

ORISSA HIGH COURT, CUTTACK

**CIVIL REVISION NOS. 186 AND 187 OF 2003**

From an order dated 26.3.2003 passed by Shri G.N.Patra, Civil Judge(Senior Division), Phulbani in M.J.C.No.11 of 2002 and an order dated 4.3.2003 passed by Shri J.M.Pattnaik, District Judge, Phulbani in Execution Case No.1 of 2002 respectively.

M/s.Nila Chakra Construction

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Petitioner

-Versus-

State of Orissa and others

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Opp.parties

For Petitioner - M/s S.K.Sanganeria,  
P.C.Patnaik and  
A.K.Sahu.

For Opp.Parties - Mr. S.K.Das,  
Addl.Standing Counsel

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PRESENT:-

THE HON'BLE MR. JUSTICE PRADIP MOHANTY

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Heard and decided on 23.08.2004  
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**PRADIP MOHANTY, J.** The question posed in the aforesaid two revisions being common, they were heard together and are disposed of by this common judgment.

2. In Civil Revision No.187 of 2003 the petitioner has challenged the order dated 4.3.2003 of the District Judge, Phulbani in Execution Case No.1 of 2002 transferring the same to the file of the Civil Judge(Senior Division), Phulbani for disposal in accordance with law, whereas, challenge in Civil Revision No.186 of 2003 is to the order dated 26.3.2003 of the Civil Judge (Senior Division), Phulbani in M.J.C.No.11 of 2002 rejecting the objection

raised by the petitioner questioning his jurisdiction to entertain and adjudicate an application under Section 34 of the Arbitration and Conciliation Act, 1996.

3. Mr. Sanganeria, learned counsel for the petitioner, submits that as per Section 2(1)(e) read with Section 42 of the Arbitration and conciliation Act, 1996 (hereinafter referred to as 'the Act'), the District Judge, Phulbani being the principal Civil court of original jurisdiction in the district, the Civil Judge (Senior Division), Phulbani lacks jurisdiction to entertain the application filed by the opposite party under Section 34 of the Act. Similarly, the District Judge, Phulbani has committed grave error in transferring the petitioner's execution case to the Civil Judge(Senior Division), Phulbani for adjudication by holding the said Court to be the Principal Civil Court of original jurisdiction in the district. Therefore, the impugned orders are liable to be set aside.

4. Mr.S.Das, learned Addl. Standing Counsel, on the other hand, while supporting the orders passed by the courts below, submitted that the Civil Judge (Senior Division), Phulbani is the principal civil court of original jurisdiction in that district and has jurisdiction to entertain the petition for execution of the award as well as the petition filed under Section 34 of the Act to set aside the award.

5. In view of the rival submissions and pleadings of the parties, the core question that arises for consideration in these revisions is as to which is the appropriate Court to enforce the award passed by the Arbitrator and to entertain the application under Section 34 of the Act.

Section 2(1)(e) of the Act defines 'Court' as follows :-

“ 'Court' means the principal Civil court of original jurisdiction in a district, and includes the High court in exercise of its ordinary original civil 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;”

A perusal of the aforesaid definition shows that 'Court' means “the Principal Civil Court of original jurisdiction in a district”. The word 'district' has not been defined under the Act. It is, therefore, appropriate to go through the definition of the same as provided under

Sec.2(4) of the Code of Civil Procedure and that of the “District Court” as defined under Section 2(10) of the Orissa General Clauses Act.

Section 2(4) of the Code of Civil Procedure reads as under:-

“ ‘District’ means the local limits of the jurisdiction of a Principal Civil court of original jurisdiction (hereinafter called as “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High court.”

Section 2(10) of the Orissa General Clauses Act, 1937 which defines the expression “District Court” reads thus :-

“ ‘District Court’ shall mean the principal Civil Court of original jurisdiction of a district; but shall not include a High Court in the exercise of its ordinary or extra-ordinary original civil jurisdiction.”

A plain reading of both the definitions, as quoted above, makes it manifest that the principal Court of original jurisdiction means the District Court inasmuch as the District Judge is the Presiding Officer of that Court. While on the point, it is also apposite to notice Section-2(2) of the Orissa Civil Courts Act, 1984 which reads as under :

“The Court of the District Judge shall be principal Court of original civil jurisdiction in the district.

Explanation- For the purposes of this sub-section, the expression “District Judge” shall not include an Additional District Judge.”

6. From a conjoint reading of Section 2(1)(e) of the Act, Section 2(4) of the Code of Civil Procedure, Section 2(10) of the Orissa General Clauses Act and Section 2(2) of the Orissa Civil Courts Act, it is obvious that the Court of the District Judge is the principal Civil Court of original jurisdiction in a district. That apart, the definition, as given under Section 2(1)(e) of the Act expressly excludes any other Civil Court of a grade inferior to such principal Civil Court or any Court of small causes. Therefore, it leaves no room for any doubt that in the present case the “Principal Civil Court of original jurisdiction” is obviously the District Judge, Phulbani and not the Civil Judge (Senior Division), Phulbani.

7. As a result of foregoing discussions, this court is of the view that the Civil Judge (Senior division), Phulbani has no jurisdiction to entertain the applications under Section 34 and 36 of the Act. It is only the District Judge, Phulbani, as the principal Civil Court of original jurisdiction in that district, who has jurisdiction to decide the matter. Therefore, the order dated 4.3.2003 of the District Judge, Phulbani in Execution Case No.1 of 2002 and the order dated 26.3.2003 of the Civil Judge (Senior Division), Phulbani in M.J.C.No.11 of 2002 are set aside. Both the aforesaid matters, now pending before the Civil Judge (Senior Division), Phulbani, be transferred to the file of the District Judge, Phulbani for adjudication in accordance with law.

8. In the result, the revisions are allowed.

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Pradip Mohanty, J.

Orissa High Court, Cuttack  
August 23, 2004 / *Samal*