedure, we have already concluded, that in the above situation, jurisdiction will vest with the High Court and not with the District Judge. The aforesaid choice of jurisdiction has been expressed in Section 2(1)(e) of the Arbitration Act, without any fetters whatsoever. It is not the case of the appellants before us, that because of pecuniary dimensions, and/or any other consideration(s), jurisdiction in the two alternatives mentioned above, would lie with the Principal District Judge, Greater Mumbai. Under the scheme of the provisions of the Arbitration Act therefore, if the choice is between the High Court (in exercise of its “ordinary original civil jurisdiction”) on the one hand, and the “principal civil court of original jurisdiction” in the District i.e. the District Judge on the other; Section 2(1)(e) of the Arbitration Act has made the choice in favour of the High Court. This in fact impliedly discloses a legislative intent. To our mind therefore, it makes no difference, if the “principal civil court of original jurisdiction”, is in the same district over which the High Court exercises original jurisdiction, or some other district. In case an option is to be exercised between a

High Court (under its “ordinary original civil jurisdiction”) on the one hand, and a District Court (as “principal Civil Court of original jurisdiction”) on the other, the choice under the Arbitration Act has to be exercised in favour of the High Court.

26. In the present controversy also, we must choose the jurisdiction of one of two courts i.e. either the “ordinary original civil jurisdiction” of the High Court of Bombay; or the “principal civil court of original jurisdiction” in District Thane i.e. the District Judge, Thane. In view of the inferences drawn by us, based on the legislative intent emerging out of Section 2(1)(e) of the Arbitration Act, we are of the considered view, that legislative choice is clearly in favour of the High Court. We are, therefore of the view, that the matters in hand would have to be adjudicated upon by the High Court of Bombay alone.

27. In view of the conclusions drawn by us above, we uphold the order passed by the High Court requiring the matters to be adjudicated on the “ordinary original civil side” by the High Court of Bombay. The reasons recorded by the High Court, for the above conclusion, were different. The reasons for our consideration have already been notice above. In view of the above, we dispose of the instant appeal, with a direction that Arbitration Petition No. 1158 of 2012 filed by the Atlanta Limited (the respondent herein) before the High Court of Judicature at Bombay, and Miscellaneous Application No. 229 of 2012 and Miscellaneous Application No. 230 of 2012 filed by the appellants before the District Judge, Thane, shall be heard and disposed of by the High Court of Bombay. We accordingly hereby direct the District Judge, Thane, to transfer the files of

Miscellaneous Application No. 229 of 2012 and Miscellaneous Application No. 230 of 2012 to the High Court, for disposal in accordance with law.

.....J.
(A.K. Patnaik)

.....J.
(Jagdish Singh Khehar)

New Delhi;
January 16, 2014.



JUDGMENT