

CASE NO.:
Arbitration Petition 17 of 2005

PETITIONER:
HBM PRINT LTD

RESPONDENT:
SCANTRANS INDIA PVT. LTD

DATE OF JUDGMENT: 29/03/2007

BENCH:
K.G. BALAKRISHNAN

JUDGMENT:
JUDGMENT

O R D E R
K.G. BALAKRISHNAN, CJI.

The petitioner herein has filed an application under Section 11 of the Arbitration and Conciliation Act, 1996. The petitioner, a company incorporated under the laws of Singapore is carrying on business at No. 745, Toa Payoh Lorong 5, Singapore, 1231, now known as SHC CAPITAL LIMITED, 302 Orchard Road, # 10-01 Singapore 238862. The respondent company, Scantrans India Pvt. Ltd. was incorporated under the Companies Act, 1956, having its registered Office at 425, Pantheon Road, Egmore, Chennai-600008. The petitioner alleges that petitioner and respondent entered into a joint venture agreement on 15-12-1993 for setting up a manufacturing unit in Chennai and to carry on the business of printing and colour separation. The Reserve Bank of India (RBI) granted permission to the joint venture company and the joint venture agreement was executed on 15-12-1993. The Sale Deed was executed on 26-4-1995. A dispute arose between the parties under Clause 8 of the Sale Deed relating to Arbitration. Clause 8 reads as follows :-

"8.1\027Any dispute arising out of or in connection with this Sale Deed, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in India in accordance with the Arbitration Rules in the Indian Republic for the time being in force which rules are deemed to be incorporated by reference into this Clause".

The petitioner issued a notice for appointment of an arbitrator on 1-3-2000 and the respondent replied that the petitioner cannot resort to Arbitration Proceedings alongwith the winding up proceedings and the agreement does not provide for more than one Arbitrator. Thereafter, on 5-6-2000, the petitioner filed an application before the Chief Justice of High Court of Madras for appointment of an Arbitrator. This application was withdrawn by the petitioner on 26-8-2004 as the Chief Justice of Madras High Court had no jurisdiction as only the Chief Justice of India or his nominee could appoint an Arbitrator. Thereafter on 31-1-2005 the present application was filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator. As the matter

has been assigned to me, I heard the parties on either side. The respondent filed detailed objection wherein it is contended that the application filed under Section 11 of the Act is barred by limitation. The main contention urged by the respondent is that the notice was served on the respondent by the petitioner on 25-3-2000 and the application for appointment of the Arbitrator should have been filed on or before 25-4-2003 and as the present application was filed only on 31-1-2005, it is barred by time. The petitioner on the other hand contended that though he bona fide believed that the Chief Justice of the High Court of Madras was the competent authority to appoint the Arbitrator, but only after the filing of the application, he realized that this being a dispute under an International Commercial Agreement would fall under the domain of Section 2(f) of the Arbitration and Conciliation Act, 1996. The Chief Justice of India is the appropriate authority to appoint the Arbitrator. Therefore, the application filed before the Chief Justice of the High Court of Madras was withdrawn and filed before this Court. It is prayed that under Section 14 of the Limitation Act, the petitioner is entitled to exclude the period during which the petitioner's application was pending before the Chief Justice of the High Court of Madras.

I find force in the contention urged by the petitioner. Petitioner filed the application before the Chief Justice of the High Court of Madras thinking that the Chief Justice of that court was the competent authority to appoint an Arbitrator, but later realized that in respect of International Commercial Agreement, Chief Justice of India was the competent authority and, therefore, filed the instant application under Section 11 of the Arbitration Act. Section 14 of the Limitation Act has wider amplitude and provides that the time spent in prior proceedings is liable to be excluded provided the proceedings relating to the same matter were in issue and prosecuted in good faith in the court which from the definition of the jurisdiction either because of like nature was unable to entertain it. I find no reason to hold that the earlier proceedings before the Chief Justice of the High Court of Madras were not filed in good faith. The petitioner might have realized later that the application is to be filed under Section 11 of the Act before the Chief Justice of India. The respondent has not pointed anything to show that there was willful negligence or lack of good faith on the part of the petitioner in having filed the application before the Chief Justice of Madras High Court. Therefore, the contention raised by the respondent as to limitation is only to be rejected.

Another strange contention has been advanced by the respondent that if under Section 42 of the Arbitration Act once an application has been filed before particular court, that court has got jurisdiction over the arbitral proceedings and also all subsequent applications arising out of that agreement shall be filed in that court. Section 42 of the Arbitration and Conciliation Act, 1996 reads as follows :-

"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".

Section 42 has no application to the fact of the present case. Section 42 is applicable in a case where the party has submitted to the jurisdiction of a particular court and has filed an application before that court. All subsequent proceedings in such a case shall be initiated only in that court. The Arbitration agreement if any arbitral proceedings applicable on appointment was filed before the Chief Justice of the High Court and subsequently any modification or anything is to be required or in any matter relating the award itself comes for decision, the party can file application only in that court and in no other court. In the present case, the Chief Justice of the Madras High Court had no jurisdiction but appointment of Arbitrator in the matter being a dispute between the parties related to International Commercial Agreement and under Section 11 Chief Justice of India alone or any other person or institution designated by him alone has jurisdiction to appoint the Arbitrator. Therefore, the contention raised as to Section 42 of the Act also is without any basis.

In the result, the matter is to be referred to the Arbitrator and out of the names as suggested by the parties, I hereby appoint Mr. Justice P. Shanmugam a retired Judge of Madras High Court as an Arbitrator. The dispute between the parties is referred to the Arbitrator. The Arbitrator is requested to pass a reasoned award within eight months from this Order. The remuneration of the Arbitrator shall be fixed by the Arbitrator in consultation with the parties.