

Court's Jurisdiction Determined Under Sections 16 To 20 Of CPC When Seat Not Specified In Arbitration Agreement: Delhi High Court

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Introduction

In a recent decision in *M/s Kings Chariot v. Mr. Tarun Wadhwa*¹, the High Court of Delhi held that when parties do not designate a seat or the place of arbitration, and no part of cause of action has arisen within the jurisdiction of a High Court, a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") would not be maintainable before the said High Court. In this article, we navigate through the facts and findings of the decision rendered by the Delhi High Court.

Brief Facts

The matter pertains to a petition filed under Section 11(5) of the Arbitration Act by the petitioner seeking appointment of a sole arbitrator.

The petitioner is engaged in the business of executing internal development works for hotels, offices, factories, and other such premises. The respondent was constructing a multi-storied hotel in Guna, Madhya Pradesh. The respondent approached the petitioner for getting some works executed in the aforesaid hotel. In this regard, a contract namely "MEP Contract" dated 11 October 2018 came to be entered amongst the parties.

The petitioner alleged that on 3 July 2021, the respondent misbehaved with the workforce of the petitioner thereby leading to disputes emerging between the parties.

On 18 January 2024, the respondent sent a notice invoking the arbitration clause contained in the agreement entered between the parties. The petitioner responded to the arbitration notice by way of a letter dated 15 February 2024 and called upon the respondent to pay the outstanding consideration amounts. However, as per the petitioner, the respondent did not pay the outstanding consideration and also did not respond to the reply issued by the petitioner dated 15 February 2024. Hence, having not other option, the petitioner filed the present petition.

In the course of the proceedings before the Delhi High Court, the respondent raised two objections. Firstly, the respondent argued that the petitioner failed to bring out any cause of action. Secondly, the respondent argued that the Delhi High Court did not have the territorial jurisdiction to entertain the present petition.

As per the respondent, the entire cause of action arose in Madhya Pradesh. As such, no venue or seat of arbitration was agreed upon amongst the parties in the underlying contract. The respondent asserted that the petitioner placed reliance on the clause which stated that "*all disputes subjected to Delhi Jurisdiction only*". However, as per the respondent, the above clause could not be construed to have designated the seat of arbitration so as to confer jurisdiction upon the Delhi High Court. Since no seat had been designated by the parties and no cause of action arose in Delhi, the respondent submitted that the present petition

¹ *M/s Kings Chariot v. Mr. Tarun Wadhwa*, 2024 SCC OnLine Del 4039.

was not maintainable in law. In this regard, reliance was placed on the decision in ***Aarka Sports Management Pvt. Ltd. v. Kalsi Buildcon Pvt. Ltd.***².

Since no seat of arbitration had been agreed, as per the respondent, the same would have to necessarily be ascertained in terms of Section 2(1)(e) of the Arbitration Act read with Sections 16 to 20 of the Code of Civil Procedure, 1908 ("**CPC**"). The respondent also submitted that an application for the appointment of a sole arbitrator had already been filed by the respondent before the Gwalior Bench of Madhya Pradesh High Court, prior to the filing of the present petition, which was pending disposal.

The petitioner, in its rejoinder, argued that since there exists an exclusive jurisdiction clause in the underlying contract holding that all disputes were subject to resolution at Delhi jurisdiction, the present petition was maintainable. In this regard, the petitioner placed reliance on the decisions in ***Aseem Watts v. Union of India***³, ***Homevista Décor and Furnishing Pvt. Ltd. v. Connect Residuary Private Limited***⁴, and ***Samsung India Electronics Pvt. Ltd. v. ENN ENN Corp. Ltd.***⁵.

Decision of the Delhi High Court

The Delhi High Court observed that admittedly, the arbitration clause itself did not specify any seat or venue. Furthermore, while the underlying contract did contain a clause providing that all disputes were subject to Delhi jurisdiction, the same was a general jurisdictional clause and did not specifically refer to the seat or venue of the arbitration. Thus, as per the Delhi High Court, the general jurisdictional clause could not be read to define the seat or venue for the purpose of arbitration.

The Delhi High Court then referred to the decision of the Supreme Court in ***M/s Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee***⁶. In ***Ravi Ranjan Developers***⁷ it was held that though in *stricto sensu*, the definition of Court in Section 2(1)(e) of the Arbitration Act may not be applicable while exercising jurisdiction under Section 11(6) to appoint the arbitrator(s), but at the same time, an application under Section 11(6) of the Arbitration Act cannot also be filed in any High Court of India, irrespective of the territorial jurisdiction.

The Supreme Court opined that Section 11(6) of the Arbitration Act has to be harmoniously read with Section 2(1)(e) and construed to mean a High Court which exercises superintendence/ supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the Arbitration Act.

In case of a petition under Section 11 of the Arbitration Act, generally, the same would be governed by the arbitration agreement and the jurisdiction of the Court to which the parties may agree. However, if there is no such agreement on seat of arbitration, then the petition under Section 11(6) of the Arbitration Act would be filed only in the jurisdiction of the High Court in accordance with Section 16 to 20 CPC

² *Aarka Sports Management Pvt. Ltd. v. Kalsi Buildcon Pvt. Ltd.*, 2020 SCC OnLine Del 2077.

³ 2023 SCC OnLine Raj 1462.

⁴ 2023 SCC OnLine Cal 1405.

⁵ 2023 SCC OnLine Del 3827.

⁶ *M/s Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee*, 2022 SCC OnLine SC 568.

⁷ *M/s Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee*, 2022 SCC OnLine SC 568.

The Delhi High Court also referred to the decisions in **Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited**⁸; **Hindustan Construction Company Limited v. NHPC Limited**⁹; and **BGS SGS Soma JV v. NHPC Limited**¹⁰. In the aforesaid decisions, the parties had designated a seat of arbitration - an act akin to vesting exclusive jurisdiction because of which only the Courts within whose territorial limits the seat is located, were held to have exclusive jurisdiction. In **Union of India v. Hardy Exploration and Production (India) Inc.**¹¹, a 3-Judge Bench of the Supreme Court held that the "sittings" at various places are relatable to "venue" and the same could not be equated with the "seat of arbitration" or "place of arbitration", which had a different connotation.

Similarly, in the case of **Mankastu Impex Private Limited v. Airvisual Limited**¹² a 3-Judge Bench of the Supreme Court observed that the "seat of arbitration" is the vital aspect in any arbitration proceedings. It determines the applicable law and also the arbitration procedure. The situs is not just about where an institution is based or where the hearings will be held, but it is all about which court would have the supervisory power over the arbitration proceedings. Similar observations were made in **Enercon (India) Ltd. v. Enercon GmbH**¹³, wherein it was reiterated by the Supreme Court that the "location of the seat" shall determine the exclusive jurisdiction of the Court to oversee the arbitration proceedings.

After referring to all the aforesaid judgments in **Ravi Ranjan Developers**¹⁴, it was held that the parties cannot by consent, confer jurisdiction on a Court which inherently lacks jurisdiction. When neither the seat nor the place of arbitration is designated in the particular arbitration clause/ agreement and no part of cause of action has arisen within the jurisdiction of the High Court, the petition under Section 11(6) of the Arbitration Act would not be maintainable before the said High Court.

In view of the above, the Delhi High Court held that there is no confusion and law is explicit that for the purpose of arbitration, even if no part of cause of action has arisen in a place, then too, the parties can agree on a seat of jurisdiction, which would then become the place for all litigation under the Arbitration Act. However, if the parties do not specify any seat/place of arbitration, then the jurisdiction of the Court shall be determined in accordance with Sections 16 to 20 of CPC.

In the present case, the Delhi High Court held that there is neither any place nor any venue determined by the parties, in the arbitration clause. Therefore, the territorial jurisdiction had to be determined in accordance with Sections 16 to 20 of CPC.

In view of the facts of the case, the Delhi High Court held that it had no territorial jurisdiction to entertain the present petition. Accordingly, the petition was dismissed.

Comment

⁸ *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited*, (2017) 7 SCC 678.

⁹ *Hindustan Construction Company Limited v. NHPC Limited*, (2020) 4 SCC 310.

¹⁰ *BGS SGS Soma JV v. NHPC Limited*, (2020) 4 SCC 234.

¹¹ *Union of India v. Hardy Exploration and Production (India) Inc.*, (2019) 13 SCC 472.

¹² *Mankastu Impex Private Limited v. Airvisual Limited*, (2020) 5 SCC 399.

¹³ *Enercon (India) Ltd. v. Enercon GmbH*, (2014) 5 SCC 1.

¹⁴ *M/s Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee*, 2022 SCC OnLine SC 568.

The decision highlights the importance of proper drafting of arbitration clauses to avoid unintended consequences. Despite there being an overarching general jurisdictional clause in the agreement in the present case, owing to the lack of any specific mention of a seat/place of arbitration, the petition under Section 11(6) came to be dismissed.

Contact

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