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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
AC No. 72 of 2023**

(RADHESHYAM MUKATI Vs M/S GTL INFRASTRUCTURE LIMITED)

Dated : 16-04-2024

Shri Nilesh Agrawal - Advocate for applicant.

None for the non-applicant, despite service of notice.

1] Heard.

2] None for the non-applicant, and the order-sheets reveal that on 18.03.2024, this Court had noted that nobody had appeared on behalf of non-applicant, hence, in the interest of justice, the non-applicant was given further four weeks time to file reply, failing which its right to file the reply was to be forfeited, and the application was to be heard on the basis of the documents filed on record. Since today also neither the counsel is present, nor the reply is filed, in view of the same, the application is heard finally.

3] This application has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (in short 'the Act of 1996') for appointment of Arbitrator to settle the dispute between the parties.

4] The case of the applicant is that on 30.03.2007, he had entered into a lease agreement with the non-applicant M/s. GTL Infrastructure Limited, Navi Mumbai for a period of 10 years whereby he had leased his land to the non-applicant for installation of passive infrastructure /Ground Base Tower. Thus, the agreement has already expired in the year 2017. However, despite repeated requests, the non-applicant(s) have neither paid the lease rent since August, 2011, nor have vacated the premises. Various notices were issued to the non-applicant, but there was no response. Hence, a civil suit was also filed by the applicant on 03.01.2022, in the Court of First Civil Judge, Junior Division,

Mhow, District - Indore which was registered as COS No.41A/202, in which after the non-applicant were served, they took an objection under Section 8 of the Act of 1996 that there is an arbitration clause in the lease agreement, hence, the matter was withdrawn by the applicant with liberty to get the dispute adjudicated by an Arbitrator. Copy of the aforesaid order is also placed on record, and thereafter again a notice was issued on 08.05.2023 by the applicant, which was served on the non-applicant on 12.05.2023, but again there was no response from the non-applicant, thus, the present application has been filed for appointment of the Arbitrator.

5] Counsel for the applicant has drawn the attention of this Court to the Arbitration Clause No.17, which also provides that the Arbitration shall be held at Pune. Thus, it is submitted that an Arbitrator be appointed to adjudicate upon the dispute between the parties.

6] In support of his submissions that this court has the jurisdiction to appoint the Arbitrator, counsel for the applicant has also relied upon a decision rendered by the Supreme Court in the case of *Ravi Ranjan Developers Pvt. Ltd. Vs. Aditya Kumar Chatterjee* reported as *2022 SCC OnLine SC 568* wherein also, in an agreement, which was executed at Muzaffarpur, Bihar, it was mentioned that the sitting of Arbitration Tribunal shall be at Calcutta, and the Calcutta High Court has passed the order for appointment of Arbitrator, which was under challenge before the Supreme Court. The Supreme Court held that merely because the venue of arbitration is at Calcutta, would not mean that it would also confer the jurisdiction to Calcutta High Court to decide the application filed under Section 11(6) of the Act of 1996.

7] Counsel has also submitted that in the present case, even though the

venue of the arbitration is at Pune, however, considering the fact that the agreement itself was executed at village Kellod, Tehsil Mhow, District Indore, and the dispute property is also situated at village Kellod, and the fact that the non-applicant's registered office is at Navi Mumbai, it is submitted that considering the fact that the applicant himself is a farmer, who had leased out his land to the non-applicant, it may be directed that the arbitration be also held at Indore only.

8] Heard counsel for the applicant and perused the record.

9] From the lease deed, it is found that the lease deed was executed at Village Kellod, Tehsil Mhow, District Indore, between the applicant, who is the land owner and the non-applicant M/s. GTL Infrastructure Limited, whose registered office is at Navi Mumbai.

10] So far as the clause 17 of lease deed is concerned, which refers to the arbitration, the same reads as under:-

“17. Any dispute or claim between the parties hereto arising out of or relating to this agreement, or its implementations and/or its effect, or the breach, termination, due to efflux of time or otherwise, or invalidity thereof, either during its subsistence or after its termination, shall be referred to the arbitration of a sole arbitrator in accordance with the provisions of Arbitrations and Reconciliation Act 1996. The Arbitration shall be held at Pune.”

(emphasis supplied)

11] It is apparent from the above that it provides that all the disputes shall be referred to the arbitration of a sole arbitrator, in accordance with the provisions of the Act of 1996, and the arbitration shall be held at Pune. So far as the jurisdiction of this court in entertaining this application is concerned, reference in this regard may also be had to the decision relied upon by the counsel for the applicant in the case of Ravi Ranjan Developers Pvt. Ltd. (supra). The relevant paras of the same read as under :-

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3. The Appellant and the Respondent entered into a Development Agreement dated 15th June 2015 for development of property situated at Muzaffarpur in Bihar measuring about 12 Kaithas and 11 Dhurs, more fully described in the said Development Agreement, outside the jurisdiction of Calcutta High Court. The said Development Agreement executed and registered in Muzaffarpur in Bihar, contains an arbitration clause, which is set out hereinbelow for convenience:

“37. That in case of any dispute or difference between the parties arising out of and relating to this development agreement, the same shall be settled by reference of the disputes or differences to the Arbitrators appointed by both the parties and such Arbitration shall be conducted under the provisions of the Indian Arbitration and Conciliation Act, 1996 as amended from time to time and the sitting of the said Arbitral Tribunal shall be at Kolkata.”

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20. The question in this case is, whether the Calcutta High Court had territorial jurisdiction to pass the impugned orders. The answer to the question has to be in the negative for the reason that the Development Agreement was admittedly executed and registered outside the jurisdiction of the High Court of Calcutta, the agreement pertains to development of property located in Muzaffarpur outside jurisdiction of the Calcutta High Court. The Appellant has its registered office in Patna outside the jurisdiction of Calcutta High Court. The Appellant has no establishment and does not carry on any business within the jurisdiction of the Calcutta High Court. As admitted by the Respondent, no part of the cause of action had arisen within the jurisdiction of Calcutta High Court.

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25. In the present case, no suit could have been filed in any Court over which the Calcutta High Court exercises jurisdiction, since as stated above, the suit admittedly pertains to immovable property situated at Muzaffarpur in Bihar, outside the territorial jurisdiction of the Calcutta High Court and admittedly, no part of the cause of action had arisen within the territorial jurisdiction of the Calcutta High Court. The Appellant who would be in the position of Defendant in a suit, neither resides nor carries on any business within the jurisdiction of the Calcutta High Court.

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28. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent.

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43. This Court has perused the Development Agreement. The contention of the

Respondent in the Affidavit in Opposition, that the parties to the arbitration agreement had agreed to submit to the jurisdiction of Calcutta High Court, is not correct. The parties to the arbitration agreement only agreed that the sittings of the Arbitral Tribunal would be in Kolkata. Kolkata was the venue for holding the sittings of the Arbitral Tribunal.

44. In Union of India v. Hardy Exploration and Production (India) Inc. a three Judge Bench of this Court held that the sittings at various places are relatable to venue. It cannot be equated with the seat of arbitration or place of arbitration, which has a different connotation.

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47. It is well settled that, when two or more Courts have jurisdiction to adjudicate disputes arising out of an arbitration agreement, the parties might, by agreement, decide to refer all disputes to any one Court to the exclusion of all other Courts, which might otherwise have had jurisdiction to decide the disputes. The parties cannot, however, by consent, confer jurisdiction on a Court which inherently lacked jurisdiction, as argued by Mr. Sinha.

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49. These appeals are therefore, allowed and the impugned orders of appointment of Arbitrator and dismissal of the review application are set aside. The appointment of the learned Arbitrator is set aside on the ground that the order of his appointment is without jurisdiction and in view of the objection to his appointment raised by the Appellant. It is made absolutely clear that this order is not to be construed as any aspersion on the learned Arbitrator appointed by the Calcutta High Court, or the manner in which he has conducted the proceedings so far.”

(emphasis supplied)

12] In the considered opinion of this Court when none of the parties reside at Pune and the lease deed itself was executed at village Kellod, Tehsil Mhow, District Indore, parties on their own cannot confer the jurisdiction of a particular Court and thus, this Court is of the considered opinion that the seat of the arbitration shall be at Indore only, and this Court has the jurisdiction to decide the present application filed under Section 11 (6) of the Act of 1996. So far as the venue of the arbitration is concerned, for the same reasons applied to hold that the seat of the arbitration shall be at Indore, and in the absence of any objection in this regard, this court is also of the opinion that no purpose would be served to keep the venue at Pune when the applicant resides in Indore only.

13] On due consideration, and under the facts and circumstances of the case, and I propose to appoint **Hon'ble Shri Justice G. S. Solanki, retired Judge of the M.P. High Court** to be the learned Arbitrator for resolving the dispute.

14] Let the declaration in terms of Section 11(8) and 12(1) of the amended Arbitration Act in the prescribed form as contained in the 6th Schedule of the Act be obtained from the proposed Arbitrator by the Principal Registrar of this Court before the next date of hearing.

15] Let the matter be listed on 23/04/2024.

(SUBODH ABHYANKAR)
JUDGE

Pankaj

