

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

OP(C) NO. 3115 OF 2018

(AGAINST THE ORDER DATED 8.10.2018 IN A.O.P.177/2018 OF
ADDITIONAL DISTRICT COURT-V, ERNAKULAM.)

PETITIONER:

SOUTHERN RAILWAY,
REPRESENTED BY THE SENIOR DIVISIONAL COMMERCIAL
MANAGER, THIRUVANANTHAPURAM DIVISION,
THIRUVANANTHAPURAM.

BY ADVS.A.DINESH RAO
C.DINESH

RESPONDENT:

M.R.RAMAKRISHNAN,
S/O. RAGHAVAN EZHUTHACHAN,
MANGATTUNJALIL HOUSE,
NEAR RAILWAY STATION, WADAKKANCHERRY,
THRISSUR - 680 623.

BY ADV SRI.VARGHESE C.KURIAKOSE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
13.02.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

“C.R.”

JUDGMENT

This Original Petition filed under Article 227 of the Constitution of India arises from the order dated 8.10.2018 passed by the Additional District Court-V, Ernakulam, in a petition (A.O.P.No.177 of 2018) filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act, 1996”) holding that the District Court, Ernakulam has territorial jurisdiction to entertain the petition.

2. The essential facts leading to the Original Petition:-

The petitioner is the Southern Railway. The respondent is the licensee of a combined fruit and tea stall at Wadakkancherry Railway Station in Thrissur District. The High Court appointed an Arbitrator to resolve the dispute between the petitioner and the respondent concerning the licence fee payable. The Arbitrator held sittings at Ernakulam and passed the award dated 18.6.2018. The respondent challenged the award under Section 34 of the Arbitration Act, 1996 before the District Court, Ernakulam. The petitioner raised a preliminary objection regarding the territorial jurisdiction of the District Court, Ernakulam to entertain the application under Section 34. The

District Court held that it has territorial jurisdiction to entertain the application.

3. Heard Sri.Dinesh Rao.A., the learned counsel appearing for the petitioner, Sri.Varghese C. Kuriakose, the learned counsel appearing for the respondent and Sri.G.Sreekumar (Chelur), the Amicus Curiae.

4. The issue: Which Court has territorial jurisdiction to entertain the application filed under Section 34 of the Arbitration Act, 1996 ?

5. The parties had not agreed on the place of arbitration. The Arbitrator determined the place of arbitration as Ernakulam. Both parties participated in the proceedings and the impugned award was passed.

6. Section 2(1)(e) of the Arbitration Act, 1996 defines "Court", which reads thus:-

"2. Definitions (1)

(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;"

7. The term "subject-matter of the arbitration" need not be confused with "subject-matter of the suit" referred to in the above extracted definition. The term "subject-matter" has a reference and connection with the process of dispute resolution between the parties. Undoubtedly the term is intended to identify the Court having supervisory control over the arbitration proceedings. It necessarily refers to a Court, which would essentially be a Court of the seat or place of the arbitration process. The Legislature has intentionally given jurisdiction to two Courts, the Court which would have jurisdiction where the cause of action is located and the Court where the arbitration takes place. This was essential as, in many cases, the arbitration agreement may provide a seat of arbitration at a place that would be neutral to both parties. Therefore, the Court where the arbitration takes place has to exercise supervisory control over the arbitral process. (Vide: **Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc. [(2012) 9 SCC 552]**).

8. The definition of "Court" as provided in Section 2(1)(e) of the Arbitration Act, 1996 is to be understood keeping in view the provisions in Section 20 of the Act.

Section 20 of the Arbitration Act, 1996 reads thus:-

"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."

Going by Section 20, as extracted above, in a case where the place of arbitration is in India, the parties are free to agree to any "place" within India. As per Section 20(2), in the absence of an agreement regarding the "place" by the parties, the Arbitral Tribunal is authorised to determine the place of arbitration, whereas Section 20(3) enables the Tribunal to meet at any place for conducting hearings at a place of convenience.

9. In **Bharat Aluminium Company** (supra), the Constitution Bench of the Apex Court referred to "place" as a "juridical seat" for the purpose of Section 2(2) of the Arbitration Act, 1996. The Apex Court made it clear that the word "place" used in Sections 20(1) and 20(2) refers to "juridical seat", whereas the word "place" used in Section 20(3) is equivalent to "venue".

10. As mentioned above, in **Bharat Aluminium Company**, the Apex Court, in uncertain terms, observed that the "Court" referred to in Section 2(1)(e) is to identify the Court having supervisory control over the arbitration proceedings. Necessarily, it refers to the Court situated within the territorial jurisdiction of the "seat" or "place" of arbitration.

11. The learned counsel for the petitioner, relying on **D Net Malayalam Digitals Pvt. Ltd. v. Asianet Satelite Communications Ltd. (2016 (4) KLT 30)**, contended that the seat of arbitration or place where the arbitration proceedings were conducted and concluded has no relevance in determining the territorial jurisdiction of the Court which is to be governed by Sections 15 to 20 of the Code of Civil Procedure.

12. In **Brahmani River Pellets Limited v. Kamachi Industries Limited [(2020) 5 SCC 462]** the Apex Court, following the principles evolved in **Bharat Aluminium Company** (supra), reiterated that the term 'subject-matter' in Section 2(1)(e) of the Act is to identify the 'Court' having supervisory control over the arbitration proceedings and that Section 20 read with Section 2(1)(e) will govern the field.

13. A Division Bench of this Court in **Sasidharan K. and Another v. Manager, Sundaram Finance Ltd. (2018 (3) KHC 638)** following **Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. (2017 KHC 6327 = AIR 2017 SC 2105)** held that the Court situated within the territorial jurisdiction of the seat or place of arbitration alone will entertain an application under Section 34 of the Arbitration Act,1996.

14. In the present case, the Arbitral Tribunal determined the `seat' or `place' of arbitration at Ernakulam. Therefore, the District Court, Ernakulam, only has jurisdiction to entertain an application under Section 34 of the Arbitration Act, 1996.

The original petition lacks merits. It stands dismissed. The Court below shall dispose of the matter within a period of three months from this day.

Before parting with the case, this Court places on record its appreciation to the learned Counsel Sri.G.Sreekumar (Chelur), for his valuable assistance as Amicus Curiae.

Sd/-
K.BABU
Judge

APPENDIX OF OP(C) 3115/2018

PETITIONER'S EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE ARBITRATION ORIGINAL PETITION SUBMITTED BY THE RESPONDENT AND DATED 29TH AUGUST, 2018.
- EXHIBIT P2 A TRUE COPY OF THE PETITION SUBMITTED UNDER SEC.36(3) OF THE ARBITRATION AND CONCILIATION ACT 1996.
- EXHIBIT P3 A TRUE COPY OF THE ORDER DATED 8TH OCTOBER, 2018 PASSED BY THE ADDITIONAL DISTRICT JUDGE-V, ERNAKULAM.

TKS