

SHREE BAIDYANATH AYURVED BHAWAN PVT. LTD.

v.

PRAVEEN BHATIA & ORS.

(Transfer Petition (C) No. 61 of 2007)

AUGUST 4, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

CONSTITUTION OF INDIA, 1950:

Article 32 – Writ petition seeking transfer of arbitration cases and other suits – Under an agreement between parties, jurisdiction conferred on court at Jhansi (U.P.) – Different arbitrators appointed by parties – Awards – Suits filed in Jhansi (U.P.) as also in Ludhiana (Punjab) – Petition under Article 32 seeking transfer of cases converted into transfer petition – Held: Parties are governed by terms of contract which conferred jurisdiction on courts, the same should ordinarily be given effect to – Transfer petition allowed – Cases directed to be transferred to District Judge, Jhansi who in turn would transfer the same to appropriate courts – Arbitration and Conciliation Act, 1996 – ss. 9 and 34.

The petitioner, a manufacturer of ayurvedic medicines, entered into an agreement with a firm, respondent No.5, the other respondents being its partners, for the purpose of distribution of its product. The agreement contained an arbitration clause stating that the jurisdiction of the court to determine the dispute between the parties would be at Jhansi (U.P.). Disputes arose between the parties, and the petitioner appointed an arbitrator. Though the respondents appeared before the said arbitrator and filed copies of pleadings, subsequently they absented. They were stated to have appointed a different arbitrator who gave an award against the petitioner. The petitioner filed a petition u/s.

- A 34 of the Arbitration and Conciliation Act, 1996 in the Court of District Judge, Jhansi to set aside the said award. The respondent firm filed 5 applications u/s. 9 of the Act in the Court of District Judge, Ludhiana. During the period 2006-2008, 14 civil suits were filed by petitioner in different courts. The petitioner filed a writ petition under Article 32 of the Constitution of India with a prayer for grant of a writ of mandamus or any other appropriate writ transferring the cases mentioned in Annexure-1 to court of Jhansi. The said writ petition was permitted to be converted into the transfer petition.

Allowing the transfer petition, the Court

- D HELD: 1.1. The parties are governed by the terms of the contract. If, in terms of the provisions of the contract, they by agreement conferred jurisdiction on one of the courts which would have otherwise jurisdiction to deal with the matter, the same should ordinarily be given effect to. [Para 13] [361-C-D]

- E *A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem* (1989) 2 SCC 163; *Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd.* (2004) 4 SCC 671 and *Rajasthan State Electricity Board v. Universal Petrol Chemicals Ltd.* (2009) 3 SCC 107, referred to

- F 1.2. It is not in dispute that two awards have been made by two different arbitrators. Objections to the said awards have been filed by both the parties. One of the questions which, thus, is required to be taken into consideration is as to whether the appointment of respective arbitrators by the parties was valid and, thus, whether the arbitrators had acted within the four corners of the arbitration agreement. [Para 14] [362-E-G]

- H 1.3. The cases mentioned in Annexure-I to the

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Transfer Petition are directed to be transferred to Jhansi. A
It is true that respondent No.6 is not a party to the
arbitration agreement but he is claiming interest under the
firm which had appointed him as its distributor pursuant
to such an authority having been conferred upon the
firm by the company. Therefore, his case also should be B
transferred. The court concerned should send the
records of the respective cases to the District Judge,
Jhansi who shall in turn transfer them to the courts
having appropriate jurisdiction. [Para 15 and 16] [362-G-
H; 363-A-B] C

Case Law Reference:

(1989) 2 SCC 163	referred to	para 13
(2004) 4 SCC 671	referred to	para 13
(2009) 3 SCC 107	referred to	para 13

D

CIVIL ORIGINAL JURISDICTION : Transfer Petition (Civil)
Nos. 61 of 2007.

Under Section 25 of The Code of Civil Procedure. E

Sunil Gupta, T.S. Doabia, Rishi Maheshwari, Shally Bhasin
Maheshwari, Vikramjeet Banerjee, Anne Mathew, B.
Rangnathan, Atul Shankar Mathur, Shruti Verma (for M/s.
Khaitan & Co.) Anil Grover, Manish Kumar, Pramod Swarup, F
V.P. Singh, Anil Kumar Jha, Sunita Sharma, Subhash Kaushik,
Anil Katiyar (for D.S. Mahra) J.S. Bhatti, Shree Pal Singh, Ajay
Pal, Kuldip Singh, Javed Mahmud Rao for the appearing
Parties.

The Judgment of the Court was delivered by G

S.B. SINHA, J. 1. Shree Baidyanath Ayurved Bhawan Pvt.
Ltd. (hereinafter referred to as 'the company' for the sake of
brevity) is a company registered and incorporated under the
Indian Companies Act, 1956. It manufactures Ayurvedic H

A medicines. For the purpose of distribution of its products, it engages Carrying and Forwarding Agents to receive goods from it, store them and sell them to stockiests.

B 2. The company appointed M/s. S. Bhatia Enterprises, Ludhiana (Respondent No.5 herein) (for short, 'the firm') of which Praveen Bhatia, Ramkishan Bhatia, Ashwani Bhatia and Promila Bhatia are partners. The agreement between the parties incorporating the terms of conditions of the said contract of carrying and forwarding agency contained an arbitration clause. Allegedly, the jurisdiction of the Court to determine the dispute between the parties was fixed at Jhansi. Respondents are said to have committed misappropriation of a huge amount which was pointed out in the audit reports of 2000 and 2001. Furthermore, they are said to have created several other forged and fraudulent credits in favour of some entities in which they had substantial interest which was allegedly detected by the Company's Account Manager.

E 3. Parties hereto invoked the arbitration clause contained in the said agreement. The company appointed one Shri M.P. Dixit as an Arbitrator. The respondents are said to have appeared before the said Arbitrator and filed copies of the pleadings, applications etc. and also collected a copy of the note-sheet but absented themselves from other and further proceedings before the Arbitrator. Respondent, however, F alleged that the purported agreement dated 1.10.1999 is a forged one and, in fact, an agreement had been entered into by and between the company and the firm on 1.4.1999.

G 4. The firm, however, appointed one Mr. Sudesh Kukreja who is said to have made an award against the appellant for a sum of Rs.4,70,000/- on or about 23.1.2004. The said award has been received by the Company at Jhansi on 31.3.2004 whereafter an objection under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is said to have been filed in the Court of District Judge, Jhansi.

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5. The Firm filed five applications under Section 9 of the Act which were marked as Application No.68, 69, 72, 73 and 74 of 2004 through its partners against the company in the Court of District Judge, Ludhiana.

6. Mr. Dixit is said to have made an award in favour of the company awarding a sum of Rs.3,56,54,487.37 at Jhansi upon adjusting the amount of security amounting to Rs.20 lakh as well as the amount of commission etc.

7. One Atul Sagar on behalf of Kay Pee Agencies, Ludhiana, who is said to have been appointed as a distributor at Ludhiana on or about 30.8.2004 filed a civil suit praying for a declaration that the cheque given by him for supply of goods to the company by M/s. Bhatia as null and void.

8. The respondents filed an application for setting aside the award pronounced by Shri Dixit in the Court of District Judge, Ludhiana on or about 23.12.2004. The Firm also filed three Civil Suits in the Court of Civil Judge, Ludhiana alleging defamation against them. The appellant filed objections to the Execution Petition filed by the respondents and during the period 2006 – 2008 appeared to have filed 14 civil suits in different courts, the details whereof are as under :

S.No.	CASE NO.	FILED	COURT AUTHORITY	SUBJECT MATTER
1.	Arbt. S.No.12	2004	Distt. Jhansi	Petition U/s. 34 Arbitration Act for setting aside arbitration award pronounced by Sudesh Kukreja in favour of Praveen Bhatia

A	2.	C.S.No.227	2005	Distt. Judge, Jhansi	Petition U/s 9 of Arbitration Act for securing award of M.P. Dixit by restraining Bhatias from selling his property etc.
B					
C	3.	C.S.No.390	2005	- do -	Suit for declaration/ recovery of damages against opposite parties due to making of forged agreement dt.1.4.99 by Bhatias.
D					
E	4.	C.S.No.28	2005	- do -	Declaration and recovery suit of Rs.23,86,374/- from Praveen Bhatia and Nandi Jain.
F	5.	C.S.No.388	2005	- do -	Declaration and recovery suit of Rs.23,41,870/-
G	6.	C.S.No.386	2005	- do -	Declaration and recovery suit of Rs.9,30,222/- from Karanveer and Praveen Bhatia.
H	7.	C.S.No. not known	2005	- do -	Declaration and recovery suit of

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				Rs.13,25,748/- from Ravinder Singh.
8.	C.S.No.387	2005	- do -	Declaration and Recovery suit of Rs.91,410/- against credit note from Praveen Bhatia
9.	C.S.No.389	2005	Civil Judge (Jr. Division)	Suit for damages for defamation caused by false and defamatory Jhansi notice by Opposite Party in Punjab Kesri.
10.	C.S.No.27	2006	- do -	Declaration and Recovery suit of Rs.11,16,847/- from Tarvinder and Praveen Bhatia
11.	C.S.No.26	2006	- do -	Declaration and recovery suit of Rs.14,68,864/- from Sanjeev Tara and Praveen Bhatia
12.	C.S.No.25	2006	- do -	Suit for declaration/ recovery of Rupees 1 lakh 20 thousand as

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A				outstanding dues from Praveen Bhatia and Sukhraj Singh Gill Kharad.
B	13.	C.S.No.116	2006	Civil Judge, Jr. Division, Jhansi
C				Defamation suit for damages for lodging false FIR No.139 by Opposite Parties.
D	14.	Arb.S.No.03	2006	DJ
				Petition under Section 36 of Arbitration Act for execution of Award given by Mr. M.P. Dixit.

9. The Company filed objections for release of goods wherein an order of attachment has been passed. Three revision applications were also filed before the High Court of Punjab and Haryana which were said to have been withdrawn. The Company filed a writ petition under Article 32 of the Constitution of India before this Court praying, inter alia, for the following reliefs:

“Grant a writ of mandamus or any other appropriate writ, a writ for transferring the cases mentioned in Annexure-I be transferred to Court of Jhansi.”

10. However, the said writ petition was permitted to be converted into a transfer petition.

11. Mr. Sodhi, learned counsel appearing for some of the respondents, would contend that having regard to the fact that the Company would not suffer any prejudice in the event the civil suits filed by the firm and/or its partners are permitted to be

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determined at different courts in the State of Punjab, particularly when the company has an office in Punjab and Haryana and, thus, the balance of convenience lies in allowing the civil proceedings to be tried at their original courts of filing. It was urged that in some of the matters, evidences were being led.

12. Mr. Bhatt, learned counsel appearing on behalf of the respondents, urged that the purported agreement being a forged one, the question of the parties being bound thereby does not arise.

13. The parties hereto are governed by the terms of the contract. If, in terms of the provisions of the contract, they by agreement conferred jurisdiction on one of the courts which would have otherwise jurisdiction to deal with the matter, the same should ordinarily be given effect to.

In *A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem* [(1989) 2 SCC 163], this Court held that when the Court has to decide the question of jurisdiction pursuant to an ouster clause, it is necessary to construe the same properly. In such an event, it was opined that other courts should avoid exercise of jurisdiction. [See also *Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd.* [(2004) 4 SCC 671]

Yet again in *Rajasthan State Electricity Board v. Universal Petrol Chemicals Ltd.* [(2009) 3 SCC 107], this court held:

"21. The aforesaid legal proposition settled by this Court in respect of territorial jurisdiction and applicability of Section 20 of the Code to Arbitration Act is clear, unambiguous and explicit. The said position is binding on both the parties who were contesting the present proceeding. Both the parties with their open eyes entered into the aforesaid purchase order and agreements thereon which categorically provide that all disputes arising between the parties out of the agreements would be adjudicated upon and decided through the process of

A arbitration and that no court other than the court at Jaipur shall have jurisdiction to entertain or try the same. In both the agreements in Clause 30 of General Conditions of the Contract it was specifically mentioned that the contract shall for all purposes be construed according to the laws of India and subject to jurisdiction of only at Jaipur in Rajasthan Courts only and in addition in one of the purchase order the expression used was that the Court at Jaipur only would have jurisdiction to entertain or try the same.”

C It was opined :

D “35. The parties have clearly stipulated and agreed that no other court, but only the court at Jaipur will have jurisdiction to try and decide the proceedings arising out of the said agreements, and therefore, it is the Civil Court at Jaipur which would alone have jurisdiction to try and decide such issue and that is the court which is competent to entertain such proceedings. The said court being competent to entertain such proceedings, the said Court at Jaipur alone would have jurisdiction over the arbitration proceedings and all subsequent applications arising out of the reference. The arbitration proceedings have to be made at Jaipur Court and in no other court.”

F 14. It is not in dispute that two awards have been made by two different arbitrators. Objections to the said awards have been filed by both the parties. One of the questions which, thus, is required to be taken into consideration is as to whether the appointment of respective arbitrators by the parties was valid and, thus, whether the arbitrators had acted within the four corners of the arbitration agreement.

G 15. It is true that respondent No.6 is not a party to the arbitration agreement but he is claiming interest under the firm who had appointed him as its distributor pursuant to such an authority having been conferred upon the firm by the company.

H We, therefore, are of the opinion that although stricto sensu

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respondent No.6 is not a party to the contract, his case also
should be transferred.

16. The transfer petition, therefore, is allowed. The cases
mentioned in Annexure-I thereto are directed to be transferred
to Jhansi. The Court concerned should send the records of the
respective cases to the District Judge, Jhansi who shall in turn
transfer them to the courts having appropriate jurisdiction in this
behalf. The transferee court therefore should issue notices to
the parties after fixing date(s) of hearing in the matters
transferred to their courts.

R.P.

Transfer Petition allowed.