

Madhao S/O Shrihari Deshpande

Vs

Madhav S/O Trimbak Dharmadhikaree

Civil Appeal No. 1582 of 1988

(Sabyasachi Mukharji, K. Jagannatha Shetty JJ)

22.04.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. In this case notice had been issued indicating that the matter would be disposed of at the notice stage. The respondents have not appeared.
2. Special leave granted and the appeal is disposed of as hereunder.
3. The only question involved in this appeal is whether the High Court of Bombay. Nagpur Bench, was right in rejecting the revision application summarily when the learned Civil Judge had held that the award was wrongly presented in his court and he had no jurisdiction to go into the question of validity of the award. The facts are that there was a reference to an arbitrator. The award was filed in the civil court at Nagpur and objection was filed against the said award. The short question upon which the learned District Judge dismissed the application was that Nagpur was not the court which had jurisdiction to entertain application. He held in his order, inter alia, as follows :

Most of the parties to the agreement of reference are the residents of Warora in the District of Chandrapur. On the careful scrutiny of agreement of reference, the place of execution of the said agreement seems to have been omitted. I am quite unable to understand as to how the glaring mistake in respect of omission of place of execution of the agreement has been committed. It seems that the place of execution of the agreement is deliberately omitted with intent to file the award in the civil court at Nagpur as the arbitrator is the resident of Nagpur. For his convenience to file the award in the civil court at Nagpur, the place of execution of the agreement seems to have been omitted. Moreover, it appears that the agreement for reference appears to have been prepared and drafted at Nagpur as stamp paper was purchased at Nagpur. It does not mean that the parties executed agreement for reference at Nagpur as most of the parties are the residents of Warora and most of the property except the house on plot No. 94, at Shiwaji Nagar, Nagpur, is situated at Warora in Chandrapur District. An adverse inference can be drawn that the agreement of reference was executed at Warora in Chandrapur District which comes within the local jurisdiction of the Civil Judge, Senior Division, Chandrapur.

4. The learned Civil Judge held that the award passed by the arbitrator ought to have been filed in the court of Civil Judge, Senior Division, Chandrapur. The learned Civil Judge held that only a bit of property situated at Nagpur and the residence of arbitrator at Nagpur did not give local

jurisdiction to the court at Nagpur. He accordingly dismissed the application with the order that award be returned for presentation to the proper court having legal jurisdiction. We are of the opinion that the learned Civil Judge was in error in view of the provisions of Sections 17 and 20 of the Code of Civil Procedure, in holding as he did.

5. In view of the facts mentioned undoubtedly part of the dispute which was the subject matter of dispute was within the jurisdiction of the Nagpur Court. This view is further corroborated by the Section 2(C) of the Arbitration Act, 1940. The court at Nagpur had undoubtedly part of the jurisdiction to entertain the suit.

6. The High Court had summarily rejected the revision application against the said order of the learned Civil Judge. The High Court, in our opinion, also was in error in not entertaining the application and in not setting aside the order of the learned Civil Judge. In the premises and in the facts of this, we are of the opinion, that the High Court and the learned Civil Judge were in error. Their orders are therefore set aside.

7. The appeal is allowed. Let the learned Civil Judge proceed with the objection to the award filed in his court at Nagpur. The said objection may be disposed of as quickly as possible. There will be no order as to costs.

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