

HIGH COURT FOR THE STATE OF TELANGANA

CIVIL REVISION PETITION NO.507 OF 2021

Between:

M/s.India Media Services Private Limited,
having its registered office at # 12,
Old Post Office Street, Kolkata, rep.by its
Authorized representative Kaushuk Banerjee.

.... Petitioner/respondent/
Judgment debtor

And

M/s.SBPL Infrastructure Limited,
Having Office at 5th Floor, GS Plaza,
Plot No.4,8-2-672, Road No.1,
Banjara Hills, Hyderabad, rep.by its
Authorized signatory Manoj Sharma.

... Respondent/petitioner/
Decree holder

DATE OF JUDGMENT PRONOUNCED : 09.06.2022

HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

1. Whether Reporters of Local Newspapers : Yes
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

+ CIVIL REVISION PETITION NO.507 OF 2021

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M/s.India Media Services Private Limited,
having its registered office at # 12,
Old Post Office Street, Kolkata, rep.by its
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Vs.

\$ M/s.SBPL Infrastructure Limited,
Having Office at 5th Floor, GS Plaza,
Plot No.4,8-2-672, Road No.1,
Banjara Hills, Hyderabad, rep.by its
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... Respondent/petitioner/
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!Counsel for the petitioner : Sri M.S.Prasad, learned senior
counsel appearing for
Smt. A.Satyasri

Counsel for the Respondent : Sri Venkat Prasad Ukkalam

<Gist :

>Head Note:

? Cases referred:

(2015) 1 SCC 32
(2018) 3 SCC 622
(2018) 16 SCC 413

HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU
CIVIL REVISION PETITION NO.507 OF 2021

ORDER: *(per Hon'ble Sri Justice P.Naveen Rao)*

Heard M.S.Prasad learned senior counsel appearing for Smt. A.Satya Siri, learned counsel for the petitioner and Sri Venkat Prasad Ukkalam learned counsel for the respondent.

2. On 05.12.2005, petitioner and the respondent entered into a Nomination Agreement. Disputes arose between the parties with respect to the Nomination Agreement and petitioner issued letter dated 24.10.2011 invoking the arbitration clause in the Nomination agreement. On an application filed by the petitioner, under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), Calcutta High Court initially appointed Justice Jayanta Kumar Biswas (Retired) as Arbitrator, who later recused himself.

3. After recusal by Justice Jayanta Kumar Biswas, respondent filed application A.P.No.435 of 2019 before the Calcutta High Court, wherein, he sought direction from the Calcutta High Court for appointment of an Arbitrator. On further application filed by the petitioner Justice Baskar Bhattacharya (Retired) was appointed as Arbitrator and he was directed to conclude the proceedings by the end of August 2020. Though, arbitration proceedings concluded on

9.8.2020, the award was actually passed on 27.10.2020. Challenging the award, petitioner filed petition under Section 34 of the Act before the Hon'ble Calcutta High Court.

4. Pending said application, respondent filed Execution Petition under Order XXI Rule 11 (2) and Section 151 of CPC on the file of the IX Additional Chief Judge, City Civil Court, Hyderabad (for short, IX ACJ, CCC, Hyderabad). The E.P. was allowed by order dated 8.3.2021. Challenging that without affording opportunity to the petitioner, the E.P. was allowed, this Revision is filed.

5. It is also clear that respondent had filed an Arbitration Application under Section 9 and it appears against orders in said application, appeal is pending before Calcutta High Court.

6. Shorn of details, suffice to note that award passed by the Arbitrator is subject matter of challenge in application filed under Section 34 in the Calcutta High Court. Section 9 applications have also been filed in the State of West Bengal. While so, on the ground that property is situated in Hyderabad city in State of Telangana, Execution Petition No.191 of 2021 was filed on the file of the IX ACJ, CCC, Hyderabad seeking enforcement of the award passed by the Arbitrator in State of West Bengal.

7. Extensive submissions are made by the learned senior counsel for petitioner and learned counsel for respondent.

8. According to learned senior counsel, IX ACJ, CCC, Hyderabad has no jurisdiction to entertain Execution Petition and therefore orders of IX ACJ, CCC, Hyderabad in E.P.No.191 of 2021 are *ex facie* illegal and void *ab initio*, as the error of jurisdiction goes to the root of the matter. According to learned senior counsel Section 42 of the Act makes it clear that the Principal District Court or the High Court where applications under Sections 9 and/or 34 are filed alone have the jurisdiction to deal with the subsequent applications after the conclusion of the arbitral proceedings and no other Court has jurisdiction to entertain such applications. Since Sections 9 and 34 applications are filed before State of West Bengal. In support of his contention, learned senior counsel placed reliance on decision of Supreme Court in **State of West Bengal Vs Associated Contractors**¹.

9. *Per contra*, according to learned counsel appearing for respondent, once award is passed by the Arbitrator, that award can be enforced at any place in the country as a decree of civil Court and more particularly where the concerned property is located. Since, concerned property is located in the city of Hyderabad, the City Civil Court in Hyderabad has jurisdiction to entertain the execution

¹ (2015) 1 SCC 32

petition and consider the Execution Petition filed under Section 36 of the Act. Therefore, the order of IX ACJ, CCC, Hyderabad, is not vitiated on the ground of jurisdiction.

10. The issue for consideration is whether the Civil Courts in Hyderabad lack jurisdiction to entertain the Execution Petition No.191 of 2021 ?

11. The relevant provisions which have a bearing on the issue in this revision are Section 2(1)(e)², Section 9³, Section 34⁴, Section 36⁵ and Section 42⁶ of the Act.

² **S.2. Definitions.**—(1) In this Part, unless the context otherwise requires,—

(a) to (d) xxx

(e) “Court” means— (i) in the case of an arbitration other than international commercial arbitration, 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;

(ii) in the case of international commercial arbitration, 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, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

³ **S. 9. Interim measures, etc., by Court.**— (1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:— (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which a question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

⁴ **S.34. Application for setting aside arbitral award.**—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that— (i) a party was under some incapacity, or (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of

12. Section 2(1)(e) defines 'Court'. According to this definition, the Principal Civil Court of Original Jurisdiction in the District and High Court in exercise of its ordinary original civil jurisdiction alone have the jurisdiction to decide the issues/claims arising under the Act. Section 9 deals with interim measures by a Court. If the contract between two parties envisage resolution of a dispute by means of arbitration, a party to such contract may file application under Section 9 seeking interim protection before commencement of arbitral

the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that— (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or (ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,— (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

⁵ **S.36. Enforcement.**—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

⁶ **S.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.

proceedings. He can also file such application while the arbitral proceedings are pending before the Arbitrator and after the arbitral proceedings are concluded by passing an award to seek appropriate directions to protect his interests. Thus, this section vests vide discretion in the Principal District Court/ High Court, as the case may be, to pass appropriate orders concerning *inter se* dispute among the parties to a contract. After an award is passed by the Arbitrator, an aggrieved party can challenge the award before the jurisdictional Principal Civil Court or the concerned High Court, as the case may be, within the parameters laid down in Section 34 of the Act. Section 36 has two limbs, one limb vests right in a party to seek enforcement of the award and the other limb vest right to an aggrieved person to seek interlocutory protection pending challenge to the Arbitral award under Section 34. Under Section 36, the person in whose favour award was passed by the Arbitrator can seek enforcement of the award, if no injunction is granted by the Court dealing with Arbitration application under Section 34. To this extent the flow of various provisions is clear and needs no further elaboration.

13. The sticky issue is on jurisdictional aspect with reference to filing of Execution Petition. For enforcement of a decree of Civil Court in a suit the CPC provides detailed mechanism and takes in itself various contingencies. It also envisages filing of E.P. in any Court other than the Court which granted the decree. The elaborate

procedure is also resulting in long delays in enforcing a decree, taking longer time than the time taken to dispose of a suit.

14. Having regard to these delays, the primary objective of the Act is to eliminate delays in resolution of disputes. It breaks the shackles of cumbersome procedures on various aspects of resolution of disputes.

15. In the above backdrop it is necessary to consider the scope of Section 42 of the Act. Section 42 deals with jurisdiction. It opens with a non-abstante clause. It applies notwithstanding any other provision in Part-I of the Act and any other law on the subject if the same is inconsistent with the provision in Section 42. Thus, it sweeps under its carpet all other provisions dealing with execution of an award, though equated as a 'decree in fiction' by a Civil Court. According to Section 42 only the Court where application under Section 9 and/or Section 34 was already filed alone has jurisdiction to deal with subsequent application including application for enforcement of award and no other Court has jurisdiction.

16. While learned counsel for respondent relied heavily on decision of the Supreme Court in **Sundaram Finance Limited Vs Abdul Samad and others**⁷ and also **Cheran Properties Limited Vs Kasturi and Sons Limited and others**⁸, learned senior counsel for petitioner placed heavy

⁷ (2018) 3 SCC 622

⁸ (2018) 16 SCC 413

reliance on **State of West Bengal and others Vs. Associated Contractors.** Learned counsel for respondent vehemently contended that **Sundaram Finance Limited** (supra) being latest judgment directly on the point approved by the Hon'ble Supreme Court in **Cheran Properties Limited** (supra), a person in whose favour an award is passed by Arbitrator can seek its enforcement anywhere in the country like any Civil court decree and since the concerned property is situated in Hyderabad city, State of Telangana, Execution Petition is rightly filed in Hyderabad and is maintainable.

17. To appreciate this contention, we have carefully gone through the judgments in **Sundaram Finance Limited** (supra) and **Cheran Properties Limited** (supra).

17.1. Briefly noted, the facts in **Sundaram Finance Limited** are as under. Loan was granted by the appellant to purchase a motor vehicle by first respondent. The second respondent therein is guarantor. The first respondent defaulted in payment of the loan. In order to recover the loan amount, arbitration proceedings were initiated and Sri Santanakrishnan, Advocate was appointed as sole arbitrator. An *ex parte* arbitration award was passed on 22.10.2011 for a sum of ₹ 12,69,420/- with interest at 18% per annum from 4.4.2011 till realization. The award became final. Seeking enforcement

of the award, the appellant filed application under Section 36 in the jurisdictional Court at Morena, State of Madhya Pradesh. The Civil Court vide order dated 20.3.2014 returned the Execution Application on the ground of lack of jurisdiction and directed the applicant therein to present in the Court of competent jurisdiction in the State of Tamilnadu. The effect of the said order was that the appellant was first required to file Execution Application before the court of competent jurisdiction in the State of Tamilnadu, obtain transfer of decree and then proceed to file in the concerned Court at Morena in State of Madhya Pradesh.

17.2. The said decision of the trial Court was based on decisions of the Madhya Pradesh High Court, Karnataka High Court and Rajasthan High Court. In view of the same, appellant directly approached the Hon'ble Supreme Court by seeking leave to challenge the decision of the trial Court. The issue for consideration is whether an application seeking execution of the award of the arbitrator has to be first filed in the Court of competent jurisdiction in State of Tamilnadu, where award was passed and then seek transfer of decree to State of Madhya Pradesh.

17.3. The Hon'ble Supreme Court reviewed decisions of various High Courts, considered relevant provisions of the Act as well as 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.

18. Two aspects are noticed from facts recorded in the judgment in **Sundaram Finance Limited** (supra). Firstly, based on the term of contract straightaway Arbitrator was appointed by the Sundaram Finance Limited and award passed by the Arbitrator has become final. It appears, there was no application filed prior to commencement of arbitral proceedings, during the arbitral proceedings or after the arbitral proceedings under Section 9. No application was filed under Section 34 challenging the award. Straightaway execution application was filed, taking recourse to Section 36 of the Act. In the said facts of the case, Hon'ble Supreme Court held that award of Arbitrator can be enforced anywhere in the country. It is pertinent to note that Section 42 has not dealt with the contingency considered by the Hon'ble Supreme Court. Secondly, the opinion expressed by Three Judge Bench of the Hon'ble Supreme Court in **Associated Contractors** (supra) was not considered by the Hon'ble Supreme Court.

19. The second decision relied by learned counsel for respondent is in **Cheran Properties Limited** (supra). Briefly noted, second respondent before the Supreme Court is a company incorporated on 2.5.1994 and is fully owned subsidiary of first respondent-Kasturi and Sons Limited

(for short KSL). On 19.7.2004 an agreement was entered into between third respondent-KC Palanisamy and first respondent. Under the agreement the second respondent Sporting Pastime India Limited (for short SPIL) was to allot 240 lakh equity shares of ₹ 10/- each fully paid up at par to KSL against the book debts due by SPIL to KSL. KSL in turn offered to sell KCP 243 lakh equity shares representing 90% of the total paid up share capital for a lump-sum amount. It appears intention of the parties was that KCP would take over the business, shares and liabilities of SPIL.

19.1. Differences arose leading to initiation of arbitration proceedings and passing of an award by the arbitrator. Suffice to note that the Arbitrator directed respondents before him to return to the claimants documents of title and share certificates relating to 2,43,00,000 shares of SPIL which were handed over earlier to first respondent. KCP challenged the award under Section 34. Learned single Judge of the Madras High Court repelled the said challenge. The appeal filed was dismissed by Division Bench and SLP filed thereon was also dismissed by the Supreme Court. In the said manner, the award attained finality.

19.2. Based on the award KSL initiated proceedings under Section 111 of the Companies Act, 1956 seeking directions for rectification of the Register of SPIL. The said application was allowed by NCLT,

affirmed by NCLAT. On challenge before the High Court, the Madras High Court upheld the decision of NCLT. Hence, the said appeal before the Hon'ble Supreme Court.

19.3. One of the contentions urged before the Hon'ble Supreme Court was that section 42 of the Act excludes the jurisdiction of all Courts except the Court in which applications were filed prior to commencement of arbitral proceedings or during the arbitral proceedings and therefore NCLT had no jurisdiction to deal with execution proceedings based on the award passed by the arbitrator. This contention was repelled by the Hon'ble Supreme Court on the ground that in view of the provisions of the Companies Act, which is a special enactment dealing with all aspects of the Companies incorporated under the Companies Act, the NCLT alone is competent to issue directions for transfer of shares and therefore order passed by the NCLT is valid.

19.4. What was sought before NCLT was based on the award passed by the Arbitrator. KSL was seeking rectification of the company records by invoking provision under Section 111 of the Companies Act. As award postulates transmission of the shares to claimants, directions contained in the award can be enforced only by filing application before the NCLT for rectification in the manner contemplated by law.

19.5. While considering the issue, Hon'ble Supreme Court referred to decision in **Associated Contractors** (supra) as well as decision in **Sundaram Finance Limited** (supra). However, the Hon'ble Supreme Court has not expressed any opinion on those decisions since Supreme Court repelled contentions on application of Section 42, in the peculiar facts of the said case. It is useful to extract the relevant paragraphs, which read as under:

"36. The arbitral award envisaged that KSL was entitled to the return of documents of title and the certificates pertaining to the shares of SPIL contemporaneously with the payment or tendering of a sum of Rs 3.58 crores together with interest. KSL is in terms of the arbitral award entitled to the share certificates. That necessarily means the transfer of the share certificates. **To effectuate the transfer, recourse to the remedy of the rectification of the register under Section 111 was but appropriate and necessary.** The arbitral award has the character of a decree of a civil court under Section 36 and is capable of being enforced as if it were a decree. Armed with that decree, KSL was entitled to seek rectification before the NCLT by invoking the provisions of Section 111 of the Companies Act, 1956. **There can be, therefore, no question about the jurisdiction of NCLT to pass an appropriate order directing rectification of the register.**

37. We have not been impressed with the submission that the application by KSL to the NCLT was not maintainable since the Tribunal has no power to execute an arbitral award. The submission proceeds on finding of the Tribunal that the purpose of the petition before it was to implement the award dated 16-12-2009 and that its ultimate direction is to the same effect. The submission relies on the provisions of Section 42 of the 1996 Act which provides 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."

While dealing with the submission it is necessary to note that the award of the Arbitral Tribunal mandates that the appellant must return the share certificates relating to 2.43 crore shares of SPIL which were handed over in terms of the agreement dated 19-7-2004 against the payment of the consideration stipulated in the award. The transfer of the share certificates by the appellant will be effectual only by the rectification of the register of the company. The mere handing over of share certificates will not constitute due implementation of the award. The award contemplates the transmission of the shares which stood in the name of the appellant in pursuance of the agreement dated 19-7-2004, to the claimant in the arbitral proceedings. This necessitated an application under Section 111 for the purpose of securing a rectification of the register. Sub-section (4) of Section 111 deals with a situation where a default is made in entering in the register, the fact of any person having become a member of the company. Under sub-section (5) while hearing the appeal, the Tribunal is entitled to direct that the transfer or transmission shall be registered by the company and to order rectification of the register.

38. In the present case, the arbitral award required the shares to be transmitted to the claimants. The arbitral award attained finality. The award could be enforced in accordance with the provisions of the Code of Civil Procedure, in the same manner as if it were a decree of the court. The award postulates a transmission of shares to the claimant. The directions

contained in the award can be enforced only by moving the Tribunal for rectification in the manner contemplated by law.

41. In the present case, the arbitral award, in essence, postulates the transmission of shares from the appellant to the claimant. The only remedy available for effectuating the transmission is that which was provided in Section 111 for seeking a rectification of the register. There is, therefore, no merit in the challenge addressed by the appellant.

(emphasis supplied)

20. It was urged by learned counsel for respondent that the decision in **Cheran Properties Limited** (supra) rendered by Three Judges of Hon'ble Supreme Court being a later law shall prevail over the decision in **Associated Contractors** (supra). There is no quarrel with the said proposition of law. But, the same is applicable only if there is a conflict of opinion by two Benches of Hon'ble Supreme Court having same coram. On careful consideration of these two decisions, we are of the opinion that there is no conflict in the opinions expressed by the Hon'ble Supreme Court in these two decisions and for that matter in the decision in **Sundaram Finance Limited**. They deal with different contingencies post-award of the Arbitrator.

21. In **Cheran Properties Limited** (supra), Hon'ble Supreme Court held that in view of special enactment in the form of Companies Act and the provisions therein for rectification of registers of a company incorporated under the Companies Act recourse has to be taken before the NCLT and, therefore, Section 42 of the Act is not applicable. Supreme Court has not decided the issue of application of Section 42 generally. Mere reference to the judgment of the Hon'ble Supreme Court in **Associated Contractors** (supra) cannot *per se* amount to

overruling the decision. Thus, the decision in **Associated Contractors** holds the field as on today.

22. In **Associated Contractors** (supra) the issue considered by the Hon'ble Supreme Court is directly on the same aspect as raised in the present revision. Three Judges Bench of Hon'ble Supreme Court considered a reference by Division Bench of Hon'ble Supreme Court dated 7.4.2010. The reference reads as under.

"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')?"

22.1. Briefly noted the facts are as under. Associated Contractors and Superintending Engineer of State of West Bengal entered into contract for execution of work of excavation and lining of Teesta-Jaldhara Main Canal. Paragraph 25 of the contract is on arbitration. Respondent filed application under Section 9 in the Calcutta High Court for interim orders. Learned single Judge passed *ex parte* interim orders which were confirmed later. Meanwhile in an application under Section 11 of the Act, 1996, Justice B.P. Banerjee (Retired) was appointed as Arbitrator. Interim order as confirmed on 10.12.1998 was challenged in appeal. Division Bench of Calcutta High Court stayed the interim order. Arbitral proceedings culminated vide award dated 30.6.2004. Challenging the award, State of West Bengal filed application under Section 34 before the Principal Civil

Court at Jalpaigudi in State of West Bengal. Application under Article 227 of the constitution of India was filed challenging the jurisdiction of the learned District Judge at Jalpaigudi. Said application was allowed by learned single Judge of Calcutta High Court. By placing reliance on Section 42 of the Act, learned single Judge held that since parties had submitted to the jurisdiction of the High Court, the Civil Court has no jurisdiction to entertain such application.

22.2. On elaborate consideration of the matter, Hon'ble Supreme Court recorded its conclusions in paragraph 25. They read as under:

“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.”

22.3. Hon’ble Supreme Court clarified that expression “*with respect to an arbitration agreement*” applies to all applications made before or during arbitral proceedings or after award was passed. Hon’ble Supreme Court held Section 9 applications and Section 34 are applications to set aside arbitral awards being applications made to a Court, are applications within the scope of Section 42. It is thus clear that Section 42 is applicable to post arbitral award and an application for execution of the arbitral award has to be filed in the Court where an application under Section 9 and/or Section 34 application was earlier filed. The view taken by learned single judge of the Calcutta High Court that as parties submitted to the jurisdiction of the High Court, the High Court alone has jurisdiction to deal with the subsequent applications for enforcement of award and the District Court at Jalpaigudi has no jurisdiction was upheld by the Hon’ble Supreme Court.

23. On a careful reading of decision in **Sundaram Finance Limited**, it is clear as crystal that the Hon’ble Supreme Court was dealing with a contingency where no application under Section 9 and/or under Section 34 were filed. At any rate the decision in **Associated**

Contractors being by a bench of Three Judges, it shall prevail over the decision of bench of Two Judges. In **Cheran Properties Limited**, the Hon'ble Supreme Court was considering the scope of Section 11 of the Companies Act. It being a special enactment dealing with affairs of the incorporated companies, the NCLT alone is vested with jurisdiction to deal with issues arising out of shares of a company and civil Court is not competent to deal with such matters.

24. In view of the law laid down by the Hon'ble Supreme Court in **Associated Contractors** (supra) it is beyond pale of doubt that Execution Application/Petition has to be filed in the Court where Section 9/ Section 34 application(s) is/are filed.

25. Taking note of provision in Section 42 and law laid down by the Hon'ble Supreme Court in **Associated Contractors**, looking back to the facts of the case, it is seen that application under Section 9 has been filed before the Calcutta High Court. It appears even Section 34 application is also filed in the Calcutta High Court. Therefore, the Calcutta High Court alone has jurisdiction to entertain an application for enforcement of the award. That being so, IX ACJ, CCC, Hyderabad in State of Telangan has no jurisdiction to entertain E.P.No.191 of 2021 for enforcement of award of Arbitrator dated 08.03.2021 under Section 36.

26. Though, elaborate submissions are made by learned senior counsel for the petitioner and learned counsel for respondent on various other aspects, we are not recording the said submissions and no opinion is expressed, in as much as we are convinced with the submission made by learned senior counsel for petitioner on lack of jurisdiction to the Court of IX ACJ, CCC, Hyderabad to entertain Execution Petition No.191 of 2021 and are left open to be urged in appropriate proceedings.

27. Accordingly, Civil Revision Petition is allowed. Pending miscellaneous petitions if any shall stand closed.

JUSTICE P.NAVEEN RAO

JUSTICE SAMBASIVARAO NAIDU

Date: 09.06.2022
TvK/kkm

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

CIVIL REVISION PETITION NO.507 OF 2021

Date: 09.06.2022

Tvk/kkm