

CASE NO.:
Arbitration Petition 19 of 2000

PETITIONER:
Nimet Resources Inc. & Anr

RESPONDENT:
Essar Steels Ltd.

DATE OF JUDGMENT: 11/05/2007

BENCH:
S.B. Sinha

JUDGMENT:
JUDGMENT

O R D E R

I.A. NO. 2 IN
ARBITRATION PETITION NO. 19 OF 2000

S.B. SINHA, J.

1. An application has been filed by the appellants invoking jurisdiction of this Court purported to be under Section 14 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act") for terminating the mandate of the Sole Arbitrator for appointment of Substitute Arbitrator as also for withdrawal of his Authority in terms of Article 8 of the Appointment of Arbitrators by the Chief Justice of India Scheme, 1996.
2. Indisputably, disputes and differences had arisen between the parties. There existed an arbitration agreement. An application under Section 11(5) of the 1996 Act was filed being Arbitration Petition No. 19/2000. By an Order dated 27.9.2000, Shri B.J. Divan, former Chief Justice of the Gujarat High Court was appointed as sole arbitrator.
3. In its Order dated 27.9.2000, this Court directed that the sole arbitrator would determine the question as to whether there existed a valid agreement between the parties and consequently had jurisdiction to conduct the proceedings for arbitration or not. An application was filed by the respondent before the learned Arbitrator on or about 20.8.2001. He passed an interim award opining that he had jurisdiction to proceed further in the arbitration proceedings and determine the disputes between the parties.
4. Indisputably, no final Award has yet been passed by the learned Arbitrator.
5. Whereas, allegations have been made in the application that the learned Arbitrator had unnecessarily been delaying the arbitral proceedings and had not been taking any initiative to dispose of the same, the respondents contend that the proceedings before the learned Arbitrator have been going on without any delay.
6. The question, however, which falls for consideration is as to whether this petition is maintainable before this Court. An application under sub-section (5) and sub-section (6) of Section 11 of the 1996 Act was maintainable before the Chief Justice of this Court. The learned Judge, as a designate of the Chief Justice of India, passed the Order dated 29.9.2000 appointing the learned Arbitrator. It was a judicial order.

7. Sub-section (2) of Section 14 of the 1996 Act reads as under:-
"Section 14(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the court to decide on the termination of the mandate."
8. Application in terms of sub-Section (2) of Section 14, thus, lies before a 'Court' within the meaning of the 1996 Act.
9. It is only thus the 'Court', within the meaning of the provisions of the said Act which can entertain such an application raised by the parties herein and determine the dispute therein on merit.
10. Unlike the 1940 Act, "Court" has been defined in Section 2(1)(e) to mean;
"2(1)(e) Court means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any court of Small Causes"
11. As a "Court" has been defined in 1996 Act itself, an application under Section 14(2) would be maintainable only before the Principal Civil Court which may include a High Court having jurisdiction but not this Court.
12. This Court in passing its Order dated 27.9.2000, as noticed hereinbefore, did not and could not retain any jurisdiction in itself as could be done in suitable cases under the 1940 Act. It even did not determine the validity or otherwise of the Arbitration Agreement. It allowed the parties to take recourse to their remedies before the learned Arbitrator. When the said Order was passed, this Court was considered to have only an administrative power, but the same has since been held to be a judicial power in *SBP & Co. v Patel Engineering Ltd.* and Another [(2005) 8 SCC 618]. The said jurisdiction, however, does not extend to Section 14 of the Act.
13. The definition of 'court' indisputably would be subject to the context in which it is used. It may also include the appellate courts. Once the legislature has defined a term in the interpretation clause, it is not necessary for it to use the same expression in other provisions of the Act. It is well-settled that meaning assigned to a term as defined in the interpretation clause unless the context otherwise requires should be given the same meaning.
14. It is also well-settled that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the later as is given to them in the earlier statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning. It is a settled law that when the legislature uses the same words in a similar connection, it is to be presumed that in the absence of any context indicating a contrary intention, the same meaning should attach to the words. [See *Lenhon v. Gobson & Howes Ltd.*, (1919) AC 709 at 711, *Craies on Statute Law*, Seventh Edition, page 141 and *G.P. Singh's Principles of Statutory Interpretation*, Tenth edition, page 278]
15. In *Venkata Subamma and another v. Ramayya and others* [AIR 1932 PC 92], it is stated that an Act should be interpreted having regard to its history, and the meaning given to a word cannot be read in a different way than what was interpreted in the earlier repealed section.

16. Such a question does not arise herein. The learned counsel appearing on behalf of the appellants placed strong reliance on a decision of this Court in *Guru Nanak Foundation v. Rattan Singh and Sons* [(1981) 4 SCC 634]. *Guru Nanak Foundation (supra)* was based on *State of Madhya Pradesh v Saith and Skelton (P) Ltd.* [(1972) 1 SCC 702]. The said decision has been distinguished in later judgments inter alia on the premise that therein the court had retained its jurisdiction. [See *National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd. and Another* (2004) 1 SCC 540]

In *Saith and Skelton (P) Ltd. (supra)*, it was held:

"\005Therefore the expression "Court" will have to be understood as defined in Section 2(c) of the Act, only if there is nothing repugnant in the subject or context. It is in that light that the expression "Court" occurring in Section 14(2) of the Act will have to be understood and interpreted. It was this Court that appointed Shri V.S. Desai, on January 29, 1971, by consent of parties as an arbitrator and to make his Award. It will be seen that no further directions were given in the said order which will indicate that this Court had not divested itself of its jurisdiction to deal with the Award or matters arising out of the Award. In fact the indications are to the contrary. The direction in the order, dated January 29, 1971, is that the arbitrator is "to make his Award". Surely the law contemplates further steps to be taken after the Award has been made, and quite naturally the forum for taking the further action is only this Court. There was also direction to the effect that the parties are at liberty to apply for extension of time for making the Award. In the absence of any other court having been invested with such jurisdiction by the order, the only conclusion that is possible is that such a request must be made only to the court which passed that order, namely, this Court.

19. That this Court retained complete control over the arbitration proceedings is made clear by its orders, dated February 1, 1971 and April 30, 1971. On the former date, after hearing counsel for both the parties, this Court gave direction that the record of the arbitration proceedings be called for and delivered to the Sole Arbitrator Mr V.S. Desai. On the latter date, again, after hearing the counsel, this Court extended the time for making the Award by four months and further permitted the arbitrator to hold the arbitration proceedings at Bombay. The nature of the order passed on January 29, 1971, and the subsequent proceedings, referred to above, clearly show that this Court retained full control over the arbitration proceedings."

17. Jurisdiction under Section 11(6) of the 1996 Act is used for a different purpose. The Chief Justice or his designate exercises a limited jurisdiction. It is not as broad as Sub-section (4) of Section 20 of the 1940 Act. When an arbitrator is nominated under the 1996 Act, the court does not retain any jurisdiction with it. It becomes functus officio subject of course to exercise of jurisdiction in terms of constitutional provisions or Supreme Court Rules.

18. The said decisions, therefore, have no application in the instant case.

19. Reliance placed on Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd. and Another [(2006) 6 SCC 204] is also misplaced. Therein, this Court merely held that the court can exercise its jurisdiction to nominate an arbitrator only when there is a failure on the part of the party to arbitration agreement to perform his part in terms of Section 15(2) of the 1996 Act. The said decision again has no application in the instant case.

20. This application cannot also be treated to be one for recall of the order dated 27.08.2000 as the application has been filed under Section 14 of the 1996 Act for termination of the mandate of the sole arbitrator. A different cause of action therefor, has arisen, wherefor remedy of the appellants only is to move an appropriate court and not this Court.

21. In Pandey & Co. Builders (P) Ltd. v State of Bihar and Another [(2007) 1 SCC 467], it has been held that as Patna High Court does not exercise any original civil jurisdiction, despite the fact that nomination of an arbitrator was made by a learned judge of the said Court acting as nominee of Chief Justice of the High Court, only the Principal Civil Court of original jurisdiction in a district would have the requisite jurisdiction to entertain an appeal from an Award of an Arbitral Tribunal under Section 37 of the Act.

22. In that view of the matter, this application must be dismissed as being not maintainable. It is directed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.