

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ARBITRATION APPEAL NO. 13 of 2019

SHABBAN KHAN

Versus

HDFC BANK LIMITED & ANR.

Appearance:

Shri N.K. Gupta – learned senior counsel with Shri Shatru Daman Singh Bhadouriyia – learned counsel for the appellant.

Shri S.K. Shrivastava – learned counsel for the respondent No.1.

Reserved on : 01.05.2025
Delivered on : 17.06.2025

ORDER

Invoking the appellate jurisdiction of this Court under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “Act of 1996”), the appellant has preferred this appeal questioning the order passed by VIth Additional District Judge, Guna in MJC No. 40/2018 dated 13.08.2018 whereby the proceedings with regard to the application under Section 34 of the Act of 1996 filed by the appellant has been closed for want of jurisdiction.

2. Short facts of the case are that one vehicle bearing registration No MP08 HA 3008 TATA 2518 was financed by respondent No 1/Bank to the appellant and respondent No 2 was the surety. The appellant failed to deposit the installment as per

agreement, hence the matter was referred to the Arbitrator at Indore and the Arbitrator had passed an award on 27.06.2014 ex-parte in absence of any notice received by the appellant and as he was absent, he was not having any knowledge about passing of the award by the Arbitrator. On the basis of award dated 27.06.2014, the respondent No 1 filed an execution application in the Court of District Judge Guna which was assigned as per Distribution Memo to Third Additional District Judge Guna from where the appellant received a notice for appearance in the execution case on 10.05.2018. After receiving the execution notice, the appellant got knowledge that an award has been passed by the Arbitrator at Indore while the respondent No 1 Bank had financed the vehicle at Guna as the respondent No 1 Bank is having branch office at Guna. Hence, the Appellant filed an application under Section 34 of the Act alongwith the application under Section 5 of Limitation Act. In para 4 of the application, it was mentioned by the appellant that he had no knowledge about the award and it was only when he received notice issued by the Executing Court i.e. Third Additional District Judge Guna and on appearance, copy of the award was supplied that he got knowledge that there is an award of which execution was filed and since the Civil Court was closed due to summer vacation, on the next opening day i.e. 18.06.2018 an application under Section 34 of the Act was filed . On the appellant's application, no notice was issued to the respondent rather the learned Sixth Additional District Judge Guna to whom the case was assigned by the District Judge as per Distribution Memo vide impugned order dated 13.08.2018 held that since the award has been passed at Indore, therefore, the application under Section 34 of the Act would lie at

Indore and not at Guna and held that the Court is not having jurisdiction. Hence, assailing the order dated 13.08.2018, the present petition has been filed.

3. Learned senior counsel for the petitioner submits that the respondent No 1 himself has filed execution application which is pending before Third Additional District Judge Guna and without considering the facts pleaded in the application learned court below has erred in holding that the Court is not having jurisdiction at Guna which is *prima facie* wrong.

4. It is further submitted that as per Section 42 of the Act of 1996 also the Court where any application under this part has been made that Court alone shall have jurisdiction over the arbitral proceedings and all other subsequent applications arising out of that agreement or the arbitral proceeding. In the case in hand, the first application was moved by the respondent No 1 for execution with regard to the arbitral proceeding at Guna, hence on this count also the Court at Guna was having jurisdiction but without considering the fact in right perspective, the order impugned has been passed which is bad in law.

5. It is further submitted that the HDFC Bank branch is situated at Guna, the vehicle was financed at Guna and the parties are living in Guna, hence, the District Court Guna is having jurisdiction to hear and decide the application under Section 34 of the Act but contrary to law the order impugned has been passed.

6. It is further submitted that learned trial Court has erred in not perusing the contents of the application of the appellant wherein in para 4 of the application all facts have already been narrated by the appellant hence the order impugned can be said to have been

passed without going through the contents of the application, thus, deserves to be quashed and therefore, it is prayed that the impugned order dated 13.08.2018 be set-aside. To bolster his submissions, learned senior counsel has relied upon the judgment of Hon'ble Apex Court rendered in the case of **State of West Bengal and Ors. Vs. Associated Contractors reported in (2015) 1 SCC 32.**

7. Per contra, learned counsel for the respondent No.1 submits that the Court where the award has been passed alone has jurisdiction to examine the validity of the same. Thus, no illegality has been committed by learned court below in holding that the Court at Guna is having no jurisdiction to entertain the application filed by the appellant under Section 34 of the Act of 1996. To bolster his submissions, learned counsel for the respondent no.1 has relied upon the judgment of High Court of Chhattisgarh at Bilaspur rendered in Arbitration Appeal No. 19 of 2019 (Shail Shrivastava Vs. Magma Fincrop Ltd.) dated 22.06.2018 and in Arbitration Appeal no. 32 of 2018 (Sachin Choudhary & Anr. Vs. Cholanmandalam Investment and Finance Company Ltd.) dated 17.01.2019.

8. Heard counsel for the parties and perused the record.

9. Admittedly, the Arbitrator has passed the award dated 27.06.2014 at Indore. The said award has been questioned by way of application under Section 34 of the Act, 1996 on 18.06.2018 before the learned District Judge at Guna. Since the award has been passed at Indore, therefore, the Court below has no jurisdiction to decide the same in view of the provisions prescribed under Section 42 of the Act, 1996, which reads as under:

“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 the agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

10. In a very recent judgment rendered by the Apex Court in the case of **BBR (India) Pvt. Ltd. vs S.P. Singhla Constructions Private Ltd. Passed in Civil Appeal Nos. 4130-4131 OF 2022 dated 18.05.2022** in Para 31 has held as under:-

“31. We have already referred to the first few sentences of the aforementioned paragraph and explained the reasoning in the context of the present case. The paragraph [BGS SGS Soma](#) (supra) also explains the non-obstante effect as incorporated in [Section 42](#) to hold that it is evident that the application made under Part-I must be to a court which has a jurisdiction to decide such application. Where ‘the seat’ is designated in the agreement, the courts of ‘the seat’ alone will have the jurisdiction. Thus, all applications under Part-I will be made in the court where ‘the seat’ is located as that court would alone have jurisdiction over the arbitration proceedings and all subsequent proceedings arising out of the arbitration proceedings. The quotation also clarifies that when either no ‘seat’ is designated by an agreement, or the so- called ‘seat’ is only a convenient venue, then there may be several courts where a part of the cause of action arises that may have jurisdiction. An application under [Section 9](#) of the Act may be preferred before the court in which a part of cause of action arises in the case where parties had not agreed on the ‘seat of arbitration’. This is possible in the absence of an agreement fixing ‘the seat’, as an application under [Section 9](#) may be filed before ‘the seat’ is determined by the arbitral tribunal under [Section 20\(2\)](#) of the Act. Consequently, in such situations, the court where the earliest application has been made, being the court in which a part or entire of the cause of action arises, would then be the exclusive court under [Section 42](#) of the Act. Accordingly, such a court would have control over the arbitration proceedings.”

11. By virtue of the aforesaid provision, it is clear that the Court with whose limits the seat had been determined by the arbitral tribunal will alone has the jurisdiction and to examine the validity of the award. The issue of a like nature in relation to the aforesaid provision has been dealt with by the Supreme Court in the matter of **M/s. Bhandari Udyog Limited v. Industrial Facilitation Council and another** reported in AIR 2015 SC 1320 and observed at paragraphs 8, 9 & 10 of its judgment as under:

“8. Admittedly, the arbitration proceeding was concluded within the jurisdiction of Raichur Court. The only forum available to respondent No. 2 was to make an application under Section 34 of the Act before the Civil Court of original jurisdiction at Raichur, since the Karnataka High Court has no original jurisdiction.

*9. Recently, when a similar question for consideration arose before three Judges Bench of this Court in the case of **State of West Bengal & Ors. v. Associated Contractors (2015) 1 SCC 32 : (AIR 2015 SC 260)**, this Court held :---*

*“22. One more question that may arise under Section 42 is whether Section 42 would apply in cases where an application made in a court is found to be without jurisdiction. Under Section 31(4) of the old Act, it has been held in **F.C.I. v. A.M. Ahmed & Co. (2001) 10 SCC 532** at p. 532, para 6 and **Neycer India Ltd. v. GMB Ceramics Ltd. (2002) 9 SCC 489** at pp. 490-91, para 3 that Section 31 (4) of the 1940 Act would not be applicable if it were found that an application was to be made before a court which had no jurisdiction. In **Jatinder Nath v. Chopra Land Developers (P) Ltd. (2007) 11 SCC 453 : (AIR 2007 SC 1401)** at p. 460, para 9 (at P.1405 of AIR) and **Rajasthan SEB v. Universal Petro Chemicals Ltd. (2009) 3 SCC 107 : (2009 AIR SCW 607)** at p. 116, paras 33 to 36 (at P. 615, paras 26 to 28 of AIR) and **Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. (2013) 9 SCC 32** at pp. 47-48, para 32, it was held that where the agreement between the parties restricted jurisdiction to only one particular court, that court alone would have jurisdiction as neither Section 31(4) nor Section 42 contains a non-obstante clause wiping out a contrary agreement between the parties. It has thus been held that applications preferred to courts outside the exclusive court agreed to by parties would also be without jurisdiction.”*

10. Indisputably, the Arbitration proceeding has been conducted within the jurisdiction of Raichur Court, which has jurisdiction as per Section 20 of the Code of Civil Procedure and is subordinate to

the High Court of Karnataka which entertained Section 11 Application. Hence, the Award cannot be challenged before a Court subordinate to the High Court of Bombay. Exercise of jurisdiction by such court shall be against the provision of Section 42 of the Act.”

12. By applying the aforesaid principles to the case in hand, it is evident that since the alleged award has been passed by the sole Arbitrator on 27.06.2014 at Indore and only thereafter the execution and objections under Section 34 of the Act were filed, this Court does not find any scope of interference in the order impugned rejecting the application filed under Section 34 of the Act, 1996 holding the same to be barred by jurisdiction.

13. This appeal is accordingly **dismissed**. No order as to costs.

(MILIND RAMESH PHADKE)
JUDGE