

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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CRP NO.73/2008

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Date of decision: 15th January, 2010

RAHISUDDIN

..... Petitioner

Through: Mr. Michael Peter & Mr. Dharmendra Vashishtha,
Advocates

Versus

**GAMBIT LEASING & FINANCE
PVT. LTD. & ANR.**

..... Respondents

Through: None.

AND

CM(M) NO.1105/2008

SAHNY SECURITIES PVT. LTD.

..... Petitioner

Through: Mr. Sangram Patnaik & Ms. Shanta Pandey,
Advocates

Versus

DR. S.C. JAIN

..... Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. These two petitions entail an identical question of law; though the counsels for the parties in the two matters were heard on separate days but the petitions are disposed of together by this common judgment.

2. CRP No.73/2008 has been preferred against the order of the Additional District Judge to whom a petition preferred under Section 34 of the Arbitration Act, 1996, with respect to an arbitration award in an arbitration proceeding claim wherein was for Rs.44,300/- only, had been assigned, holding that the jurisdiction to entertain suit the pecuniary value whereof was upto Rs.3,00,000/- being of the Civil Judge, Delhi, the petition was not maintainable before him; accordingly, the petition was ordered to be transferred for decision by a court of appropriate jurisdiction. This Court while issuing notice of the petition on 2nd May, 2008, stayed proceedings in the matter before the Civil Judge and the proceedings so remain stayed. Though the petition before this Court has been preferred as under Section 115 of the CPC and does not lie as such but the same is treated as one under Article 227 of the Constitution of India and heard and is being disposed off as such.

3. CM(M) No.1105/2008 has been preferred by a respondent (before the trial court) in a petition filed by the respondent herein under Section 34 of the Act with respect to an arbitral award in an arbitration proceeding, claims wherein were for less than Rs.3,00,000/-. The petition under Section 34 of the Arbitration Act was preferred in the Court of the Senior Civil Judge and marked to the court of a Civil Judge. A preliminary issue as to whether the said petition had been filed within time or not was framed and evidence recorded thereon. The Civil Judge by a judgment running into over 40 pages held the petition to be time barred and dismissed the same as such. The respondent herein preferred an appeal against the

said order to the court of the District Judge and the same was marked to the Court of an Additional District Judge, Delhi. The Additional District Judge, Delhi vide order dated 23rd April, 2007 held that the petition under Section 34 of the Act, by virtue of Section 2(1)(e) of the Act could not have been entertained by the court of the Civil Judge, Delhi. The Additional District Judge, accordingly holding the order of the Civil Judge to be non-est in the eyes of law set aside the same and directed the parties to appear before the Civil Judge and directed the Civil Judge to transfer the matter to the District Judge for assignment to a court of appropriate jurisdiction for adjudication. The District Judge accordingly marked the matter to an Additional District Judge. However, the Additional District Judge to whom the matter was marked held that the claims being of less than Rs.3,00,000/-, the petition under Section 34 was maintainable before the Civil Judge only. Reliance in this regard was placed on the order dated 27th July, 2007 of a Single Judge of this Court in *Smt. Sunita Gupta Vs. M/s Garg & Co.* CM(M) No.508/2007. The parties were as such again referred to the District Judge. The District Judge on receipt of the file again mechanically marked the file to the Court of a Civil Judge for adjudication. The Civil Judge directed the parties to complete the pleadings. Aggrieved there from the petitioner approached this Court.

4. The factual matrix in both the cases would thus show that the question for adjudication is as to which is the “court” within the meaning of Section 2(1)(e) of the Arbitration Act, 1996, whether the court of the District Judge / Additional District Judge only or the court of the Senior Civil Judge / Civil Judge vis-à-vis matter pecuniary jurisdiction whereof is less than Rs.3,00,000/-?.

5. Section 2(1)(e) of the Arbitration Act, 1996 is as under:-

“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.”

6. The other relevant provisions are to be found in Section 2 (4) of the CPC defining “District” as:

“District means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”) and includes the local limits of the ordinary original civil jurisdiction of a High Court”

And Section 3 of the CPC providing that for the purpose of the Code, the District Court is subordinate to the High Court and every Civil Court of a grade inferior to that of a District Court is subordinate to the High Court and the District Court.

7. A bare reading of Section 2(e) of the Arbitration Act would show that a Civil Court of a grade inferior to the principal Civil Court of original jurisdiction in a district has been expressly excluded from the definition of court. This leads to the question whether the court of Senior Civil Judge / Civil Judge which is in relation to suits, the court of institution and / or the court of the first instance cannot be said to be the principal civil court of original jurisdiction in a district having jurisdiction to decide the questions forming the subject matter of arbitration if the same had been the subject matter of a suit.

8. The Punjab Courts Act, 1918 applicable to Delhi, cannot be ignored in determining the above question.

(A) Chapter 3 thereof titled “The Subordinate Civil Courts” in Section 18 there under provides that there shall be the following classes of the civil courts namely:-

(i) Court of the District Judge.

- (ii) [Omitted]
- (iii) The court of the subordinate Judge; (now known as Civil Judge)
- (B) Section 20 provides for the appointment of one person as the District Judge of a District.
- (C) Section 22 provides for the appointment of subordinate judges.
- (D) Section 24 is relevant and is as under:-

“24. District Court to be principal Civil Court of original jurisdiction—The Court of the District Judges shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.”

- (E) Section 25 provides that the Court of the District Judge shall have jurisdiction in every original civil suit the value of which does not exceed Rs.20,00,000/-.
- (F) Section 26 provides for determination by the High Court of the value of the original civil jurisdiction to be exercised by the subordinate judge. Vide notification dated 21st July, 2003, the High Court of Delhi has in exercise of the said power notified that the Civil Judges shall try original civil suits the jurisdictional value of which does not exceed Rs.3,00,000/-.
- (G) Section 33 lays down that that subject to the general superintendence and control of the High Court, the District Judge shall have control over all the Civil Courts within the local limits of his jurisdiction.
- (H) Similarly, Section 34 empowers the District Judge to distribute civil business amongst the various courts in his district.
- (I) Section 39 provides for an appeal from a decree or order of a subordinate Judge to the District Judge.

9. A reading of the aforesaid provisions of the Punjab Courts Act, 1918 leave no manner of doubt that the court of the subordinate Senior Civil Judge / Civil

Judge is inferior to that of the District Judge inasmuch as not only the court of the District Judge has power of superintendence over the same but the court of the District Judge is also the appellate court for appeals against the judgments / decrees / orders of the court of the Senior Civil Judge / Civil Judge.

10. That being the position and Section 2(1)(e) of the Arbitration Act expressly excluding any civil court of a grade inferior to the principal civil court of original jurisdiction, the term “Court” qua the Arbitration Act, 1996 cannot possibly include the court of the civil judge. I may notice that Section 3(17) of the General Clauses Act also define District Judge as meaning the Judge of a Principal Civil Court of original Jurisdiction.

11. However, as noticed above, it appears that in the order of this Court in Smt. **Sunita Gupta** (supra) relied upon in the orders in one of the proceedings herein above, this Court has held otherwise. The said order is very brief and is quoted hereinabove to set out the reasoning which prevailed with the Court:-

- “2. Question which has arisen in the instant petition is, which court would exercise jurisdiction with respect to an award where challenge is predicated under Section 34 of the Arbitration and Conciliation Act 1996, subject matter of the award being less than Rs.3 lacs.
3. Needless to state, the court of competent jurisdiction to entertain the award would be the court exercising original jurisdiction had there been no arbitration clause and a civil suit had to be filed.
4. Thus, the objections were rightly filed before a learned Civil Judge. Thus, appeal under Section 37 of the Arbitration and Conciliation Act, 1996 was maintainable before the learned Addl. District Judge.
5. The reasons in the order impugned dated 3.3.2007 that the court of principal civil jurisdiction under the Arbitration and Conciliation Act, 1996 is the court of the District Judge is a reasoning which runs in the teeth of the definition of ‘Court’

as per Section 2 (1)(e) of the Arbitration and Conciliation Act, 1996.

6. Petition stands disposed of quashing the impugned order dated 3.3.2007.
7. Petitioner's appeal which has been dismissed is restored. It is held that the appeal was maintainable before the District Judge. That it was correctly assigned to a learned Addl. District Judge."

In the aforesaid order, the provisions as aforesaid of the CPC and of the Punjab Courts Act, 1918 have not been considered.

12. This Court, in **Sunita Gupta** (Supra), also did not consider the earlier judgment of this Court in **Kinetic Capital Finance Ltd. Vs. Anil Kumar Misra** 87(2000) DLT 405. Though the question was as to which court would be competent to execute the award in an arbitration proceeding, the claim wherein if had been the subject matter of the suit would have been maintainable before the court of the Civil Judge, and this Court held that the execution would lie before the Civil Judge. However, while so holding, it was observed that the Punjab Courts Act applicable to Delhi provides that the court of District Judge would be deemed to be the District Court or principal court of original jurisdiction in the district. Reliance was also placed on **Bakshi Lochan Singh Vs. Jathedar Santokh Singh** AIR 1971 Delhi 277 where the Division Bench held the Court of the District Judge, Delhi to be the principal civil court of original jurisdiction in every suit, the value of which does not exceed Rs.50,000/- (as it then was). It was also held that the court of the District Judge, Delhi was the principal civil court of original jurisdiction for suits falling below the minimum pecuniary jurisdiction of the High Court. It was, however, held that there was no requirement for the execution of the arbitration award as a decree in the court of the principal civil court of original jurisdiction and hence the award was held executable under Section 36 of the Act before the civil court. Though judicial propriety does not allow me to take a

contrary view to that taken in **Sunita Gupta** (supra) but since relevant provisions of law and the earlier dicta in **Kinetic Capital Finance Ltd.** (supra) were not noticed in that order, I do not deem it expedient to refer the question to a Division Bench.

13. **Union of India Vs. S.R. Construction Co.** 144 (2007) DLT 580 also is with respect to Section 2(1)(e) but in relation to High Court and District Court and does not deal with the aspect of District Judge and Civil Judge.

14. I find the other High Courts, of course on the interpretation of their local statutes, also to have taken a view that the principal civil court of original jurisdiction in a district is the court of the District Judge and cannot include the Court of the subordinate judge or Civil Judge in the district. Reference in this regard may be made to **Fountain Head Developers Vs. Maria Arcangela Sequeira** AIR 2007 Bom 149 (FB), **State of Tamil Nadu Vs. R. Sundaram** 2006 (3) Arb. LR 447 (Madras) (DB), **Surat Singh Vs. State of Himachal Pradesh** 2003 (3) Arb. LR 606 (HP)(DB), **Sulekha Clay Mines Vs. Union of India** 2000 (1) KLT 691, **ICDS Ltd. Vs. Mangala Builders Pvt. Ltd.** 2001 AIR 2001 Karnataka 363 & **M/s I.T.I. Ltd., Allahabad Vs. District Judge, Allahabad** AIR 1998 Allahabad 313. The said judgments have also reasoned that Section 15 of the CPC providing for institution of the suit in the Court of the lowest grade competent to try it will not be applicable where under the provisions of any particular statute, as is the case under the Arbitration Act, 1996, confer power only on a particular type of Court. It was held that even though in the case of an ordinary civil suit by applying Section 15 of the CPC a court of the subordinate judge can be said to have jurisdiction, this general principle cannot be made applicable to the special provisions contained in different statutes such as Companies Act and other such specific acts. The petitions / applications under

Section 34 and / or under other provisions of the Act were thus not held maintainable before the Courts which were subordinate to the Court of the District Judge. In fact, the Kerala High Court struck down a rule framed by the High Court specifying the principal subordinate judge as the authority to deal with matters under Section 9, 34 & 36 of the Arbitration Act, 1996, as contrary to the provisions of the Statute. The Allahabad High Court went to the extent of holding that the court competent to decide a proceeding under Section 34 is only the District Judge and it does not include even the Additional District Judge. However, the Madras High Court differs from the said view and held the court of the Additional District Judge also to be so empowered. I may clarify that as far as Delhi is concerned, it has been held in *Mysore Chemicals and Fertilizers Ltd. Official Vs. Receiver Cum Official Liquidator* MANU/DE/0105/1974 that under the Punjab Courts Act, the Additional District Judge after assignment and transfer of the case to him by the District Judge is deemed to exercise power in dealing with and disposing of the case, as a District Judge.

15. I must also mention that a Single Judge of the Patna High Court in *Bhopal Singh Vs. Nagendra Narain Singh*, 2001 (2) Arb. LR 602 (Patna) has taken a contrary view. It has been held that the subordinate Judge of the District is the principal civil court of original jurisdiction for entertaining a suit and as such that court can interfere in the award. It was so held only for the reason that since the court of the subordinate Judge was the principal civil court of original jurisdiction for entertaining a suit and not the District Judge, that court was the principal civil court of original jurisdiction in the District for the purposes of the Arbitration Act, 1996 also. However, neither the exclusionary part of Section 2(1)(e) was noticed nor the provisions aforesaid of the CPC. In view of the said provisions as well as the express provisions of the Punjab Courts Act applicable to Delhi, I am unable to subscribe to the view taken by the Patna High Court.

Resultantly, the following orders are made in the two cases:-

16. In CRP 73/2008 the order dated 20th March, 2008 of the Additional District Judge before whom the petition under Section 34 of the Arbitration Act was preferred and of transferring the said proceedings for consideration by the court of the Civil Judge, Delhi is set aside. It is held that the petition under Section 34 of the Act was correctly instituted in the court of the District Judge, Delhi. Since pursuant to the order which is set aside, the petition already stands transferred to the court of the Civil Judge, Delhi, the District Judge of the concerned District is directed to decide the matter himself or mark the said proceedings for adjudication in accordance with law by a court of the Additional District Judge.

17. In CM (M) No.1105/2008, the order dated 23rd November, 2007 of the Additional District Judge transferring the petition under Section 34 of the Arbitration Act to the court of the District Judge for assignment thereof to the court of a Civil Judge and the order dated 27th November, 2007 of the District Judge marking the said proceedings to the court of the Civil Judge, Delhi are set aside. It is directed that the said proceedings are to be adjudicated by the court of the Additional District Judge to whom the same were marked. I am also constrained to observe that the Additional District Judge and the District Judge in making the orders dated 23rd November, 2007 and 27th November, 2007 are found to have acted mechanically and without considering that the proceedings were earlier pending before the Civil Judge, Delhi had been adjudicated and in appeal there-from vide order dated 23rd April, 2007 had been held to fall within the jurisdiction of Additional District Judge. The said order dated 23rd April, 2007 had attained finality. The District Judge also acting in pursuance thereof had vide order dated 23rd April, 2007 assigned the petition under Section 34 of the Arbitration Act to the Court of the Additional District Judge. In view of the said

past history, the Additional District Judge on 23rd November, 2007 could not have again held the proceedings to be falling within the jurisdiction of the Civil Judge and the District Judge could not have on 27th November, 2007 in clear contradiction to the earlier order dated 23rd April, 2007 of that court assigned the proceedings to a court of the Civil Judge, Delhi. The counsel for the petitioner has correctly urged that in so far as the court of the Civil Judge was concerned, the proceedings already stood adjudicated and the petitioner could not have been directed to again pursue the matter before the Civil Judge. In view of the aforesaid mechanical orders considerable delay in disposal of the proceedings has already been caused. In the circumstances, the Additional District Judge to whom the petition under Section 34 of the Arbitration Act is now assigned is directed to dispose of the same within six months of receipt thereof.

18. However, since there was no clarity about the position in law, till now in both the matters, the parties are left to bear their own costs. It is further directed that all applications under the provisions of the Arbitration Act, 1996, but not executions of arbitral awards, pending before the Court of a Civil Judge be transferred by the Civil Judge to the court of the District Judge for assignment to courts of Additional District Judges or for consideration by the District Judge himself and in future, the Civil Judges are to not admit such applications. A copy of this order be forwarded by the Registry to all the District Judges.

**RAJIV SAHAI ENDLAW
(JUDGE)**

January 15, 2010
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