IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CMPMO No. 170 of 2006.

Date of Decision:31st August, 2006.

Bhawna Singh & others. **Petitioners.**

Versus

M/s Magma Leasing Ltd. & another. **Respondents.**

Coram

The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting[1]?

For the Petitioner: **Mr. Lalit K. Sharma, Advocate.**

For the respondent: **Mr. Pankaj Sharma, Advocate, vice Mr. Sandeep Kaushik, Advocate, for respondent No.1.**

V.K. Gupta, C.J. (Oral).

The petitioners filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 in the Court of the learned Additional District Judge, Solan for setting aside the arbitral award dated 21st September, 2001 passed by the sole Arbitrator, respondent No.2 herein, namely, Shri S.K. Jain, Advocate, Delhi High Court on various grounds. In the reply filed by respondent No.1 to the said application under Section 34 of 1996 Act, amongst various defences

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[1] Whether reporters of the Local Papers are allowed to see the Judgment?

raised, respondents took the preliminary objection with respect to the territorial jurisdiction of the Court by contending and submitting that the Court at Solan did not have any territorial jurisdiction and that the territorial jurisdiction vested exclusively in the Courts at Delhi. This plea was based upon and linked with the facts relating to the accrual of the cause of action as well as a specific clause in the Arbitration Agreement conferring exclusive territorial jurisdiction upon the Courts at Delhi. Following five Issues were framed by the learned Court below on 1st November, 2002:-

"1. Whether the award No.AR-4/2001 passed by the respondent No.2 is liable to be set aside as prayed for? OPA.
2. Whether this Court has territorial jurisdiction to entertain the application? OPR.
3. Whether the application is barred by limitation? OPR.
4. Whether the award dated 21.9.2001 passed by the Arbitrator is final and binding on the parties as alleged? OPR.
5. Relief."

By a detailed judgment, the learned Court below returned its findings on all the Issues. In so far as Issue No.1 is concerned, it held that the award was not liable to be set aside because the petitioners failed to establish that the arbitral award suffered from any illegality on any account. In so far as Issue No.2 is concerned the learned Court below specifically and expressly held that the Courts at Delhi had exclusive jurisdiction to deal with the subject matter of the petition filed under Section 34 of the 1996 Act and, therefore, the Courts at Solan did not have the territorial jurisdiction to try the said application. In para 20 of the impugned judgment, under the caption "Relief" the learned Court below, however, observed and held as under:-

> "Relief.
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> 20. In view of the findings on the various issues above, application cannot succeed and it is as such dismissed with cost. Accordingly the award dated 21.9.2001 passed by the Arbitrator being legal is binding upon

> the applicants. Memo of cost be prepared. The file after due completion be consigned to the Record Room."

The petitioners do not contest, dispute or assail the finding of the learned Court below with respect to Issue No.2. In other words, the petitioners concede and admit that indeed the Courts at Solan did not have the territorial jurisdiction and the Courts at Delhi had the exclusive jurisdiction to try the aforesaid arbitration application under Section 34 of the 1996 Act. Even otherwise on a perusal of the impugned judgment, I myself find that the learned Court below has rightly decided Issue No.2 against the petitioners because indeed, upon proper appreciation of the material on record the jurisdiction was exclusively of the Courts at Delhi and the Courts at Solan did not have any jurisdiction to try the application.

I, however, find that the learned Court below completely erred in finally deciding the application by passing the operative part of the judgment in so far as the grant of final relief is concerned. In para 20 of the judgment (supra)

the learned Court below pronounced on the validity of the award by holding it to be legal and binding upon the petitioners. Actually once the learned Court below decided that it had no jurisdiction to try the application, despite its stated finding on Issue No.1, it ought not have declared the award as being legal and binding upon the petitioners in the operative part of the judgment but it should have returned the petition filed under Section 34 of the 1996 Act to the petitioners for presentation before a Court of competent jurisdiction. On that course having been adopted, the finding on Issue No.1 would have become nonest because it was returned by the Court which had no jurisdiction to entertain the application at all.

There is no doubt that under sub-rule (1) of Rule 2, Order 14 of the Code of Civil Procedure it is the duty of the Court to return findings on all Issues, both of law as well as facts, which were settled by it at the stage of framing of the Issues and upon which the parties went to trial but if in the process, on an Issue relating to the jurisdiction of the Court the finding ultimately goes against the plaintiff or the

petitioner, as the case may be, in the operative part of the judgment the Court while disposing of the matter finally should pass the order compatible with the finding on the preliminary Issue relating to the matter of jurisdiction and either dismiss the matter on that ground alone or order the return of the plaint or the petition, as the case may be, to the plaintiff or the petitioner. In such a fact situation the Court should not, in the final, operative part of the judgment decree the suit or dismiss the suit linked with or based upon its findings on the Issues of facts etc. because that would not only cause avoidable prejudice to the parties, or one of them, but would also actually be an exercise in futility since the new Court, the other Court having jurisdiction in the matter in which the suit or the petition would be instituted afresh would be deciding all points of controversy itself, based upon the material that would be placed before it for consideration in due course. This is notwithstanding the fact that sub-rule (1) of Rule 2, Order 14 does enjoin upon the Court a statutory duty of deciding all the Issues but as far as the operative part of the judgment

is concerned it cannot and should not finally dispose of the matter based upon and linked with the findings on the Issues of fact, in a case where the Issue relating to jurisdiction is decided against the petitioner.

For the foregoing reasons, this petition is allowed. The finding on Issue No.2 is confirmed and upheld. As a necessary corollary and a consequence thereof, it is ordered and directed that the petition filed under Section 34 of the 1996 Act by the petitioners shall be returned to them for being presented in the Court of competent jurisdiction. Because of this course being adopted now by this Court, this Court holds that the finding on other Issues returned by the learned Court below, including and more particularly the finding on Issue No.1 shall be treated as nonest for all purposes and in all respects.

If the petitioners present the petition under Section 34 of the 1996 Act before the new Court of competent jurisdiction within two weeks from today, the question of limitation shall not come in their way because this period of two weeks shall be excluded and the petition shall be

treated to have been filed in the new Court on 7th January, 2002, the date when it was filed originally in the Court of learned Additional District Judge, Solan.

The petition is disposed of. No order as to costs.

31st August, 2006. (V.K. Gupta), C.J.
(tr)