REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6691 OF 2005

State of West Bengal & Ors. … Appellants

Versus

Associated Contractors … Respondent

WITH

CIVIL APPEAL NO. 4808 OF 2013

J U D G M E N T

R.F. Nariman, J.

1. This matter has come before a three Judge Bench by an order of reference of a Division Bench of this Hon'ble Court dated 7th April, 2010. The referral order reads thus:

> *"In this appeal, the question that arises for decision is which Court will have the jurisdiction to entertain and decide an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter for short 'the Act').*
>
> *2. Mr. Bikas Ranjan Bhattacharya, learned senior counsel appearing for the appellants cited the judgments in the*

case of National Aluminium Co. Ltd. Vs. Pressteel & Fabrications (P) Ltd. And Anr. (2004) 1 SCC 540, Bharat Coking Coal Ltd. Vs. Annapurna Construction (2008) 6 SCC 732, Bharat Coking Coal Ltd. Vs. H.P. Biswas and Company (2008) 6 SCC 740 and Garhwal Mandal Vikas Nigam Ltd. Vs. Krishna Travel Agency (2008) 6 SCC 741 in support of his submission that it is only the Principal Civil Court, as defined in Section 2(e) of the Act, which can entertain and decide an application under Section 34 of the Act for setting aside the Award.

3. Mr. Pradip Ghosh, learned senior counsel appearing for the respondent on the other hand submitted that in the present case the Calcutta High Court exercising jurisdiction under Clause 12 of the Letters Patent had passed an interim order under Section 9 of the Act before commencement of the arbitration proceedings and by virtue of Section 42 of the Act, it is only the Calcutta High Court which will have jurisdiction to entertain and decide an application under Section 34 of the Act for setting aside the Award. In support of his submission, he relied upon judgment of this Court in the case of Jindal Vijaynagar Steel (JSW Steel Ltd.) Vs. Jindal Praxair Oxygen Co. Ltd. (2006) 11 SCC 521.

4. We have perused the decisions cited by learned counsel for the parties, which are all decisions of two Judges Bench. In our opinion, the law has to be clarified beyond doubt as to which Court will have the jurisdiction to entertain and decide an application for setting aside the Award under Section 34 of the Act read with Section 2(e) of the Act and other provisions, including Section 42 of the Act. We, therefore, refer the matter to a larger Bench to decide this question of law.

5. Let the papers of this case be placed before Hon'ble the Chief Justice for constituting an appropriate Bench.

6. Till the disposal of the appeal by a larger Bench, the interim order dated 17.05.2007 shall continue to operate."

2. The facts necessary to decide this matter are as follows:

In 1995-96 an Item Rate Tender was duly executed and signed between the respondent Associated Contractors and the concerned Superintending Engineer for execution of the work of excavation and lining of Teesta-Jaldhaka Main Canal from Chainage 3 Kms. to 3.625 Kms. in Police Station: Mal, District: Jalpaiguri, West Bengal. Para 25 of the said Item Rate Tender and Contract contained an arbitration clause.

3. The respondent herein filed an application under Section 9 of the Arbitration Act, 1996 for interim orders in the High Court of Calcutta. A learned Single Judge of the High Court of Calcutta, after granting leave under Clause 12 of the Letters Patent, passed an ad-interim ex-parte injunction order. This order was continued from time to time until it was confirmed by an order dated 10th December, 1998. Meanwhile, in an application under Section 11 of the Arbitration Act, Justice B.P. Banerjee (retired), was appointed as an Arbitrator to adjudicate upon the disputes between the parties. A Recalling Application filed by the State was dismissed on 20th January, 2000.

4. An appeal was filed against the order dated 10th December, 1998, confirming the ad-interim ex-parte injunction. On 5th July, 2000, delay in filing the appeal was condoned and on 20th July, 2000, the interim order was stayed by the Division Bench. The Arbitrator was, however, asked to complete the proceedings before him which would go on uninterrupted.

5. Meanwhile, several orders were passed by the High Court regarding remuneration of the Arbitrator and payment of the same. The arbitration proceedings culminated in an Award dated 30th June, 2004 by which the claimant was awarded a sum of Rs.2,76,97,205.00 with 10% interest from 1st July, 1998 till the date of the Award. If not paid within four months, the same would then attract interest at the rate of 18% per annum. Costs were also awarded in the sum of Rs.50,000/-. The counter claims of the respondent were rejected.

6. On 21st September, 2004, the State of West Bengal filed an application under Section 34 of the 1996 Act to set aside the arbitral Award before the Principal Civil Court of the learned District Judge at Jalpaiguri, West Bengal. On 6th October, 2004, the learned District Judge at Jalpaiguri issued notice to the other side directing the respondent to appear and file its written objections on or before 4th January, 2004. On 10th December, 2004, the respondent filed an application under Article 227 of the Constitution

challenging the jurisdiction of the court of the learned District Judge at Jalpaiguri. By the impugned judgment dated 11th April, 2005, a Single Judge of the High Court of Calcutta allowed the petition under Article 227 holding:

> *"Accordingly, I hold that since the parties already had submitted to the jurisdiction of this Court in its Ordinary Original Civil jurisdiction in connection with different earlier proceedings arising out of the said contract, as indicated above, the jurisdiction of the court of the learned District Judge at Jalpaiguri to entertain the said application for setting aside of the award was excluded under Section 42 of the said Act. Thus, I find that this Court in its Ordinary Original Civil Jurisdiction is the only court which can entertain an application for setting aside the said award. The Revisional Application, thus, stands allowed. The impugned notice is, thus, quashed."*

7. In an S.L.P. filed against this order, Mr. Anip Sachthey, learned advocate for the State of West Bengal, argued that since the application itself made under Section 9 was without jurisdiction, Section 42 of the Arbitration Act would not be attracted. He argued that the reason the Division Bench stayed the interim order passed under Section 9 was because it was convinced prima facie that the High Court had no territorial jurisdiction in the matter.

8. Mr. P.K. Ghosh, learned senior advocate for the respondent, contended that Clause 12 leave had already been granted and a number of orders have been passed after the ad-interim ex-parte order dated 22nd July, 1998 by the learned Single Judge of the High Court. There is, in fact, no order of any court which has pronounced upon jurisdiction, and therefore, Section 42 would necessarily apply to the facts of the case.

9. As the matter has been referred to us for an authoritative pronouncement on Section 2(1)(e) and Section 42 it will be important to set out Section 2(1)(e) and Section 42 of the Arbitration Act, 1996 which read as follows:

> *"2(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.*
>
> *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."*

10. Section 2(1)(e) had its genesis in Section 2(c) of the 1940 Act. Section 42 had its genesis in Section 31(4) of the 1940 Act. These sections of the 1940 Act read as follows:

> *"2(c) "Court" means a Civil Court having jurisdiction to decide the questions forming the subject- matter of the reference if the same had been the subject- matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a Small Cause Court;*
>
> 31(*4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings-, and all subsequent applications arising, out of that reference, and the arbitration proceedings shall be made in that Court and in no other Court."*

11. It will be noticed that Section 42 is in almost the same terms as its predecessor Section except that the words "in any reference" are substituted with the wider expression "with respect to an arbitration agreement". It will also be noticed that the expression "has been made in a court competent to entertain it", is no longer there in Section 42. These two changes are of some significance as will be pointed out later. Section 42 starts with a non-obstante clause which does away with anything which may be inconsistent with the Section either in Part-I of the Arbitration Act, 1996 or in any other law for the time being in force. The expression "with respect

to an arbitration agreement" widens the scope of Section 42 to include all matters which directly or indirectly pertain to an arbitration agreement. Applications made to Courts which are before, during or after arbitral proceedings made under Part-I of the Act are all covered by Section 42. But an essential ingredient of the Section is that an application under Part-I must be made in a court.

12. Part-1 of the Arbitration Act, 1996, contemplates various applications being made with respect to arbitration agreements. For example, an application under Section 8 can be made before a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement. It is obvious that applications made under Section 8 need not be to courts, and for that reason alone, such applications would be outside the scope of Section 42. It was held in **P. Anand Gajapathi Raju & Ors. v. P.V.G. Raju (Dead) & Ors., (2000) 4 SCC 539** at para 8 that applications under Section 8 would be outside the ken of Section 42. We respectfully agree, but for the reason that such applications are made before "judicial authorities" and not "courts" as defined. Also, a party who applies under Section 8 does not apply as *dominus litis*, but has to go wherever the `action' may have been filed. Thus, an application under Section 8 is parasitical in nature - it has to be filed only before the judicial authority before whom a

proceeding is filed by someone else. Further, the "judicial authority" may or may not be a Court. And a Court before which an action may be brought may not be a Principal Civil Court of original jurisdiction or a High Court exercising original jurisdiction. This brings us then to the definition of "court" under Section 2(1)(e) of the Act.

13. It will be noticed that whereas the earlier definition contained in the 1940 Act spoke of any civil court, the definition in the 1996 Act fixes "court" to be the Principal Civil Court of original jurisdiction in a district or the High Court in exercise of its ordinary original civil jurisdiction. Section 2(1)(e) further goes on to say that a court would not include any civil court of a grade inferior to such Principal Civil Court, or a Small Causes Court.

14. It will be noticed that the definition is an exhaustive one as it uses the expression "means and includes". It is settled law that such definitions are meant to be exhaustive in nature – See **P. Kasilingam & Ors. v. P.S.G. College of Technology & Ors., (1995) Suppl. 2 SCC 348** at para 19.

15. A recent judgment of this Hon'ble Court reported in **Executive Engineer, Road Development Division No. III, Panvel & Anr. v. Atlanta Limited, AIR 2014 SC 1093** has taken the view that Section 2(1)(e) contains a scheme different from that contained in Section 15 of the Code of

Civil Procedure. Section 15 requires all suits to be filed in the lowest grade of court. This Hon'ble Court has construed Section 2(1)(e) and said that where a High Court exercises ordinary original civil jurisdiction over a district, the High Court will have preference to the Principal Civil Court of original jurisdiction in that district. In that case, one of the parties moved an application under Section 34 before the District Judge, Thane. On the same day, the opposite party moved an application before the High Court of Bombay for setting aside some of the directions contained in the Award. In the circumstances, it was decided that the "Court" for the purpose of Section 42 would be the High Court and not the District Court. Several reasons were given for this. Firstly, the very inclusion of the High Court in the definition would be rendered nugatory if the above conclusion was not to be accepted, because the Principal Civil Court of original jurisdiction in a district is always a court lower in grade than the High Court, and such District Judge being lower in grade than the High Court would always exclude the High Court from adjudicating upon the matter. Secondly, the provisions of the Arbitration Act leave no room for any doubt that it is the superior most court exercising original jurisdiction which has been chosen to adjudicate disputes arising out of arbitration agreements. We respectfully concur with the reasoning contained in this judgment.

16. Similar is the position with regard to applications made under Section 11 of the Arbitration Act. In **Rodemadan India Ltd. v. International Trade Expo Centre Ltd., (2006) 11 SCC 651**, a Designated Judge of this Hon'ble Court following the seven Judge Bench in **S.B.P. and Co. v. Patel Engineering Ltd. & Anr., (2005) 8 SCC 618,** held that instead of the court, the power to appoint arbitrators contained in Section 11 is conferred on the Chief Justice or his delegate. In fact, the seven Judge bench held:

> *"13. It is common ground that the Act has adopted the UNCITRAL Model Law on International Commercial Arbitration. But at the same time, it has made some departures from the model law. Section 11 is in the place of Article 11 of the Model Law. The Model Law provides for the making of a request under Article 11 to "the court or other authority specified in Article 6 to take the necessary measure". The words in Section 11 of the Act, are "the Chief Justice or the person or institution designated by him". The fact that instead of the court, the powers are conferred on the Chief Justice, has to be appreciated in the context of the statute. 'Court' is defined in the Act to be the principal civil court of original jurisdiction of the district and includes the High Court in exercise of its ordinary original civil jurisdiction. The principal civil court of original jurisdiction is normally the District Court. The High Courts in India exercising ordinary original civil jurisdiction are not too many. So in most of the States the concerned court would be the District Court. Obviously, the Parliament did not want to confer the power on the District Court, to entertain a request for appointing an arbitrator or for constituting an arbitral tribunal under Section 11 of the Act. It has to be noted that under Section 9 of the Act, the District Court or the High Court exercising original jurisdiction, has the power to make interim orders prior to, during or even post arbitration. It has also the power to entertain a challenge to the award that may ultimately*

be made. The framers of the statute must certainly be taken to have been conscious of the definition of 'court' in the Act. It is easily possible to contemplate that they did not want the power under Section 11 to be conferred on the District Court or the High Court exercising original jurisdiction. The intention apparently was to confer the power on the highest judicial authority in the State and in the country, on Chief Justices of High Courts and on the Chief Justice of India. Such a provision is necessarily intended to add the greatest credibility to the arbitral process. The argument that the power thus conferred on the Chief Justice could not even be delegated to any other Judge of the High Court or of the Supreme Court, stands negatived only because of the power given to designate another. The intention of the legislature appears to be clear that it wanted to ensure that the power under Section 11(6) of the Act was exercised by the highest judicial authority in the concerned State or in the country. This is to ensure the utmost authority to the process of constituting the arbitral tribunal.

18. It is true that the power under Section 11(6) of the Act is not conferred on the Supreme Court or on the High Court, but it is conferred on the Chief Justice of India or the Chief Justice of the High Court. One possible reason for specifying the authority as the Chief Justice, could be that if it were merely the conferment of the power on the High Court, or the Supreme Court, the matter would be governed by the normal procedure of that Court, including the right of appeal and the Parliament obviously wanted to avoid that situation, since one of the objects was to restrict the interference by Courts in the arbitral process. Therefore, the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. They have been conferred the power or the right to pass an order contemplated by Section 11 of the Act. We have already seen that it is not possible to envisage that the power is conferred on the Chief Justice as persona designata. Therefore, the fact that the power is conferred on the Chief Justice, and not on the court presided over by him is not sufficient to hold that the power thus conferred is merely an administrative power and is not a judicial power."

It is obvious that Section 11 applications are not to be moved before the "court" as defined but before the Chief Justice either of the High Court or of the Supreme Court, as the case may be, or their delegates. This is despite the fact that the Chief Justice or his delegate have now to decide judicially and not administratively. Again, Section 42 would not apply to applications made before the Chief Justice or his delegate for the simple reason that the Chief Justice or his delegate is not "court" as defined by Section 2(1)(e). The said view was reiterated somewhat differently in **Pandey & Co. Builders (P) Ltd. v. State of Bihar & Anr., (2007) 1 SCC 467** at Paras 9, 23-26.

17. That the Chief Justice does not represent the High Court or Supreme Court as the case may be is also clear from Section 11(10):

> *"The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section(5) or sub-section (6) to him."*

The scheme referred to in this sub-section is a scheme by which the Chief Justice may provide for the procedure to be followed in cases dealt with by him under Section 11. This again shows that it is not the High Court or the

Supreme Court rules that are to be followed but a separate set of rules made by the Chief Justice for the purposes of Section 11.

Sub-section 12 of Section 11 reads as follows:

> *"(a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to ''Chief Justice" in those sub-sections shall be construed as a reference to the ''Chief Justice of India".*
>
> *(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court."*

It is obvious that Section 11(12)(b) was necessitated in order that it be clear that the Chief Justice of "the High Court" will only be such Chief Justice within whose local limits the Principal Civil Court referred to in Section 2(1)(e) is situate and the Chief Justice of that High Court which is referred to in the inclusive part of the definition contained in Section 2(1)(e). This sub-section also does not in any manner make the Chief Justice or his designate "court" for the purpose of Section 42. Again, the decision of the Chief Justice or his designate, not being the decision of the Supreme Court or the High Court, as the case may be, has no precedential value

being a decision of a judicial authority which is not a Court of Record.

18. In contrast with applications moved under Section 8 and 11 of the Act, applications moved under Section 9 are to the "court" as defined for the passing of interim orders before or during arbitral proceedings or at any time after the making of the arbitral Award but before its enforcement. In case an application is made, as has been made in the present case, before a particular court, Section 42 will apply to preclude the making of all subsequent applications under Part-I to any court except the court to which an application has been made under Section 9 of the Act.

19. One of the questions that arises in the reference order is whether the Supreme Court is a court within the meaning of Section 2(1)(e) of the Act. In two judgments under the 1940 Act, namely, **State of Madhya Pradesh v. Saith and Skelton (P) Ltd., (1972) 1 SCC 702** and **Guru Nanak Foundation v. Rattan Singh & Sons, (1981) 4 SCC 634**, the Supreme Court took the view that where an Arbitrator was appointed by the Supreme Court itself and the Supreme Court retained seisin over the arbitration proceedings, the Supreme Court would be "court" for the purpose of Section 2(c) of the 1940 Act. These judgments were distinguished in **National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd. & Anr., (2004)**

1 SCC 540, Bharat Coking Coal Limited v. Annapurna Construction, (2008) 6 SCC 732 and **Garhwal Mandal Vikas Nigam Ltd. v. Krishna Travel Agency, (2008) 6 SCC 741**. The first of these judgments was a judgment under the 1996 Act wherein it was held that when the Supreme Court appoints an Arbitrator but does not retain seisin over the proceedings, the Supreme Court will not be "court" within the meaning of Section 2(1)(e) of the Act. Similar is the position in the third judgment, the Garhwal case. Even under the 1940 Act, in Bharat Coking Coal, the same distinction was made and it was held that as the Supreme Court did not retain seisin over the proceedings after appointing an Arbitrator, the Supreme Court would not be "court" within the meaning of the Arbitration Act, 1940.

20. As noted above, the definition of "court" in Section 2(1)(e) is materially different from its predecessor contained in Section 2(c) of the 1940 Act. There are a variety of reasons as to why the Supreme Court cannot possibly be considered to be "court" within the meaning of Section 2(1)(e) even if it retains seisin over the arbitral proceedings. Firstly, as noted above, the definition is exhaustive and recognizes only one of two possible courts that could be "court" for the purpose of Section 2(1)(e). Secondly, under the 1940 Act, the expression "civil court" has been held to be wide enough to include an appellate court and, therefore would include

the Supreme Court as was held in the two judgments aforementioned under the 1940 Act. Even though this proposition itself is open to doubt, as the Supreme Court exercising jurisdiction under Article 136 is not an ordinary Appellate Court, suffice it to say that even this reason does not obtain under the present definition, which speaks of either the Principal Civil Court or the High Court exercising original jurisdiction. Thirdly, if an application would have to be preferred to the Supreme Court directly, the appeal that is available so far as applications under Sections 9 and 34 are concerned, provided for under Section 37 of the Act, would not be available. Any further appeal to the Supreme Court under Article 136 would also not be available. The only other argument that could possibly be made is that all definition sections are subject to context to the contrary. The context of Section 42 does not in any manner lead to a conclusion that the word "court" in Section 42 should be construed otherwise than as defined. The context of Section 42 is merely to see that one court alone shall have jurisdiction over all applications with respect to arbitration agreements which context does not in any manner enable the Supreme Court to become a "court" within the meaning of Section 42. It has aptly been stated that the rule of forum conveniens is expressly excluded by section 42. See: JSW Steel Ltd. vs. Jindal Praxair Oxygen Co.Ltd., (2006) 11 SCC 521 at para 59. Section 42 is

also markedly different from Section 31(4) of the 1940 Act in that the expression "has been made in a court competent to entertain it" does not find place in Section 42. This is for the reason that, under Section 2(1)(e), the competent Court is fixed as the Principal Civil Court exercising original jurisdiction or a High Court exercising original civil jurisdiction, and no other court. For all these reasons, we hold that the decisions under the 1940 Act would not obtain under the 1996 Act, and the Supreme Court cannot be "court" for the purposes of Section 42.

21. One other question that may arise is as to whether Section 42 applies after the arbitral proceedings come to an end. It has already been held by us that the expression "with respect to an arbitration agreement" are words of wide import and would take in all applications made before during or after the arbitral proceedings are over. In an earlier judgment, **Kumbha Mawji v. Dominion of India, (1953) SCR 878,** the question which arose before the Supreme Court was whether the expression used in Section 31(4) of the 1940 Act "in any reference" would include matters that are after the arbitral proceedings are over and have culminated in an award. It was held that the words "in any reference" cannot be taken to mean "in the course of a reference", but mean "in the matter of a reference" and that such phrase is wide enough and comprehensive enough to cover an application made after

the arbitration is completed and the final Award is made. (See Paras 891-893). As has been noticed above, the expression used in Section 42 is wider being "with respect to an arbitration agreement" and would certainly include such applications.

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 **FCI represented by Managing Director & Anr. v. A.M. Ahmed & Co., through MD & Anr., (2001) 10 SCC 532** at para 6 and **Neycer India Ltd. v. GNB Ceramics Ltd., (2002) 9 SCC 489** at 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 Pvt. Ltd., (2007) 11 SCC 453** at para 9 and **Rajasthan State Electrical Board v. Universal Petrol Chemical Limited, (2009) 3 SCC 107** at paras 33 to 36 and **Swastik Gases (P) Ltd. v. Indian Oil Corporation, 2013 (9) SCC 32** at 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.

23. Even under Section 42 itself, a Designated Judge has held in **HBM Print Ltd. v. Scantrans India (Pvt.) Ltd., (2009) 17 SCC 338**, that where the Chief Justice has no jurisdiction under Section 11, Section 42 will not apply. This is quite apart from the fact that Section 42, as has been held above, will not apply to Section 11 applications at all.

24. If an application were to be preferred to a Court which is not a Principal Civil Court of original jurisdiction in a district, or a High Court exercising original jurisdiction to decide questions forming the subject matter of an arbitration if the same had been the subject matter of a suit, then obviously such application would be outside the four corners of Section 42. If, for example, an application were to be filed in a court inferior to a Principal Civil Court, or to a High Court which has no original jurisdiction, or if an application were to be made to a court which has no subject matter jurisdiction, such application would be outside Section 42 and would not debar subsequent applications from being filed in a court other than such court.

25. Our conclusions therefore on Section 2(1)(e) and Section 42 of the Arbitration Act, 1996 are as follows:

(a) Section 2(1)(e) contains an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" for the purpose of Part-I of the Arbitration Act, 1996.

(b) The expression "with respect to an arbitration agreement" makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an Award is pronounced under Part-I of the 1996 Act.

(c) However, Section 42 only applies to applications made under Part-I if they are made to a court as defined. Since applications made under Section 8 are made to judicial authorities and since applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.

(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.

(e) In no circumstances can the Supreme Court be "court" for the purposes of Section 2(1)(e), and whether the Supreme Court does or does not retain seisin after appointing an Arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil court having original jurisdiction in the district as the case may be.

(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-I.

(g) If a first application is made to a court which is neither a Principal Court of original jurisdiction in a district or a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject matter jurisdiction would be outside Section 42.

The reference is answered accordingly.

26. On the facts of the present case, nothing has been shown as to how the High Court of Calcutta does not possess jurisdiction. It has been mentioned

above that leave under Clause 12 has been granted. In the circumstances of the present case, therefore, the judgment dated 11th April, 2005 passed by the High Court of Calcutta is correct and does not need any interference. Civil Appeal No.6691/2005 and Civil Appeal No.4808/2013 are hereby dismissed.

.....CJI
(R.M. Lodha)

……..J.
(Kurian Joseph)

……..J.
(R.F. Nariman)

New Delhi,
September 10, 2014