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AA-93-2021

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 16th OF APRIL, 2026ARBITRATION APPEAL No. 93 of 2021*M/S. BEYOND MALLS LLP**Versus**M/S CENTURY 21 MALLS PVT. LTD.*

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Appearance:

*Shri Anil Khare- Senior Advocate with Shri Ashwin Rastogi,
Shri Shantanoo Saxena and Shri Priyankush Jain- Advocate for the
applicant.*

*Shri Manoj Munshi- Senior Advocate with Shri Akshay Jha- Advocate for
the respondent.*

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Reserved on: 09.3.2026

Pronounced on: 16.04.2026
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ORDER

Per. Justice Vivek Rusia

This appeal has been filed under section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act of 1996"), against the order dated 01.11.2021 passed in MJC AV No.29/2021, whereby the learned Commercial Court has dismissed the application filed under section 34 of the Act of 1996 for want of territorial jurisdiction.



2. The facts of the case, in short, are as follows :-

(i) The respondent purchased the land admeasuring 6.43 acres situated at Village Misrod, Patwari Halka 50/42, Tehsil Huzur, District Bhopal and thereafter obtained development permission from the TNCP, Bhopal on 13.12.2007 (Annexure A-4). The respondent constructed a multistoried mall on the aforesaid land, and thereafter, given on lease by executing a lease agreement dated 23.10.2017 (Annexure A-5) with the appellant. On 13.08.2019 (Annexure A-6), the respondent served a notice on the appellant demanding the pending unpaid lease rent from October, 2018 to April, 2019, along with security deposit interest @ 18% p.a. A reply was filed on 12.09.2010 (Annexure A-7). Due to non-fulfilment of the above demand, the respondent sent a notice dated 21.08.2020 (Annexure A-10) for the appointment of an Arbitrator resolving the dispute between them. The respondent filed an application on 01.9.2020 under section 9 of the Act of 1996 before the 19th Additional District Judge, Bhopal, for the grant of interim protection.

(ii) Vide order dated 27.11.2020, the District Court, Bhopal granted an order of *status quo*, and later on the said application was disposed of on 22.12.2020 (Annexure A/2) as an Arbitrator had been appointed by the High Court of Delhi on an application filed by the respondent. The respondent filed an application under section 11(6) of the Act of 1996 before the High Court of Delhi, which was registered as ARB.P. 507/2020. The said application was not opposed by the respondent therein, and Shri Justice G.



Rohini (Retired) was appointed as the sole arbitrator vide order dated 23.10.2020 (Annexure R/2).

(iii) The learned Sole Arbitrator initiated the Arbitration proceeding and passed the interim award dated 10.06.2021 in favour of the respondent herein. The appellant filed an application under section 34 of the Act of 1996 before the Commercial Court, Bhopal, on 12.07.2021. In the said application, the respondent filed an objection challenging the jurisdiction of the Commercial Court at Bhopal. Vide order dated 01.11.2021, the Commercial Court Bhopal has dismissed the application under section 34 of the Act of 1996 on the ground of lack of jurisdiction. Hence, this appeal is before this Court.

3. Learned counsel for the parties jointly submit that arbitration proceedings are still going on and final award has not been passed, but the issue raised in this appeal is liable to be decided in respect of territorial jurisdiction of this Court in order to challenge the final award to be passed under section 34 of the Act of 1996 by any of the parties in future.

4. Shri Anil Khare, learned Senior Advocate for the appellant, submitted that the learned Commercial Court at Bhopal is bound by its earlier order dated 22.12.2020, whereby the objection raised by the respondent was rejected, holding that the Bhopal Court is treated as a judicial seat based on the lease deed, and the respondent never challenged the said order. Hence, the said order had attained finality, and the Commercial Court Bhopal could not take a contrary view. It is further submitted that the parties,



by executing an agreement, had decided that in relation to the lease deed, the jurisdiction of the court where the premises are located may be any other jurisdiction to which they may be entitled. Admittedly, the premise on rent in question is situated at Bhopal; therefore, the parties have chosen the court at Bhopal as the Court Seat, not the venue for all arbitration proceedings. Even apart from this, the respondent has approached the Commercial Court at Bhopal by filing an application under section 9 of the Act of 2016 on 01.09.2020. Therefore, the respondent cannot raise such an objection since the respondent first approached the Court at Bhopal; therefore, such a provision of section 42 of the Act of 1996 would attract. Learned counsel has placed reliance on the judgment passed by the Apex Court in the case of *BGS SGS Soma JV Vs. NHPC Ltd; 2020 4 SCC 234*, which makes it clear that section 42 of the Act of 1996 is designated to avoid conflicts of jurisdiction by conferring exclusive supervisory authority on the court first properly approached. Learned counsel has also placed reliance on the judgment passed by the Apex Court in the case of *General Manager East Coast Railway Rail Sadan & another Vs. Hindustan Construction Co. Ltd; 2022 SCC Online SC 907*. Learned Senior counsel further submitted that *BGS SGS (supra)* has laid down that the "venue" is merely a venue and not a "seat" can be concluded only when the agreement provides no other contrary indicator, in the present case, Clause 17.15.2 (Annexure A-4) specifically provides Delhi as a convenient and neutral venue for conducting the arbitration proceedings. It is submitted that the question regarding jurisdiction has been wrongly decided by the impugned order. The present



appeal is maintainable as the use of the term "refusal to set aside an arbitral award u/s 34" will include the refusal on all grounds, and the effect of the impugned order is a refusal to set aside the arbitral award under section 34 of the Act of 1996. Reliance is also placed on the decision in *M/s Ravi Ranjan Developers Pvt.Ltd. Vs. Aditya Kumar Chatterjee*, 2022 SCC Online 568 and *Torrent Power Limited Vs. Dakshinanchal Vidyut Vitran Nigam Limited*, 2022 SCC Online ALL 883.

5. *Per contra*, Shri Manoj Munshi, learned Senior Advocate for the respondent, raised the issue of maintainability of this present appeal as this appeal was filed under section 37, would not be maintainable because under section 37(1)(c), the appeal lies from an order setting aside or refusing to set aside an arbitral award under section 34. The impugned order is on the jurisdiction; therefore, it does not fall under section 37(1)(c). It is further contended that appellant itself objected to the jurisdiction of Court at Bhopal in application under section 9 of Act of 1996 and further actively participated in Arbitration Petition no.507/2021, Arbitration Appeal No.21/2021, OMP(Misc.) (Comm) 259/2023, 269/2025 & 753/2025 in Delhi High Court, therefore, once submitted to jurisdiction of Delhi High Court now cannot approbate and reprobate simultaneously inasmuch waiver under section 4 of the Act of 1996 is attracted and under section 5 of the Act of 1996 there is minimal judicial intervention which bars judicial interference, including extensions under section 29A of the Act of 1996 with consent. It is further submitted that failure to raise jurisdictional or procedural objections in time amounts to waiver under section 4, as has been held in the case of *Bharat*



Sanchar Nigam Limited & another Vs. Motorola India Private Limited, (2009) 2 SCC 337. It is also argued that though section 42 of the Act of 1996 provides exclusive jurisdiction to the court which was first approached, but appellant itself objected to the Bhopal court's jurisdiction in the section 9 of the Act of 1996 application leading to appointment of arbitrator at Delhi High Court, now section 42 cannot be invoked to restore jurisdiction to Bhopal Court after appellant acquiesces to the court at Delhi.

6. We are unable to accept such contention raised by Mr. Munshi in view of the law laid down by the Apex Court in the case of *Chintels India Limited Vs. Bhayana Builders Private Limited*, (2021) 4 SCC 602 and *M/s Essar Construction Vs. N.P. Rama Krishna Reddy*, (2000) 6 SCC 94, in which, it has been held that literal reading of section 34(1)(c) of the Act of 1996 would show that a refusal to set aside an arbitral award as delay has not been condoned under sub-section (3) of Section 34 of the Act of 1996 would certainly fall within section 37(12)(c) of the aforesaid Act.

7. Shri Munshi, learned senior counsel, argued that before filing an application under Section 9 of the 1996 Act before the District Court, Bhopal, an application under Section 11 was filed at the Delhi High Court for appointment of an arbitrator, therefore, all subsequent proceedings would be held before the Court at Delhi by virtue of section 42 of the 1996 Act. Shri Munshi has placed reliance on clause 17.9.3 of the Agreement, under which all the proceedings of conducting arbitration shall be held in Delhi. The learned senior counsel has placed reliance on the judgment of the Apex



Court in the case of *General Manager, East Coast Railway, Rail Sadan and another Vs. Hindustan Construction Company Limited, (2022) 20 SCC 212*, in which it has been held that merely because the appellants had not opposed the appointment of an arbitrator, that by itself would not confer jurisdiction upon the High Court, if otherwise it had no jurisdiction. It is further held that in view of section 42 of the Act of 1996, the High Court of Andhra Pradesh at Hyderabad alone would have jurisdiction to decide a subsequent application arising out of a contract agreement, and further arbitral proceedings will have to be made in that High Court alone.

Appreciation & Conclusions

8. Undisputed facts of the case are that the immovable property under the agreement and in dispute is situated at Bhopal. The application under section 9 of the Arbitration and Conciliation Act, 1996, was filed by the respondent before the Commercial Court on 01.9.2020. The lease deed between the parties was executed on 27.9.2017, containing the clauses relating to "Dispute Resolution" from 17.9 to 17.15, which read as under:-

"17.9 Dispute Resolution

17.9.1 In case of any disputes or differences arising between the Parties hereto as to the effect, interpretation, existence, termination, breach, validity or application of this Lease Deed and related Lease Deeds or as to their rights, duties or liabilities there under, or to as any act matter



or thing arising out of, or consequent to, or in connection with this Lease Deed (“Dispute”), the Parties shall use all reasonable endeavour to resolve the matter amicably.

17.9.2 However, if any Dispute cannot be resolved amicably, such Dispute shall be referred to and finally resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996.

17.9.3 The Sole Arbitrator shall be appointed by the court, such arbitration proceedings shall be held in New Delhi and shall be conducted in the English language.

17.9.4 The award of the arbitrator shall be in writing, final, conclusive and binding upon the Parties, and the Parties shall be entitled (but not obliged) to enter judgment thereon in the court having competent jurisdiction;

17.9.5 The arbitral tribunal shall apportion the costs of the arbitration between the parties, having regard to the outcome of the case and other relevant circumstances.

*17.10 Lessee’s right to off-set
Unless expressly agreed otherwise in this Agreement, in the event that the Lessor is obliged to pay any amounts to the Lessee, the Lessee may offset such amount against Rent*



17.11 No waiver to fulfil obligation

Neither Party shall by payment of contractual damages be released from its duty to fulfil any obligation in which the Party is in breach of.

17.12 Deadlines

17.12.1 In the periods established by calendar days, if the last day of the period should coincide with a non-working day, it shall be understood the deadline expires on the next Working Day.

17.13 Sole Deed

This Lease Deed includes all of the pacts between the Parties in relation to the lease. Any proposal, offer, information dossier, letter of interest, MOU, document, communication or information that is different from the Lease Deed and prior to the signing of this Lease Deed, in relation to the lease of the Premises, even if it had been granted and agreed to by the Parties, shall be cancelled and rendered null and void by means of the signing of this Lease Deed by the Parties.

17.14 Amendments

Every amendment or modification to be done to this Lease Deed shall be done in written and with mutual understanding of each Party.

17.15 Applicable Law and Jurisdiction

17.15.1 This Lease Deed shall be subject to and must be interpreted in accordance with laws of India. .



17.15.2 In relation to this Lease Deed, the Parties agree to submit themselves to the jurisdiction of the courts of the where the Premises is located, waiving any other jurisdiction to which they may be entitled.

17.15.3 The Annexures are part of this Lease Deed and all references thereto must be understood as made to both the main body and the Annexures. Without prejudice thereof, and in the event of any discrepancy or inconsistency, the main body of the Lease Deed shall prevail over any of the Appendices or its future versions."

9. As per Clause 17.9.3, the Sole Arbitrator shall be appointed by the court; such arbitrator's proceedings shall be held in New Delhi. Thus, the arbitration proceedings shall be held in Delhi, which is only at the convenience of the parties. Therefore, the application filed under section 11(6) of the Act of 1996 for the appointment of an Arbitrator (Justice Shri G.Rohni, Retd.) stationed at New Delhi was rightly disposed of without any objection. As the parties were in agreement that the arbitration proceedings shall be held only at Delhi, and accordingly, under such agreement, an application under section 11(6) of the Act of 1996 was filed by the respondents before the High Court of Delhi for the appointment of an arbitrator. So, only in respect of the venue of the arbitration proceedings, the



place at Delhi was settled under clause 17.9 of the agreement. But, so far as the applicable laws and jurisdiction are concerned, as agreed by the parties by virtue of clauses 17.15.1 to 17.15.3, the parties agreed to submit themselves to the jurisdiction of the Court where the leased property is located, waiving any other jurisdiction to which they may be entitled. So far as the seat and jurisdiction of the Court is concerned, the parties have agreed and submitted themselves to the jurisdiction of the Court at Bhopal, because admittedly the properties in question are situated at Bhopal.

10. Therefore, under such a situation, the respondent filed an application under section 9 of the Act of 1996 before the Court at Bhopal. In the said proceedings, when the present appellant raised an objection about the jurisdiction, the learned court dismissed the said application vide order dated 22.12.2020. The learned Commercial Court held that the application under section 9 was filed on 01.9.2020 and by that time, the Arbitrator was not appointed. Admittedly, the sole Arbitrator was appointed by the High Court on 23.10.2020.

11. It is well-settled law that section 20 of the Act of 1996 determines the place of arbitration by the Arbitral Tribunal having regard to the circumstances of the case, including the convenience of the parties. Even otherwise, section 20(1) thereof gives an authority to the party to agree in respect of the place of arbitration. Section 20 of the Act of 1996 only deals with the place of arbitration for the arbitration proceedings. But, section 42 of Act of 1996 decides the jurisdiction of the Court, and according to which where with respect to an arbitration agreement any application under this



Part has been filed by the party, that Court alone will have the 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 no other Court.

12. Therefore, in the present case, the respondent first moved an application under section 9 of the Act of 1996 before the Court at Bhopal in order to get the interim relief. In paragraph 15 of the said application, the respondent disclosed that he has already issued a notice for the appointment of an arbitrator and intends to approach the Hon'ble High Court of Madhya Pradesh for the appointment of an arbitrator at the earliest; however, later on, the application was moved before the High Court of Delhi. But the fact is clear that the first application was filed before the District Court at Bhopal. So, therefore, under section 42 of the Act of 1996, the Commercial Court, Bhopal will have the jurisdiction. The respondent has wrongly raised an objection and the learned Court has wrongly rejected the application.

13. The Apex Court in the case of *BGS SGS Soma JV Vs. NHPC Limited, (2020) 4 SCC 234* in paragraphs 32, 38, 48 & 59 has held as under:-

"32. However, Section 42 cannot possibly have any application to an application under Section 11(6), which necessarily has to be made before a High Court, unless the earlier application was also made in a High Court. In the instant case, the earlier application under Section 9 was made in the District Court at



Muzaffarpur and not in the High Court of Judicature at Patna. An application under Section 11(6) of the A&C Act for appointment of Arbitrator, could not have been made in the District Court of Muzaffarpur. Therefore, Section 42 is not attracted.

38. As observed by the Constitution Bench, Section 2(2) of the A&C Act places a threshold limitation on the applicability of Part-I, where the place of arbitration is not in India. The Constitution Bench in effect and substance drew a distinction between venue and place of arbitration, as contemplated in Section 20 and held that only if the agreement of the parties was construed to provide for seat/place of arbitration in India, would Part-I of the 1996 Act be applicable. If the seat/place were outside India, Part-I would not apply, even though the venue of a few sittings may have been in India, or the cause of action may have arisen in India.

48. In this case, the parties, as observed above did not agree to refer their disputes to the jurisdiction of the Courts in Kolkata. It was not the intention of the parties that Kolkata should be the seat of arbitration. Kolkata was only intended to be the venue for arbitration sittings. Accordingly, the Respondent himself approached the District Court at Muzaffarpur, and not a Court in Kolkata for interim protection under Section 9 of the A&C Act. The Respondent having himself invoked the jurisdiction of the District Court at Muzaffarpur, is estopped from contending that the parties had agreed to confer exclusive jurisdiction to the Calcutta High Court to the exclusion of other Courts. Neither of the parties to the agreement construed the arbitration clause to designate Kolkata as the seat of arbitration. We are constrained to hold that Calcutta High Court



inherently lacks jurisdiction to entertain the application of the Respondent under Section 11(6) of the Arbitration Act. The High Court should have decided the objection raised by the Appellant, to the jurisdiction of the Calcutta High Court, to entertain the application under Section 11(6) of A&C Act, before appointing an Arbitrator.

59. Equally incorrect is the finding in Antrix Corpn. Ltd. that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non obstante clause, and then goes on to state "...where with respect to an arbitration agreement any application under this part has been made in a court..." It is obvious that the application made under this part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the court where the seat is located, and that court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so-called "seat" is only a convenient "venue", then there may be several courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration a Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where



parties have not agreed on the "seat" of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled."

14. Recently, the Apex Court in the case of *Gayatri Balasamy Vs. Novasoft Technologies Limited*, (2025) 9 SCC 1 has held that it is the duty of the Court to give weightage and due consideration to each choice made by the parties and to construe the arbitration agreement in a manner that aligns with most of such stipulation and intention. It is also held that where two or more possible places that have been designated in the agreement either expressly or impliedly equally appear to be a seat of arbitration then in such case, conflict may be resolved through recourse to the doctrine of forum, non-convenience and the seat be then determined based on which one of the possible places may be most appropriate forum keeping in mind the nature of the agreement, dispute in hand, the parties themselves and their intention and finally concluded, thus the place most suited for interest of all the parties and the ends of justice may be determined as a seat of arbitration. In paragraph 77 it has been held thus:-

"77. Our reasoning is bolstered when considering the practical aspects. The Arbitral Tribunals, when determining post-award interest, cannot foresee future issues that may arise. Post-award interest is inherently future-oriented and depends on facts and circumstances that unfold after the award is issued. Since the future is unpredictable and unknown to the arbitrator at the time of the award, it would be unreasonable to suggest that the arbitrator, as a soothsayer, could have anticipated or predicted future events with certainty. Therefore, it is appropriate for the Section 34 Court to have the authority to intervene and modify the post-award interest if the facts and circumstances justify such a change."



15. Therefore, in view of the above and as per clause 17.9 of the Agreement, instead the parties have also chosen the court at Bhopal to have jurisdiction and for arbitration proceedings, Delhi as the place for the convenience of the parties, the respondent first approached the Court at Bhopal by way of application under section 9 of the Act of 1996. So, therefore, by virtue of section 42 of the Act of 1996, the Court at Bhopal alone shall have the jurisdiction to decide the application under section 34 of the Act of 1996.

16. The impugned order dated 01.11.2021 is hereby set aside, proceeding of the case MJC AV No.29/2021 before the learned Commercial Court are restored.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

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