IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on 28.09.2022
Date of Decision-30.09.2022

1. CR No.259 of 2022(O&M)

National Highway Authority of India and another
... Petitioners

Versus

Yashpreet Singh and another ... Respondents

2. CR No.831 of 2022(O&M)

National Highway Authority of India and another
... Petitioners

Versus

Yashpreet Singh and another ... Respondents

3. CR No.3150 of 2021(O&M)

National Highway Authority of India and another
... Petitioners

Versus

Parampal Kaur and another ... Respondents

4. CR No.3153 of 2021(O&M)

National Highway Authority of India and another
... Petitioners

Versus

Dilbar Singh @ Jagseer Singh and another ... Respondents

5. CR No.3155 of 2021(O&M)

Union of India ... Petitioner

Versus

Sandeep Kumar and others ... Respondents

6. CR No.3164 of 2021(O&M)

Executive Engineer

... Petitioner

Versus

Rainu Bala and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Satya Pal Jain, Sr. Advocate with
Mr. R.S. Madan, Advocate and
Mr. Mahender Joshi, Advocate
for the petitioners.

Mr. Puneet Bali, Sr. Advocate with
Mr. Ranjit Saini, Advocate and
Mr. Vikram Rathore, Advocate
for respondent No.1 in CR Nos.259, 831 of 2022 and in CR Nos.3150 and 3153 of 2021, for respondents No.1 and 2 in CR No.3155 of 2021 and for respondents No.1 to 4 in CR No.3164 of 2021.

Mr. R.S. Pandher, Sr. DAG, Punjab.

***

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.259 of 2022 titled National Highway Authority of India and another Vs. Yashpreet Singh and another, CR No.831 of 2022 titled National Highway Authority of India and another Vs. Yashpreet Singh and another, CR No.3150 of 2021 titled National Highway Authority of India and another Vs. Parampal

Kaur and another, CR No.3153 of 2021 titled National Highway Authority of India and another Vs. Dilbag Singh @ Jagseer Singh and another, CR No.3155 of 2021 titled Union of India Vs. Sandeep Kumar and others and CR No.3164 of 2021 titled Executive Engineer Vs. Rainu Bala and others are being decided.

[2]. Since common questions of law in the aforesaid cases are involved, therefore, facts are being culled out from CR No.259 of 2022.

[3]. Petitioners in the aforesaid cases except in CR No.831 of 2022 have assailed the order dated 26.10.2021 passed by the Executing Court, dismissing the application under Section 42 of the Arbitration and Conciliation Act, 1996 and order dated 26.10.2021 to the extent, whereby the executing Court has directed the petitioners to deposit the awarded amount passed by the Arbitrator.

[4]. In CR No.831 of 2022, the petitioners have assailed the order dated 18.02.2022 passed by the Additional District Judge, Faridkot, vide which the application under Order 21 Rule 29 read with Section 151 CPC was dismissed as well as the order of even date i.e. 18.02.2022 to the extent where the executing Court has directed the petitioners to deposit the decretal amount till 11.03.2022.

[5]. Learned counsel for the petitioner submitted that the award was passed by the Arbitrator on 18.01.2019. Respondent No.1 filed an application for correction of award under Arbitration and Conciliation Act, 1996 and the same was allowed by the Arbitrator on 23.01.2019. On 13.03.2019, Union of India filed an objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Court at Bathinda. The case was registered vide ARB No.15 of 2019 and notice was issued to the respondents accordingly. Respondent No.1 has appeared through his counsel on 20.04.2019. In the execution petition filed by respondent No.1, the executing Court issued notice on 07.11.2019. Petitioner filed an application under Section 42 of the Arbitration and Conciliation Act, 1996 read with Section 151 CPC for transfer of execution proceedings to the Court of competent jurisdiction at Bathinda on the ground that the land is situated in Bathinda and the parties are also residents of Bathinda. The aforesaid application under Section 42 of the Act for transfer of execution petition to the Court of competent jurisdiction at Bathinda has been dismissed by the Additional District Judge vide order dated 26.10.2021.

[6]. On 01.09.2021, reply to the application for stay was filed by respondent No.1 and the order was passed by the Additional District Judge on 11.02.2022. With reference to the

aforesaid facts, learned counsel for the petitioners submitted that the petitioners had acquired the land for widening/four lanning of NH-15 of Bathinda Section in District Bathinda from 265.700 to 287.215 KM.

[7]. Respondent No.1 filed an application under Section 3G(5) of the National Highways Act before the Arbitrator, which was allowed vide award dated 18/23/01/2019. Against the aforesaid award of the Arbitrator, NHAI filed an objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 in the District Court at Bathinda as the acquired land is situated in District Bathinda. Respondent No.1 filed an execution petition in the District Court at Faridkot as the arbitration proceedings have taken place at Faridkot.

[8]. According to the learned counsel for the petitioners, the executing Court at Faridkot has no jurisdiction to carry on with the execution proceedings as the assets of the petitioners are not located in Faridkot. With this background, the petitioners have submitted that the execution proceedings filed by respondent No.1 in District Court, Faridkot lacks jurisdiction as no assets of the petitioners are located in District Faridkot, rather the assets are situated in District Bathinda and therefore, the execution petition filed by respondent No.1 at Faridkot is liable to be transferred to the Court of competent jurisdiction at Bathinda.

[9]. Learned counsel further submitted that the executing Court at Faridkot lacks territorial jurisdiction as per Section 42 of the Act as the petitioners had filed objection petition under Section 34 of the Arbitration and Conciliation Act prior to the filing of execution petition by respondent No.1. In the aforesaid objection petition, award dated 18/23.01.2019 has been assailed and the same has been registered vide ARB No.15 of 2019 titled Union of India Vs. Niranjan Singh and others before the Principal Civil Court of original jurisdiction at Bathinda. Notice was issued on 13.03.2019. Respondent No.1 has also appeared through his counsel on 20.04.2019. Respondent No.1 has filed the execution petition for execution of award at Principal Civil Court of original jurisdiction at Faridkot and the same has been registered vide Execution No.202 of 2019. Notice was also issued in the execution petition on 07.11.2019.

[10]. Learned counsel submitted that as per the mandate of Section 42 of the Act, the proceedings arising out of the award ought to have been filed in the Court of Principal Civil Court of original jurisdiction, where the party to the arbitration proceedings has approached at the first instance. Since the petitioners have approached the Principal Civil Court of original jurisdiction at the first instance at Bathinda, therefore, subsequent execution petition filed by respondent

No.1 at Faridkot is liable to be transferred to the competent Court at Bathinda as the executing Court at Faridkot has no territorial jurisdiction to entertain the execution petition. In support of his contention, learned counsel has referred to ***OMP (Enf.) (Comm.) 38 of 2021*** titled ***Continental Engineering Corporation Vs. Sugesan Transport Pvt. Ltd.*** decided on 10.01.2022 by the Delhi High Court.

[11]. With reference to the aforesaid, learned counsel submitted that there is no justification for filing an execution petition before the Court within whose jurisdiction the arbitral award has been passed and then to seek a transfer to the Court, which has jurisdiction over the judgment debtor or their properties. Irrespective of the place where the award has been passed, the same is to be executed by a Court within whose jurisdiction the judgment debtor resides, carries on business or his property is situated. Since the judgment debtor is residing within the territorial jurisdiction of Court at Bathinda, therefore, the Court at Bathinda has the jurisdiction to enforce the arbitral award and the Court at Faridkot has no territorial jurisdiction.

[12]. Learned counsel placed reliance upon ***Civil Revision Petition No.507 of 2021*** titled ***M/s India Media Services Pvt. Ltd. Vs. M/s SBPL Infrastructure Limited*** decided by Telangana High Court on 09.06.2022 and

contended that in view of law laid down by the Hon'ble Apex Court in ***State of West Bengal Vs. Associated Contractors, (2015) 1 SCC 32,*** the Court at Faridkot has no territorial jurisdiction and the enforcement of award has to be transferred to the Court at Bathinda. With reference to the aforesaid judgment, learned counsel for the petitioner sought to distinguish the ratio laid down in ***Sundaram Finance Limited Vs. Abdul Samad, (2018) SCC 622*** on the premise that the Hon'ble Apex Court had reviewed the decisions of various High Courts while considering the relevant provisions of the Act as well as the Civil Procedure Code and held that an award can be enforced anywhere in the country and there is no requirement of obtaining transfer of the decree from the Court which would have jurisdiction over the arbitral proceedings. In ***Sundaram Finance Limited case (supra)***, two aspects were noticed by the Court. Firstly, based on the term of contract straightway Arbitrator was appointed by Sundaram Finance Limited and award passed by the Arbitrator had become final. There was no application filed prior to commencement of arbitral proceedings during the arbitral proceedings or after the arbitral proceedings under Section 9 of the Act. No application was filed under Section 34 of the Act, challenging the award. Straightway execution application was filed, taking recourse to Section 36 of the Act. The Hon'ble Apex Court had held that the award of the

Arbitrator can be enforced anywhere in the country. In view of aforesaid, Section 42 of the Act was not considered by the Hon'ble Apex Court. Secondly, the opinion expressed by the Hon'ble Supreme Court in ***Associated Contractors case (supra)*** was not considered by the Hon'ble Supreme Court in ***Sundaram Finance Limited case (supra).***

[13]. Learned counsel further submitted that the High Court in a bunch cases with lead case ***TA No.191 of 2021*** titled ***Madanjit Kaur Vs. National Highways Authority of India and others*** decided on 14.10.2021 has passed an order, requesting NHAI to take a policy decision with respect to the matter. Pursuant to the aforesaid, the National Highway Authority of India has issued an office order dated 11.10.2021 on the subject of transfer applications pending in the High Court regarding adjudication of land acquisition disputes in Civil Courts. In this regard, it has been decided that NHAI would file objection petitions under Section 34 of the Act in Civil Courts, where the land is situated and not at a place where arbitration proceedings are held in order to avoid multiplicity of proceedings. The said directive is however subject to compliance of mandate of Section 42 of the Act. The aforesaid policy is prospective in nature and takes care of the objections which have been filed subsequent to the

aforesaid policy decision. High Court was pleased to transfer the objection petitions from one place to another.

[14]. Learned counsel further submitted that vide notification dated 19.03.2021, the Central Government in pursuance of sub Section (5) of Section 3G of the National Highways Act, 1956 appointed Sh. Satwant Singh (Commissioner Retd.) at D.C. Office, Ferozepur as Arbitrator for the purpose of said sub Section, who was required to exercise the powers conferred and perform the duties imposed on an Arbitrator by or under the said Act within the local limits of his respective jurisdiction as specified in the relevant column. Sub Sections (6) and (7) of Section 3G of the Act were to be taken into consideration while passing the award. The Arbitrator was having revenue jurisdiction of Faridkot, Fazilka, Ferozepur, Moga and Sri Muktsar Sahib. The seat of the Arbitrator was at Ferozepur.

[15]. Learned counsel by referring to ***Associated Contractors case (supra)***, submitted that Section 2(1)(e) of the Act contains an exhaustive definition making 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 1 of the Act. The expression "with respect of an arbitration agreement" makes it clear that Section 42 of the Act will apply to all

applications made whether before or during arbitral proceedings or after an award is pronounced under Part-1 of the 1996 Act. However, Section 42 of the Act only applies to applications made under Part-1 if they are made to a Court as defined. Since applications made under Section 8 of the Act are made to judicial authorities and since applications under Section 11 of the Act are made to 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 the purview of Section 42 of the Act. Applications under Section 9 of the Act being applications made to a Court and Section 34 of the Act applications to set aside arbitral awards are applications which are within the purview of Section 42 of the Act. Section 42 of the Act will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-1 of the Act.

[16]. Learned counsel further relied upon ***Civil Appeal Nos.6958-6959 and 6965-6966 of 2009*** titled ***National Highways Authority of India Vs. Sayedabad Tea Company Ltd. and others*** decided on 27.08.2019. With reference to para No.19 of the aforesaid judgment, learned counsel submitted that when the special law sets out a self-contained code, the application of general law would impliedly be excluded. The scheme of Act, 1956 being a special law

enacted for the purpose and for appointment of an Arbitrator by the Central Government under Section 3G(5) of the Act, 1956 and sub Section (6) of Section 3G itself clarified that subject to the provisions of the Act, 1956, the provisions of Act, 1996 shall apply to every arbitration obviously to the extent where the Act, 1956 is silent, the Arbitrator may take recourse in adjudicating the dispute invoking the provisions of Act, 1996 for the limited purpose. But so far as the appointment of an Arbitrator is concerned, the power being exclusively vested with the Central Government as envisaged under sub Section (5) of the Section 3G of Act, 1956, Section 11 of the Act, 1996 has no application.

[17]. Learned counsel further submitted that the concept of seat and venue as interpreted in reference to commercial arbitration governed by an agreement cannot be applied to statutory arbitration under the National Highways Act, 1956. When there is no meeting of mind, no formal agreement is required. When arbitration is conducted in accordance with the provisions of a Special Act that specifically provides for arbitration in respect of disputes arising on matter covered by that Act, then such arbitration is called as statutory arbitration. A statutory arbitration is distinct from a consensual arbitration which is the result of an agreement between the parties. In case, statutory arbitration applies, the arbitral Tribunal

constituted by the Statute has exclusive jurisdiction and the proceedings are the creation of the Parliament and not of a meeting of minds. The distinguishing feature under statutory arbitration is that there is no question of consent of the parties. Therefore, appointment of Arbitrator and procedure for the conduct of proceedings are governed by the provisions of the Statute under which arbitration proceedings are initiated and in the absence of enabling provisions under the Statute, as per the provisions of the Arbitration and Conciliation Act, 1996.

[18]. Section 2(4) and (5) of the Arbitration and Conciliation Act, 1996 provides for the application of the Arbitration and Conciliation Act to statutory arbitrations. It replaces Section 46 of the old Act 1940. Arbitral proceedings under Section 3G(5) of the National Highways Act, 1956 is statutory arbitration where the Central Government has been empowered to appoint an Arbitrator. Thus, there is no party autonomy in the appointment of the Arbitrator. Absence of the party autonomy means that the intention of the parties has to be seen in light of the scheme of the statutory arbitration. The scheme of the statutory arbitration under the National Highways Act is therefore a guiding consideration for setting out the procedure for the conduct of arbitral proceedings.

[19]. Section 3G(5) of the National Highways Act is a beneficial provisions incorporated to facilitate the parties with expeditious and cost-effective dispute resolution with respect to compensation for the compulsory acquisition of land. In the absence of specific provisions under the National Highways Act, the principles governing the Arbitration and Conciliation Act, 1996 have to be applied considering the interest of the parties involved and also considering that the remedy of arbitration under the National Highways Act remains expeditious and cost-effective.

[20]. Learned counsel further submitted that in case of statutory arbitration which is distinct from commercial contractual arbitrations as in statutory arbitration under the National Highways Act, there is no formal arbitration agreement that specifies the rights and obligations or procedure to be followed. The procedure, rights and obligations in the case of statutory arbitrations are derived from the provisions of the National Highways Act with notifications for the acquisition of land. The concept has been recognized in case of ***Sayedabad Tea Co. Ltd. case (supra)*** and it has been held that the provisions of the Arbitration Act have no applicability on statutory arbitrations and the provisions of National Highways Act override the provisions of the Arbitration Act.

[21]. With reference to Section 2(1)(e)(i) of the National Highways Act, learned counsel submitted that the Court having jurisdiction shall be the Court having jurisdiction to decide the questions forming the subject matter of the arbitration i.e. the land which has been acquired under the National Highways Act. Learned counsel further submitted that in the instant case, the confarnment of jurisdiction on the Court where the subject matter of the dispute is located is the appropriate Court and the same is also as per convenience of the majority of landowners, who will prefer the jurisdiction of the local Courts. The Arbitration and Conciliation Act, 1996 does not employ the words 'seat' or 'venue' of arbitration and only employs the word 'place' of arbitration in the sense of 'juridical seat'. Learned counsel further referred to Section 20 of the Arbitration and Conciliation Act and contended that the parties would be free to agree for the place of arbitration. In case of failure of agreement, the place of arbitration shall be determined by the arbitral Tribunal having regard to the circumstances of the case including the convenience of the parties. Irrespective of the aforesaid, the arbitral Tribunal may unless otherwise agreed by the parties, meet at any place which it considers appropriate for consultation amongst its members for hearing witnesses, experts or the parties or for inspection of documents, goods or other properties.

[22]. The seat of arbitration and venue of arbitration cannot be used inter-changeably. In the light of scheme of statutory arbitration, the seat of the arbitration under National Highways Act has to be construed as the place where the land is situated. The Divisional Commissioner, Faridkot was empowered to act as an Arbitrator for the land acquisitions made in revenue Districts including District Bathinda. The Divisional Commissioner, Faridkot while holding the proceedings at Faridkot has chosen the venue as Faridkot. Merely because the arbitration proceedings were held at Faridkot, the same does not confer the jurisdiction to the Court at Faridkot. Arbitrator did not determine the seat of the arbitral Tribunal at Faridkot and in the absence of the same, merely the arbitral proceedings were held at Faridkot, will not *ipso facto* designate the seat of the Arbitrator at Faridkot, particularly when the subject matter of the acquired land is situated in Bathinda.

[23]. Learned counsel referred to ***Matter under Article 227 No.6890 of 2021*** titled ***Hasmukh Prajapati Vs. Jai Parkash Associates Ltd.,*** decided on 17.02.2022 and ***Bharat Aluminium Co. Vs. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 (BALCO case for short)***. In ***BALCO case (supra),*** it has been held that there are concurrent jurisdiction over the arbitral proceedings i.e. Courts

possessing the subject matter or cause of action and the Courts where the place/seat of arbitration was designated. The Hon'ble Apex Court has clarified the legal position in para No.96 of the aforesaid judgment. Learned counsel also referred to ***BGS SGS Soma JV Vs. NHPC, (2020) 4 SCC 234*** to distinguish that where the parties have not agreed on the seat of arbitration, the arbitral Tribunal is used to determine the seat under Section 20(2) of the Arbitration and Conciliation Act, 1996. Since no interim order was passed by the Arbitrator, showing the parties had consented to the seat for arbitration proceedings at District Faridkot, therefore, the said judgment is distinguishable. On the strength of the aforesaid submission, learned counsel contended that the execution proceedings pending in the Court at Faridkot are liable to be transferred to the competent Court at Bathinda where the land is situated and parties are also residing there.

[24]. *Per contra*, learned Senior Counsel for the respondents submitted that the seat of the Arbitrator was fixed at Faridkot vide letter No.1/1/2014-IAS(2)/538942/5 dated 16.07.2015 as per Section 3G(5) of the National Highways Act, 1956. The aforesaid reference finds mentioned in the award of the Arbitrator itself. The award was signed and pronounced in Fardikot by the Arbitrator. In the objection petition filed by the petitioners under Section 34 of the

Arbitration and Conciliation Act, 1996 in Bathinda District Court, no stay has been granted in favour of the petitioners. The respondents have filed an application for returning the petition under Section 34 of the Arbitration and Conciliation Act on the ground that the Court at Bathinda has no jurisdiction. The respondents have filed execution petition at Faridkot, where at the fag end of the execution proceedings, when the Additional District Judge asked the petitioners to deposit the enhanced compensation, the petitioners filed the application under Section 42 of the Arbitration and Conciliation Act on the ground that they had already filed the objection petition under Section 34 of the Arbitration and Conciliation Act at Bathinda, therefore, the execution petition be transferred to Bathinda. Petitioners pleaded the concept of automatic stay so as to seek stay of disbursement of amount, though there is no concept of automatic stay after the amendment in the Arbitration Act and the award has to be treated as a money decree and the same cannot be stayed. No stay has been granted against disbursement of the amount by the executing Court.

[25]. I have heard learned counsel for the parties and have also perused the relevant facts and precedents relied by the parties.

[26]. In ***BBR (India) Pvt. Ltd. Vs. S.P. Singla Constructions Pvt. Ltd, (2022) SCC Online SC 642*** it has been held that Section 42 of the Act is to no avail to the petitioner as in the present case, the Arbitrator has fixed the jurisdictional seat under Section 20(2) of the Act before any party had moved the Court under the Act being a Court where a part or whole of the cause of action has arisen. Para No.33 of the aforesaid judgment reads as under:-

> *"33. Section 42 is to no avail as it does not help the case propounded by the appellant, as in the present case the arbitrator had fixed the jurisdictional 'seat' under Section 20(2) of the Act before any party had moved the court under the Act, being a court where a part or whole of the cause of action had arisen. The appellant had moved the Delhi High Court under Section 34 of the Act after the arbitral tribunal vide the order dated 5th August 2014 had fixed the jurisdictional 'seat at Panchkula in Haryana. Consequently, the appellant cannot, based on fastest finger first principle, claim that the courts in Delhi get exclusive jurisdiction in view of Section 42 of the Act. The reason is simple that before the application under Section 34 was filed, the jurisdictional 'seat' of arbitration had been determined and fixed under sub-section (2) to Section 20 and thereby, the courts having jurisdiction over Panchkula in Haryana, have exclusive jurisdiction. The courts in Delhi would not get jurisdiction as the jurisdictional 'seat of arbitration' is Panchkula and not Delhi."*

[27]. The respondents have filed the execution petition at Faridkot following the law laid down in ***Sundaram Finance Limited case (supra)***, wherein the Hon'ble Apex Court has held in para No.17 to the following effect:-

> *"17. However, what has been lost sight of is Section 32 of the said Act, which reads as under:*
>
> ***32. Termination of proceedings.-(****1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the Arbitral Tribunal under sub-section (2).*
>
> *(2) The Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings where-*
>
> *(a) the claimant withdraws his claim, unless the respondent objects to the order and the Arbitral Tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;*
>
> *(b) the parties agree on the termination of the proceedings; or*
>
> *(c) the Arbitral Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.*
>
> *(3) Subject to Section 33 and sub-section (4) of Section 34, the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings."*
>
> *The aforesaid provision provides for arbitral proceedings to be terminated by the final arbitral award. Thus, when an award is already made, of which execution is sought,*

the arbitral proceedings already stand terminated on the making of the final award. Thus, it is not appreciated how Section 42 of the said Act, which deals with the jurisdiction issue in respect of arbitral proceedings, would have any relevance. It does appear that the provisions of the said Code and the said Act have been mixed up."

Para No.19 of the aforesaid judgment is also necessary to be quoted hereasunder:-

"19. The Madras High Court in Kotak Mahindra Bank Ltd. v. Sivakama Sundari referred to Section 46 of the said Code, which spoke of precepts but stopped at that. In the context of the Code, thus, the view adopted is that the decree of a civil court is liable to be executed primarily by the court, which passes the decree where an execution application has to be filed at the first instance. An award under Section 36 of the said Act, is equated to a decree of the court for the purposes of execution, and only for that purpose. Thus, it was rightly observed that while an award passed by the Arbitral Tribunal is deemed to be a decree under Section 36 of the said Act, there was no deeming fiction anywhere to hold that the court within whose jurisdiction the arbitral award was passed should be taken to be the court, which passed the decree. The said Act actually transcends all territorial barriers."

[28]. The award was passed by the Arbitrator and was signed at Faridkot. Petitioners have already deposited the amount in Faridkot in respect of other co-sharers whose lands were acquired by the same acquisition though the awards

were different, but the award of the Collector was the same. Section 42 of the Act is not applicable after passing of the award. For enforcement of award, its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of decree from the Court, which would have jurisdiction over the arbitral proceedings. Under Section 36 of the Arbitration and Conciliation Act, 1996, an award under Section 36 of the Act is equated to a decree of the Court for the purposes of execution. No deeming fiction is attached to hold that the Court within whose jurisdiction the arbitral award has been passed should be taken to be the Court, which passed the decree. Arbitration Act actually transcends all territorial barriers.

[29]. In view of ***BGS SGS Soma JV case (supra) ,*** the petitioners cannot be allowed to contend that as per 2019 Rules, there is automatic stay in contrary to Section 36 of the Arbitration and Conciliation Act. Reliance can be placed upon ***Pam Developments and Private Limited Vs. State of West Bengal, 2019(3) RCR (Civil) 603*** and ***BCCI Vs. Kochi Cricket Pvt. Ltd., (2018) 6 SCC 287***, where the contentions with regard to automatic stay was deprecated by the Court and it was held that in view of Section 36 of the Act, mere filing of an application under Section 34 of the Act, shall not

stay enforceability of the award unless the Court grant a stay of operation of the arbitration award in accordance with the provision of sub Sections 2 and 3 of Section 36 of the Act. No stay has been granted by the Court at Bathinda in the objection petition under Section 34 of the Arbitration and Conciliation Act. Petitioners have deposited the awarded amount as per the award by the Arbitrator at Faridkot. It is only the enhanced amount for which this method has been adopted by the petitioners under the garb of Section 42 of the Act. The respondents are losing huge amount per day towards interest. The amount has been partly deposited by the petitioners in the executing Court. Petitioners are not going to lose anything if the amount is released to the claimants. Para No.1 of the award itself shows that Government of India had appointed the Commissioner, Faridkot, Division Faridkot as Arbitrator under Section 3G(5) and (6) of the National Highways Act, 1956 vide letter dated 16.07.2015 for Bathinda District, Punjab, thereby creating seat of the Arbitrator at Faridkot. In the proceedings arising out of the same award, the petitioners have already deposited the enhanced amount in the executing Court in ***Ex.535 of 2019*** titled ***Harpreet Singh Vs. National Highway Authority of India***. Perusal of ***Arbitration Case No.10 dated 04.01.2016*** titled ***Union of India and others Vs. Ujjagar Singh and others*** decided on 29.01.2016 and ***Case Code No.PBLD01-***

000559-2016 titled ***Nirmal Singh and another Vs. Union of India and others*** decided on 29.01.2020 would show that the petitioners have admitted the jurisdiction of the Court, where the award is passed. Even in those cases, the petitioners had admitted that the objection petition under Section 34 of the Arbitration and Conciliation Act is maintainable in the Court where the award is passed by the Arbitrator and the objection petition under Section 34 of the Act, challenging the award can only be filed before the Court, who is having jurisdiction over the place where the award is passed. The stand has been taken in view of the judgment of the Hon'ble Apex Court in ***Civil Appeal No.2077 of 2015*** arising out of ***SLP(C) No.8675 of 2014*** titled ***M/s Bhandari Udyog Ltd. Vs. Industrial Faciliation Council and another.***

[30]. In the context of para No.19 of ***Hasmukh Prajapati's case (supra)***, it can be seen that the seat of the Arbitrator is of utmost importance and the same connotes the situs of arbitration. The term "venue" is often confused with the term "seat" but it is more a place often chosen as convenient location by the parties to carry out arbitration proceedings but the same should not be confused with "seat". The term "seat" carries more weight than "venue" or "place".

[31]. With reference to ***BGS SGS Soma JV's case (supra),*** it can be seen that the Arbitrator has fixed the seat at

Faridkot as per para No.1 of the award and as per notification and therefore, Faridkot shall have the exclusive jurisdiction to entertain and hear the dispute under Section 34 of the Act. Once the seat has been chosen, it would then amount to an exclusive jurisdiction, so far as the seat is concerned. If no seat of Arbitration was specified and the parties agreed about the venue of Arbitration and the arbitration proceedings took place at such a venue and award is passed, then in view of ratio laid down in ***BGS SGS Soma JV case (supra)***, if the venue of arbitration is designated without specifying the seat of arbitration, the stated venue would be the juridical seat of the arbitration and the objection petition under Section 34 of the Act would lie at that place only.

[32]. In the instant case, the seat of the Arbitrator has been fixed at Faridkot, therefore, by no stretch of imagination, Bathinda Court has any jurisdiction. The provision of Section 42 of the Act provides that any application for arbitration shall be made to that Court who has supervisory jurisdiction over the arbitral Tribunal and in no other Court. The language itself is explanatory and it is applicable till the finalization of the arbitral proceedings and after termination of the arbitral proceedings i.e. after pronouncement of award in terms of Section 32 of the Act, arbitral proceedings stand terminated and thereafter, Section 42 of the Act has no application.

[33]. In reference to interpretation of seat and venue, ratio of ***Inox Renewables Ltd. Vs. Jayesh Electricals Ltd, 2021 SCC OnLine Sc 448*** can be seen. Para Nos.11, 12, 13 and 17 of the aforesaid judgment are reproduced hereasunder:-

> *"11. What is clear, therefore, as per this paragraph is that by mutual agreement, parties have specifically shifted the venue/place of arbitration from Jaipur to Ahmedabad. This being so, is it not possible to accede to the argument made by learned counsel for the Respondent that this could only have been done by written agreement and that the arbitrator's finding would really have reference to a convenient venue and not the seat of arbitration.*
>
> *12.* ***In BGS SGS (supra),*** *this Court, after an exhaustive review of the entire case law, concluded thus: 32. It can thus be seen that given the new concept of "juridical seat" of the arbitral proceedings, and the importance given by the Arbitration Act, 1996 to this "seat", the arbitral award is now not only to state its date, but also the place of arbitration as determined in accordance with Section 20. However, the definition of "court" contained in Section 2(1)(c) of the Arbitration Act, 1940, continued as such in the Arbitration Act, 1996, though narrowed to mean only principal civil court and the High Court in exercise of their original ordinary civil jurisdiction. Thus, the concept of juridical seat of the arbitral proceedings and its relationship to the jurisdiction of courts which are then to look into matters relating to the arbitral proceedings including challenges to arbitral awards was*

unclear, and had to be developed in accordance with international practice on a case by case basis by this Court.

XXX 48. The aforesaid amendment carried out in the definition of "Court" is also a step showing the right direction, namely, that in international commercial arbitrations held in India, the High Court alone is to exercise jurisdiction over such proceedings, even where no part of the cause of action may have arisen within the jurisdiction of such High Court, such High Court not having ordinary original jurisdiction. In such cases, the "place" where the award is delivered alone is looked at, and the High Court given jurisdiction to supervise the arbitration proceedings, on the footing of its jurisdiction to hear appeals from decrees of courts subordinate to it, which is only on the basis of territorial jurisdiction which in turn relates to the "place" where the award is made. In the light of this important change in the law, Section 2(1)(e)(i) of the Arbitration Act, 1996 must also be construed in the manner indicated by this judgment.

49. Take the consequence of the opposite conclusion, in the light of the facts of a given example, as follows. New Delhi is specifically designated to be the seat of the arbitration in the arbitration clause between the parties. Part of the cause of action however, arises in several places, including where the contract is partially to be performed, let us say, in a remote part of Uttarakhand. If concurrent jurisdiction were to be the order of the day, despite the seat having been located and specifically chosen by the parties, party autonomy would suffer, which BALCO specifically states cannot be the case. Thus, if an application is made to a District Court in a

remote corner of the Uttarakhand hills, which then becomes the court for the purposes of Section 42 of the Arbitration Act, 1996 where even Section 34 applications have then to be made, the result would be contrary to the stated intention of the parties as even though the parties have contemplated that a neutral place be chosen as the seat so that the courts of that place alone would have jurisdiction, yet, any one of five other courts in which a part of the cause of action arises, including courts in remote corners of the country, would also be clothed with jurisdiction. This obviously cannot be the case. If, therefore, the conflicting portion of the judgment of BALCO in para 96 is kept aside for a moment, the very fact that parties have chosen a place to be the seat would necessarily carry with it the decision of both parties that the courts at the seat would exclusively have jurisdiction over the entire arbitral process.

XXX 53. In Indus Mobile Distribution (P) Ltd., after clearing the air on the meaning of Section 20 of the Arbitration Act, 1996, the Court in para 19 (which has already been set out hereinabove) made it clear that the moment a seat is designated by agreement between the parties, it is akin to an exclusive jurisdiction clause, which would then vest the courts at the "seat" with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties. XXX XXX XXX

82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the

"venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an International context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration.

98. However, the fact that in all the three appeals before us the proceeding were finally held at New Delhi, and the awards were signed in New Delhi, and not a Faridabad, would lead to the conclusion that both parties have chosen New Delhi a the "seat" of arbitration under

Section 20(1) of the Arbitration Act, 1996. This being the case, both parties have, therefore, chosen that the courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the "seat" has been chosen, which would then amount to an exclusive jurisdiction clause so far as Courts of the "seat" are concerned."

13. This case would show that the moment the seat is chosen as Ahmedabad, it is akin to an exclusive jurisdiction clause, thereby vesting the courts at Ahmedabad with exclusive jurisdiction to deal with the arbitration. However, learned counsel for the Respondent referred to and relied upon paragraphs 49 and 71 of the aforesaid judgment. Paragraph 49 only dealt with the aspect of concurrent jurisdiction as dealt with in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 ["BALCO"]*** *which does not arise on the facts of the present case. Paragraph 71 is equally irrelevant, in that, it is clear that the parties have, by mutual agreement, entered into an agreement to substitute the venue at Jaipur with Ahmedabad as the place/seat of arbitration under Section 20(1) of the Arbitration and Conciliation Act, 1996.*

17. The reliance placed by learned counsel for the Respondent on Indus Mobile (supra), and in particular, on paragraphs 18 and 19 thereof, would also support the Appellant's case, inasmuch as the "venue" being shifted from Jaipur to Ahmedabad is really a shifting of the venue/place of arbitration with reference to Section

20(1), and not with reference to Section 20(3) of the Arbitration and Conciliation Act, 1996, as it has been made clear that Jaipur does not continue to be the seat of arbitration and Ahmedabad is now the seat designated by the parties, and not a venue to hold meetings. The learned arbitrator has recorded that by mutual agreement, Jaipur as a "venue" has gone and has been replaced by Ahmedabad. As clause 8.5 of the Purchase Order must be read as a whole, it is not possible to accept the submission of Shri Malkan that the jurisdiction of Courts in Rajasthan is independent of the venue being at Jaipur. The two clauses must be read together as the Courts in Rajasthan have been vested with jurisdiction only because the seat of arbitration was to be at Jaipur. Once the seat of arbitration is replaced by mutual agreement to be at Ahmedabad, the Courts at Rajasthan are no longer vested with jurisdiction as exclusive jurisdiction is now vested in the Courts at Ahmedabad, given the change in the seat of arbitration."

[34]. As regards CR No.831 of 2022, it can be appreciated that as regards Rule 3 of the National Highways (Manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019 is concerned, the same does not create any automatic stay as the Rule is only in respect of manner in which the disbursement has to be made and also the manner of making requisite funds available to the competent authority. Rule 3 of the National Highways Act

deals with the manner of making requisite funds available to the competent authority which shall be as follows:-

> *"3. The manner of making requisite funds available to the competent authority shall be as follows:-*
>
> *(i) Subject to provisions of the Act, the executing agency authorised by the Central Government in this behalf, shall open and maintain an account with one or more Scheduled Commercial Banks for remittance of the amount for land acquisition across the country, with arrangements for access to such account by the competent authority for specific jurisdiction as per authorisation of limits by the executing agency. The Executing Agency shall, on the demand raised by the competent authority before announcement of the award, issue requisite authorisation limits in favour of the competent authority for withdrawal of amount from such account as per requirements from time to time for disbursement to the landowners or persons interested therein through an electronic banking mechanism as per extant Reserve Bank of India regulations and the said authorisation limits, revolving in nature, shall entitle the competent authority to withdraw money from such account as per requirements, without any further reference to the land acquiring agency, for disbursement to the landowners or persons interested therein, as follows:*
>
> *(a) The amount determined under section 3-G of the Act within fifteen days of the raising of demand by the competent authority, and*

(b) Where the amount determined by the Arbitrator under sub section (7) of section 3-G of the Act is in excess of the amount determined by the competent authority, the excess amount, together with interest, if any, awarded by the Arbitrator, within 30 days of the communication of Arbitrator's award, unless such Award has been further challenged by either of the aggrieved parties."

[35]. Bare perusal of the aforesaid Rule would show that the Rules only govern the internal functioning of the Government and has nothing to do with the enforcement of the arbitral award. The Rules cannot create a law, which has already been legislated and does not provide for automatic stay. These rules are formulated as per Clause (aa) of sub Section (2) of Section 9 of National Highways Act, 1956, which is reproduced hereasunder:-

***"9. Power to make rules.**-(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.*

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely

(a) the manner in which, and the conditions subject to which, any function in relation to the development or maintenance of a national highway or any part thereof may be exercised by the State Government or any officer or authority subordinate

to the Central Government or the State Government;

[(aa) the manner in which the amount shall be deposited with the competent authority under sub-sections (1) and (6) of section 3H

(b) the rates at which fees for services rendered in relation to the use of ferries, permanent bridges, temporary bridges and tunnels on any national highway [and the use of sections of any national highway] may be levied, and the manner in which such fees shall be collected, under section 7;]

(c) the periodical inspection of national highways and the submission of inspection reports to the Central Government;

(d) the reports on works carried out on national highways;

(e) any other matter for which provision should be made under this Act.

[(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made. the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without

prejudice to the validity of anything previously done under that rule.]"

[36]. The Statute clearly states that the Rules are to be formulated regarding the deposit of compensation amount and does not provide for any stay of the proceedings. It is also pertinent to mention here that Section 3G(6) of the National Highways Act clearly states that subject to the provision of this Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every arbitration under this Act. Once the matter has been settled by the Arbitrator and award has been passed, it becomes a decree to be enforced by the executing Court while following law as per Code of Civil Procedure. The provisions of the National Highways Act shall not govern the proceedings once the arbitration award has been passed.

[37]. Section 2(e)(i) of the Arbitration and Conciliation Act would reveal that Faridkot Court has only jurisdiction to entertain and decide the objection petition under Section 34 of the Arbitration and Conciliation Act and also the execution and therefore, the objection petition filed at Bathinda Court is not maintainable. Petitioners have raised points, which were never pleaded in the applications before the executing Court and the same cannot be allowed to be taken in revisional jurisdiction under Article 227 of the Constitution of India and the objection petition deserved to be dismissed.

[38]. Case titled ***Land Acquisition No.9689 of 2019*** titled ***Ram Awadh Vs. Competent Authority/Spl. Land Acquisition Officer, Bbk. and another*** decided on 16.04.2019 is not applicable to the present case for the simple reason that in the aforesaid case, the Court did not consider the fact that 2019 Rules are not applicable so far as payments to landowners are concerned. The Rules are framed under Section 9 of the National Highways Act, 1956 and the Statute clearly states that the Rules are to be formulated regarding deposit of compensation amount and does not provide for any automatic stay of disbursement. In the aforesaid judgment, unamended Section 36 of the Arbitration and Conciliation Act has been quoted without adhering to the bar created in view of proviso to Section 36(3) of the Act. Section 3G(6) of the National Highways Act clearly states that subject to the provisions of this Act, provisions of Arbitration and Conciliation Act shall apply to every arbitration under this Act. Once the matter has been decided by the Arbitrator and the award has been passed, it becomes a decree to be enforced by the executing Court after following procedure as mentioned under Code of Civil Procedure. The provisions of National Highways Act shall not govern the proceedings once the award has been passed. Rule itself makes it clear that the same is internal arrangement of the Central Government/Highway Authority and the competent authority only for making the

funds available to the land owners. 2019 Rules talks about the national highway manner of depositing the amount by the Central Government making requisite funds available to the competent authority for acquisition of land.

[39]. Since in ***Ram Awadh's case (supra),*** unamended Section 36 of the Act has been relied, therefore, the same is distinguishable on the facts of present case and in view of interpretation of Rules of 2019.

[40]. In view of ***Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd. and others, AIR 2017 SC 2017 SC 2105*** it can be appreciated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the Court which exercises supervisory power over the arbitration. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause.

[41]. In the present case, the seat of the Arbitration was designated at Faridkot and therefore, the jurisdiction exclusively vests in the Court at Faridkot. Under the law of arbitration, unlike the Code of Civil Procedure which applies to suits filed in Courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction i.e. no part of the cause of action may

have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of the Code of Civil Procedure be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Faridkot would vest Faridkot Court with exclusive jurisdiction for the purposes of regulating arbitral proceedings arising out of the agreement between the parties.

[42]. It is well settled that where more than one Court has jurisdiction, it is open for the parties to exclude all other Courts. For an exhaustive analysis, ratio laid down in ***Swastik Gases Private Limited Vs. Indian Oil Corporation Limited. (2013) 9 SCC 32*** can be relied and this view was followed in later judgment i.e. ***B.E. Simoese Von StaraburgNiedenthal Vs. Chhatisgarh Investment Limited, (2015) 12 SCC 225***.

[43]. Having regard to the aforesaid case laws, it can be held that the Court at Faridkot has the exclusive jurisdiction to the exclusion of other Courts in the country as juridical seat of the arbitration was fixed at Faridkot.

[44]. Taking into consideration the totality of facts and circumstances of the case, I am of the considered view that the seat of the Arbitrator was fixed at Faridkot and the execution proceedings are maintainable in the Court at Faridkot. Section 42 of the Arbitration and Conciliation Act,

1996 has no application. The award has to be executed in the Principal Civil Court at Faridkot.

[45]. Having considered the totality of facts and circumstances of the case, I do not find any substance in the present civil revision petitions and the same are accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

30.09.2022
Prince

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**