



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 3305 OF 2022  
IN  
COMM. ARBITRATION PETITION NO. 130 OF 2022**

M/s. Admirecon Infrastructure Pvt. Ltd. ...Applicant/  
Org.Respondent

**In the matter between**

Gurumahima Heights Co-operative  
Housing Society Ltd. ...Petitioner

Vs.

M/s. Admirecon Infrastructure Pvt. Ltd. ...Respondent

----

Mr. Vyom Shah a/w. Mr. Anand Iyer i/b. Divya Shah Associates,  
for the Petitioner and for the Respondent in IA/3305/2022.

Mr. Ajinkya Kurdukar a/w. Mr. Subhash Gupta, for the the  
Respondent and for Applicant in IA/3305/2022.

----

**CORAM : MANISH PITALE, J.  
DATE : 26<sup>th</sup> APRIL 2023**

**P.C.**

. This is an application filed by the respondent seeking dismissal of the arbitration petition on the ground that this Court lacks jurisdiction to entertain the petition.

2. The arbitration petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, by the petitioner to challenge an arbitral award dated 15/10/2021, passed by a sole arbitrator, whereby the petitioner has been directed to pay

specific amounts to the respondent alongwith interest.

3. The petitioner – society had floated a tender inviting bids for awarding contract of carrying out repairs and painting to the building of the society situated at Navi Mumbai. The contract was awarded to the respondent. The contract/Articles of Agreement contained an arbitration clause. It is an admitted position that General Conditions of Contract governed the relationship between the parties, which also contained an arbitration clause. While the contract dated 11/4/2016, executed between the parties, titled as Articles of Agreement, in Clause 5 stated that all disputes arising in connection with the said agreement / contract shall be deemed to have arisen in Navi Mumbai to be referred to sole arbitration of M/s. Avon Projects, Clause 25 of the General Conditions of Contract simply stated that disputes between the parties would be resolved as per the Arbitration Act.

4. As disputes arose between the parties, the respondent filed an application under Section 9 of the said Act for grant of interim measures before the Court of Principal District Judge at Thane. By judgment and order dated 3/2/2017, the aforesaid Court at Thane dismissed the application filed by the respondent.

5. Thereafter, the respondent filed a petition under Section 11 of the said Act before this Court for appointment of arbitrator.

The respondent invoked Clause 25 of the General Conditions of Contract and when the appointment of arbitrator could not take place by consent of parties, the said petition was filed before this Court. By order dated 6/12/2018, a learned Single Judge of this Court disposed of the petition by appointing a sole arbitrator by consent of parties. It was specifically recorded that the venue of arbitration shall be Navi Mumbai.

6. As noted hereinabove, by the impugned arbitral award dated 15/10/2021, the sole arbitrator allowed certain claims of the respondent and directed the petitioner to pay specific amounts alongwith interest to the respondent.

7. By the present application, the respondent contends that the petition under Section 34 of the said Act for challenging the impugned arbitral award could have been filed only before the Court at Thane. The respondent contends that the agreement / contract executed between the parties specifically stipulates that all disputes shall be deemed to have arisen within the jurisdiction of Navi Mumbai, which is covered under the jurisdiction of the said Court at Thane. It is further contended that except two hearings, all the other 22 hearings in the arbitral proceedings had taken place at Navi Mumbai. It is further contended that building of the petitioner society, in respect of which contract was awarded to the respondent, is also situated in Navi Mumbai. The respondent further contended that since the application filed

under Section 9 of the said Act was filed before the said Court at Thane, as per Section 42 of the said Act, the petition filed under Section 34 thereof, ought to have been filed before the Court at Thane. On this basis, the respondent has claimed in the present application that the present petition deserves to be dismissed.

8. In reply, the petitioner contends that the award signed by the learned arbitrator records the date of its pronouncement and the place as Mumbai. It is contended that therefore, the place of the arbitral proceedings and the award is Mumbai, due to which this Court has jurisdiction to entertain the petition filed under Section 34 of the said Act.

9. Upon completion of pleadings in the application, this Court took up the same for consideration, as the objection raised on behalf of the respondent goes to the root of the matter.

10. Mr. Ajinkya Kurdukar, learned counsel appearing for the applicant / original respondent made submissions in line with the contentions raised in the application. Reliance was placed on the arbitration clause contained in the agreement / contract dated 11/4/2016, executed between the parties. It was submitted that since all disputes arising between the parties were deemed to have arisen in Navi Mumbai, only the Court having jurisdiction over Navi Mumbai i.e. the Court at Thane could entertain the petition under Section 34 of the said Act. It was submitted that the said

clause in the agreement dated 11/4/2016, ought to have been read with Clause 25 of the General Conditions of Contract. On this basis, it was submitted that since the parties had agreed to such a position, the petition filed under Section 34 of the said Act before this Court is not maintainable and it ought to be dismissed.

11. It was further submitted that 22 out of 24 hearings in the arbitral proceedings took place at Navi Mumbai and therefore, it could not be held that the place of arbitration was Mumbai, merely because the learned arbitrator while signing the award recorded that the same was signed at Mumbai. It was further submitted that, in any case, the respondent had filed an application under Section 9 of the said Act before the Court at Thane and therefore, as per Section 42 of the said Act, only the Court at Thane has jurisdiction in the present case. Learned counsel also referred to Section 20 of the said Act in support of his contentions. He relied upon judgments of the Supreme Court in the case of *Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and Ors.*<sup>1</sup> and *BGS SGS SOMA JV Vs. NHPC Ltd.*<sup>2</sup> and Judgment of this Court in the case of *Omprakash S/o. Ramnivas Varma and Ors. Vs. Vijay Dwarkada Varma*<sup>3</sup>, to contend that material on record and the conduct of the parties clearly demonstrated that the place of arbitration was Navi Mumbai and that therefore, only the Court

---

<sup>1</sup>(2017) 7 SCC 678

<sup>2</sup>(2019) SCC Online SC 1585

<sup>3</sup>2020(5) Mh.L.J. 184

at Thane has jurisdiction to entertain the petition under Section 34 of the said Act to challenge the impugned award.

12. On the other hand, Mr. Vyom Shah, learned counsel appearing for the original petitioner, submitted that there is no substance in the objection regarding jurisdiction raised on behalf of the applicant (original respondent). The learned counsel also relied upon the documents on record to contend that a proper interpretation of the same would show that the place of arbitration was indeed Mumbai and that therefore, this Court has jurisdiction to entertain the petition filed under Section 34 of the said Act to challenge the impugned arbitral award.

13. In the first instance, it was submitted that the arbitral award in the present case specifically records that it is signed at Mumbai. In fact, paragraph 37 of the impugned arbitral award specifically records that the award was published on 15/10/2021, at Mumbai. According to the learned counsel, this was enough to indicate that the place of arbitration was Mumbai and hence, the petition filed under Section 34 of the said Act was within the jurisdiction of this Court.

14. The learned counsel emphasized upon the fact that in the present case the respondent invoked Clause 25 of the General Conditions of Contract for arbitration, which nowhere provides for place of arbitration. It was then contended that the Articles of

Agreement / Contract dated 11/4/2016, recorded at page 984 of the compilation of documents that it was executed at Mumbai. It was further submitted that even though at page 985 of the compilation of documents, it was recorded that the Articles of Agreement / Contract were made at Navi Mumbai, it could not be said that the said aspect would inure to the benefit of the respondent, for the reason that admittedly the office of the respondent is located at Mumbai.

15. It was further submitted that in the application filed under Section 9 of the said Act before the Court at Thane, the petitioner had specifically raised objection of jurisdiction. The said Court had merely appointed a Commissioner and eventually, dismissed the application for interim measures filed by the respondent. On this basis, it was submitted that Section 42 of the aforesaid Act would not be of any assistance to the respondent. It was specifically submitted that by recording the fact that the award was published at Mumbai, it was clear that the learned arbitrator had determined the place of arbitration under Section 20 of the said Act. It was further submitted that two hearings had indeed taken place at Mumbai. By placing reliance on the order of this Court passed under Section 11 of the said Act, wherein it was recorded that venue of arbitration would be Navi Mumbai, it was submitted that Navi Mumbai was merely the venue of arbitration, while the place of arbitration was always Mumbai. The learned counsel for the petitioner submitted that the ratio of the

judgments of the Supreme Court in the case of *Indus Mobile Distribution Private Limited (supra)* and *BGS SGS SOMA JV (supra)* and the judgment of this Court in the case of *Omprakash S/o. Ramnivas Varma (supra)*, was in favour of the petitioner and that therefore, the present application deserves to be dismissed.

16. Heard learned counsel for the rival parties, in the backdrop of the material placed on record and also the position of law, brought to the notice of this Court.

17. Before considering the specific facts of the present case, it would be appropriate to refer to the position of law and the relevant provisions of the said Act.

18. In the context of the present case, Sections 20 and 42 of the said Act are relevant and they read as follows:

*Section 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, goods or other property.*

*Section 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.*

19. A perusal of Section 20 of the said Act would show that the parties are free to agree on a place of arbitration, failing which the arbitral tribunal determines the place of arbitration, having regard to the circumstances of the case and convenience of the parties. The aforesaid provision also makes it clear that the arbitral tribunal can meet at any place that it considers appropriate. This has been interpreted as the venue of arbitration. The position of law concerning place and venue of arbitration has been exhaustively considered and dealt with by the Supreme Court in the case of *BGS SGS SOMA JV (supra)*. It has been clarified that the words “Venue” and / or “Place” cannot be the only determinative factors for ascertaining the place of arbitration and consequently, the Court which would have jurisdiction to

entertain the challenge raised to an arbitral award. Much would turn on the arbitration clause / agreement and other relevant factors. In the case of *Indus Mobile Distribution Private Limited (supra)*, it was held that where it is specified that Courts at a particular place shall have exclusive jurisdiction for the purposes of regulating the arbitral proceedings, the place of arbitration is the place where such Courts are situated.

20. This Court in the case of *Omprakash S/o. Ramnivas Varma (supra)*, took into consideration the aforementioned judgments of the Supreme Court in a case where there was nothing to show an agreed place of arbitration and where the arbitrator had not determined the place of arbitration. In such a situation, this Court held that the conduct of the parties could also be a factor for determining or ascertaining the place of arbitration, which in turn would lead to ascertaining as to which Court would have jurisdiction to entertain the challenge under Section 34 of the said Act. In the said case, on the basis of the conduct of the parties and the material available on record, this Court held against the petitioners and directed that the application filed under Section 34 of the said Act shall be returned by the concerned Court, to be presented before the Court of competent jurisdiction.

21. It is significant that Section 42 of the said Act pertains to jurisdiction and starts with a non-obstante clause, specifying that

where an application under Part I of the said Act is filed in a Court in respect of an arbitration agreement, that Court alone has jurisdiction over the arbitral proceedings and all subsequent applications arising out of such agreements and the arbitral proceedings. It is specifically provided that no other Court shall have jurisdiction. Thus, Section 42 of the said Act also becomes relevant in such circumstances.

22. In the present case, Clause 5 of the Articles of Agreement / Contract executed between the parties provided for arbitration. It reads as follows:

*5. All disputes arising out of or in connection with this agreement or concerning thereto shall be deemed to have arisen in Navi Mumbai and the same will be referred to the sole arbitration of the M/s. Avon Projects decision will be final and binding on both the parties to this contract.*

23. There is no dispute between the parties that General Conditions of Contract applied to their case. Clause 25 thereto provides for arbitration and the said clause reads as follows:

25. Arbitration - In case of any disputes between the Contractor and the society with regard to any of the Terms and Conditions of this contract, or the scope of work, or the mode of measurements or any technical or any financial matter, or due to the terms and

conditions regarding the payment, the same will be solved as per Arbitration Act, 1996.

24. It is a matter of record that while invoking arbitration, the respondent referred to Clause 25 of the General Conditions of contract, quoted hereinabove. A bare perusal of Clause 5 of the Articles of Agreement / Contract, as also a perusal of Clause 25 of the General Conditions of Contract shows that neither clause provides for a place of arbitration. The two clauses also do not place exclusive jurisdiction on any particular Court. Clause 5 of the Articles of Agreement / Contract does specify that all disputes between the parties shall be deemed to have arisen at Navi Mumbai. This can be taken as a relevant factor, but admittedly, this specific clause was not invoked by the respondent while the parties went to arbitration.

25. A perusal of the Articles of Agreement / Contract in the present case, shows that at page 984 of the compilation of documents, the first page of the Articles of Agreement / Contract records that the contract was made at Mumbai on 11/4/2016, but the first page of the said Articles of Agreement / Contract at page 985 of the compilation of documents shows that it was made at Navi Mumbai on 11/4/2016. These two pages of the Articles of Agreement were signed by both parties. The other remaining pages of the Articles of Agreement from page 986 to 987 of the compilation of documents were also signed by both parties.

Therefore, it is not clear as to whether the Articles of Agreement were signed and executed at Mumbai or at Navi Mumbai. This is also a relevant factor in the present case. There can be no doubt about the fact that a perusal of the impugned arbitral award shows that the date is recorded as 15/10/2021 and it is also recorded that the award was published at Mumbai. This is a relevant factor. But, at the same time, the arbitral award itself records that 22 out of the 24 hearings in the arbitral proceedings took place at Navi Mumbai. Two hearings that took place at Mumbai were due to certain unavoidable circumstances. It is relevant that the order passed by this Court under Section 11 of the said Act records that the venue of arbitration was to be at Navi Mumbai. These are also relevant factors in the present case.

26. The aforementioned relevant factors lead at least to one conclusion that there is lack of material to show agreement on the part of the parties as to the place of arbitration, as contemplated under Section 20(1) of the said Act. In such a situation, under Section 20(2) of the said Act, the learned arbitrator could have determined the place of arbitration. But, a perusal of the arbitral award does not show any exercise on the part of the learned arbitrator of having determined the place of arbitration. Although the learned counsel appearing for the petitioner is justified in contending that the learned arbitrator was not expected to pass a detailed reasoned order for determining the place of arbitration, it was expected that there was some application of mind on the said

aspect, which could be deduced from the contents of the arbitral award. But, there is nothing to indicate that the learned arbitrator in the present case determined the place of arbitration.

27. Merely because the award records that the same was published at Mumbai cannot be the basis to hold that the place of arbitration in the facts of the present case was Mumbai. The emphasis placed on behalf of the petitioner on the fact that the award was signed and published at Mumbai cannot be of much assistance for holding that the place of arbitration was indeed Mumbai. This is because mere signing of the award at a place cannot be the determinative factor for ascertaining the place of arbitration. For instance, if there is no agreement between the parties as regards place of arbitration; the arbitrator has not determined the place of arbitration and the arbitral proceedings are conducted at place “A”, while the learned arbitrator for some reason goes to place “B” and signs and publishes the award at place “B”, it cannot be said that the place of arbitration is place “B”. The overall circumstances would have to be taken into consideration to reach a conclusion on the said aspect of the matter.

28. In the present case, this Court is of the opinion that there is lack of material to show any agreement between the parties as regards the place of arbitration. There is nothing to show that the learned arbitrator exercised power under Section 20(2) of the said

Act to determine the place of arbitration. It is also an admitted position that 22 out of 24 hearings of the arbitral proceedings took place at Navi Mumbai. The building of the petitioner – society in respect of which the contract was awarded to the respondent is located in Navi Mumbai. These factors do assume significance and the most telling aspect of the matter becomes the application of Section 42 of the said Act, in the facts and circumstances of the present case. It is an admitted position that the respondent filed the application under Section 9 of the said Act before the aforesaid Court at Thane. Although the petitioner appears to have raised the question of jurisdiction, the Court at Thane considered the application of the respondent on merits and dismissed the same. The petitioner is not justified in claiming that since the Court at Thane had merely appointed a commissioner and later dismissed the application of the respondent, Section 42 of the said Act would not come into play.

29. A perusal of the aforesaid provision clearly indicates that it starts with a non-obstante clause and specifies that where an application has been made under Part I of the said Act, in a Court in respect of the arbitration agreement, that Court alone has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the agreement and the arbitral proceedings. In fact, the provision stipulates that no other Court shall have jurisdiction. In the present case, it cannot be said that no part of cause of action arose within jurisdiction of Court at

Thane. It is an admitted position that the application under Section 9 of the said Act was indeed filed by the respondent before the Court at Thane.

30. In the facts of the present case, considering the material on record, including the conduct of the parties, upon application of the position of law clarified by the Supreme Court and this Court in the aforementioned judgments, the only conclusion that can be reached is that the Court at Thane alone has jurisdiction to entertain the application / petition filed under Section 34 of the said Act to challenge the arbitral award.

31. Therefore, this Court is of the opinion that the present application deserves to be allowed and the objection regarding jurisdiction deserves to be upheld.

32. This Court in the case of *Omprakash S/o. Ramnivas Varma (supra)*, held that in such a situation, it would not be appropriate to direct outright dismissal of the petition filed under Section 34 of the said Act and instead a direction was issued to return the petition, to be presented before the Competent Court. This Court is inclined to follow the same course of action in the present case, in the interest of justice.

33. In view of the above, the application is partly allowed. It is held that this Court does not have jurisdiction to entertain the petition filed under section 34 of the said Act filed by the



petitioner. The petition is therefore returned to the petitioner, to be filed before the Competent Court, which in this case is the Court of Principal District Judge at Thane.

34. The application stands disposed of in above terms. There shall be no order as to costs.

**MANISH PITALE, J.**

