GURU NANAK FOUNDATION

v.

RATTAN SINGH & SONS

September 29, 1981

[D.A. DESAI AND A.P. SEN, JJ.]

Jurisdiction of the competent court, when the Supreme Court is seisin of the proceedings, to entertain the Award—Scope of sections 2 (c), 14 (2), 31 (4) and 41 of the Arbitration Act, 1940.

Disputes having arisen between the parties to a building contract dated 4th April, 1972, an application for the appointment of an arbitrator in terms of clause 47 of the Arbitration Agreement, numbered as Suit No. 400(A) of 1974 was filed in the Delhi High Court. By its order dated August 14, 1974, the High Court appointed the 2nd Respondent Sri M. C. Nanda, retired Chief Engineer, C.P.W.D. as the sole arbitrator. When the reference was pending, a petition number O.M.P. 133/1969 was moved by the appellant, under sections 5 and 11 of the Act, for the removal of the arbitrator and appointment of another in his place. The petition was dismissed, but in the appeal by special leave (Civil Appeal No. 17/1977) the Supreme Court made an order dated January 5, 1977, wherein by consent of parties 3rd respondent Sri O. P. Mallick, retired Chief Engineer, C.P.W.D., was appointed as the sole arbitrator. Since the 3rd respondent after entering into arbitration directed the parties to file fresh pleadings indicating that he desired to commence the arbitration proceeding afresh, another C.M.P. No.1088/77 was filed in the Supreme Court whereupon suitable directions were given to proceed from the stage at which Sri Nanda left. A further application No. 526(A)/77 was moved, this time before the High Court for considering the counter claim but it was dismissed as the first respondent who did question the jurisdictional aspect earlier, agreed to the issue being included in the reference. Thereafter, the arbitrator made an Award on November 11, 1977. The 1st respondent by his letter dated November 17, 1977, requested the 3rd respondent arbitrator to file or cause to be filed the award along with pleadings and documents before the Supreme Court.

The 3rd respondent acting on the advice tendered by an officer of the Supreme Court filed the award in the Delhi High Court and informed the parties. The 1st respondent moved C.M.P. No. 14079 of 1977 in the Supreme Court seeking a declaration that the award has to be filed in the Supreme Court in view of provisions contained in section 14 (2) read with section 31 (4) of the Act and for a direction that the award be collected from Delhi High Court and be filed before the Supreme Court and notice of the filing of the award be issued to the parties.

The appellant filed a counter affidavit and contested the petition *inter alia* contending that Delhi High Court would be the court within the meaning of section 14 (2) in which award ought to have been and has rightly been filed. It was contended that if the Court withdrew the proceedings to itself, the appellant would be denied the valuable right of appeal under the letters patent and a further appeal to the Supreme Court under Article 136 of the Constitution.

Allowing the C.M.P. No. 14079 of 1977, the Court,

HELD 1. The Supreme Court is the court having exclusive jurisdiction wherein the Award dated November 11, 1977 should be filed. [857 C]

1 : 1. On a pure grammatical construction as well as taking harmonious and overall view of the various provisions contained in the Act it is crystal clear that ordinarily that court will have jurisdiction to deal with the questions arising under the Act, except the one in Chapter IV, in which a suit with regard to the dispute involved in the arbitration would be required to be filed under the provisions of the Code of Civil Procedure. However, where an application is made in any reference to a court competent to entertain it, that court alone will have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall have to be made in that court alone and in no other court. [852 G-H, 853 A-B]

1 : 2. The expression "court" as defined in section 2(c) will have to be adhered to unless there is anything repugnant in the subject or context in which it is used. The expression "court" as used in section 21 of the Act includes the "appellate court" because appellate proceedings are generally recognised as continuation of the suit". The expression "court" used in section 14(2), therefore, will have to be understood in this background. Incorporating the definition of the expression "court" as set out in section 2(c), in sub-section (1) of section 31 would mean that the award will have to filed in that court in which the suit in respect of the dispute involved in the award would have been required to be filed. The provision contained in sub-section (2) of section 14 will not be rendered *otiose*. [851 A-B, D-E, 852 F]

Ct. A. Ct. Nacchiappa Chettiar & Others v. *Ct.A. Ct. Subramanium Chettiar*, [1960] 2 SCR 209, followed.

1 : 4. The Scheme disclosed in sub-sections (2), (3) and (4) of section 31 clearly indicates that to the exclusion of all other courts only one court will have jurisdictton to deal with the proceedings incidental to the reference and the arbitration. Sub-section (3) clearly points in this direction when it provides that all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the court wherein the award has been or may be filed and to no other court. The opening non-obstante clause of sub-section (4) excludes anything anywhere contained in the whole Act or in any other law for the time being in force if it is contrary to or inconsistent with the substantive provision contained in sub-section (4). To that extent it carves out an exception to the general question of jurisdiction of the court in which award may be filed elsewhere provided in the Act in respect of the proceedings referred

A to in sub-section (4). This provision will have an over-riding effect in relation to the filing of the award if the conditions therein prescribed are satisfied. If those conditions are satisfied the court other than the one envisaged in section 14 (2) or section 31 (1) will be the court in which award will have to be filed. That is the effect of the non-obstante clause in sub-section (4) of section 31. Sub-section (4) thus invests exclusive jurisdiction in the court, to which an application has been made in any reference and which that court is competent to B entertain as the court having jurisdiction over the arbitration proceedings and all subsequent applications arising out of reference and the arbitration proceedings shall have to be made in that court and in no other court. Thus sub-section (4) not only confers exclusive jurisdiction on the court to which an application is made in any reference but simultaneously ousts the jurisdiction of any other court which may as well have jurisdiction in this behalf. [851 E-H, 852A-C]

C

2. A proceedings earlier to reference in a Court wouldnot clothe that court with such jurisdiction as to render the provision contained in section 31 (4) *otiose.* [858 D-E]

Also the subsequent application made by the appellant before the Delhi High Court, which was dismissed after the 1st respondent's challenge to the D jurisdiction of the Delhi High Court upon compromise between the parties enlarging the jurisdiction of the arbitrator by consent, cannot give the Delhi High Court any control over the arbitration proceedings. In view of the fact that a reference was made by this Court to the 3rd respondent and that this Court gave further direction about the manner and method of conducting the arbitration proceedings and fixed the time for completion of arbitration proceedings, the Supreme Court alone would have jurisdiction to entertain the award. [854 C,E-F]

E

State of Madhya Pradesh v. *M/s. Saith and Skelton (P) Ltd.,* [1972] 3 SCR 233; followed.

Kumbha Mawji v. *Union of India,* [1953] SCR 878, distinguished.

F 3. If the Supreme Court has jurisdiction to entertain the Award and the Supreme Court in view of section 31 (4) alone has jurisdiction for entertaining the award meaning that the award has to be filed in the Supreme Court alone and no other, the same cannot be defeated by a specious plea that the right of appeal would be denied. In the instant case, the door of the Supreme Court is not being closed. In fact the door is being held wide ajar for him to raise all contentions which one can raise in a proceeding in an originating summons. [858 F-G, 859 A-B]

G

Garikapatti Veeraya v. *N. Subbiah Choudhury,* [1957] SCR 488, explained.

State of Madhya Pradesh v. *M/s. Saith and Skelton (P) Ltd.*, [1972] 3 SCR 233, followed.

H

CIVIL APPELLATE JURISDICTION Civil Misc. Petitions Nos. 14079 & 14078 of 1977.

IN

Civil Appeal No. 17 Of 1977

From the judgment and order dated the 11th December, 1975 of the High Court of Delhi at New Delhi in O.M.P. No. 133 of 1975.

R.S. Narula and *Harbans Singh* for the Petitioner.

S.C. Wattal, R.C. Wattal, C.R. Somasekharan and *T.V.S.N. Chari* for the Respondent.

The Judgment of the Court was delivered by

DESAI, J. Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to Arbitration Act, 1940 ('Act' for short). However, the way in which the proceedings under the Act are conducted and without an exception challenged in Courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the Courts been clothed with 'legalese' of unforseeable complexity. This case amply demonstrates the same.

A contract dated 4th April, 1972 for construction of a building was entered into between the appellant and the 1st respondent. Clause 47 of this contract incorporated an arbitration agreement between the parties. The differences and disputes having arisen between the parties to the contract, the 1st respondent moved an application numbered as Suit No. 400 (A) of 1974 in the Delhi High Court under section 20 of the Act seeking a direction calling upon the appellant to file the arbitration agreement in the court and for a further direction to refer the disputes and the differences covered by the arbitration agreement to the arbitrator to be appointed by the Court. By the order dated August 14, 1974 the High Court appointed the 2nd respondent Shri M.L. Nanda, retired Chief Engineer, CPWD as the sole arbitrator to examine the differences and the disputes between the parties and to make an

award in respect of them. When the reference was pending before the arbitrator, a petition No. OMP 133 of 1975 was moved by the appellant in Delhi High Court seeking directions purporting to be under sections 5 and 11 of the Act for the removal of the 2nd respondent as arbitrator. This petition made by the appellant failed as per the order dated December 23, 1975. The appellant having been aggrieved by the dismissal of the petition moved a special leave petition (Civil) No. 882 of 1976 in this Court questioning the correctness of the dismissal of the petition for removal of the arbitrator. The special leave petition came up before a bench of this Court. Special leave to appeal was granted and Civil Appeal No. 17 of 1977 arising out of the special leave petition was heard by a three-judges bench of this Court. Khanna, J. speaking for the Court made an order dated January 5, 1977 wherein by the consent of the parties the 2nd respondent Shri M.L. Nanda was removed as arbitrator and the 3rd respondent Shri C.P. Malik retired Chief Engineer, CPWD was appointed as the sole arbitrator to settle the disputes between the parties. Usual direction for the remuneration of the arbitrator was made. The 3rd respondent was directed to commence the arbitration proceedings within 15 days from the date of the order of the court and to dispose of the same as expeditiously as possible.

It appears that the 3rd respondent after entering into arbitration directed the parties to file fresh pleadings indicating that he desired to commence the arbitration proceedings afresh which would imply that the pleadings filed before the former arbitrator and the evidence led before him were to be ignored. The first respondent moved an application numbered as CMP No. 1088 of 1977 in this Court *inter alia* praying for a relief that the 3rd respondent should commence the arbitration proceedings from the stage where it was left by the 2nd respondent. In other words the 1st respondent prayed in the petition that the pleadings before the former arbitrator as well as evidence recorded by him shall be treated as part of the proceedings before the 3rd respondent.

After hearing both the parties, this Court made the following order. As it has some impact on the outcome of this petition, it is reproduced in extenso :

"*C.M.P. No. 1088/77* : We have heard counsel on both sides. It is absolutely plain that the new arbitrator

in tune with the spirit of the order passed by this Court should proceed with speed to conclude the arbitration proceedings. In the earlier directions by this Court it had been stated that the proceedings should commence within 15 days and that the arbitrator "shall try to dispose of the same as expeditiously as possible." We direct the arbitrator, bearing in mind the concurrence of the counsel on both sides, that he shall conclude the proceedings within four months from today.

A grievance is made that the arbitrator is calling for fresh pleadings which may perhaps be otiose since pleadings have already been filed by both sides before the earlier arbitrator Mr. Nanda. If any supplementary statement is to be filed it is certainly open to the parties to pursuade the arbitrator to receive them in one week from today. The arbitrator will remember that already some evidence has been collected and he is only to consider and conclude. With this directive we dispose of the application."

Pursuant to the directions given by this Court, the 3rd respondent commenced the arbitration proceedings from the stage where the same was left by the previous arbitrator. He gave opportunity to the parties to place before him supplementary pleadings if any, as well as additional evidence if any. He also examined some witnesses.

When the arbitration proceedings were pending before the 3rd respondent, the appellant moved an application numbered as Suit No. 526 (A) of 1977 in Delhi High Court praying for a relief that the counter claim of the appellant against the first respondent be also covered by the terms of reference and an award be made in that behalf. The first respondent questioned the jurisdiction of Delhi High Court to entertain the application on the ground that the Supreme Court alone is in seisin of the matter, and that court alone has jurisdiction to give directions in the reference. Wiser counsel prevailed with the parties. The first respondent amicably agreed to permit the arbitrator to examine the counter claim, if any, made by the appellant against the 1st respondent. In view of this private agreement between the parties, application bearing number Suit No. 526 (A) of 1977 filed by the appellant was dismissed by Delhi High Court. Thereafter the arbitrator made his award on November 11, 1977 and on the same day served a notice on the parties to the proceedings intimating that the arbitrator has made

A the award. The 1st respondent by his letter dated November 17, 1977 requested the 3rd respondent arbitrator to file or cause to be filed the award alongwith pleadings and documents before the Supreme Court.

B It appears that the 3rd respondent arbitrator approached the Registry of the Supreme Court for filing of award when he was advised by an officer of this Court that the award should be filed in Delhi High Court. Pursuant to this advice the 3rd respondent filed the award in Delhi High Court and informed the 1st respondent accordingly. Thereupon the 1st respondent moved this petition seeking a declaration that the award has to be filed in this Court in C view of provisions contained in section 14 (2) read with section 31 (4) of the Act and for a direction that the award be collected from Delhi High Court and be filed before this Court and notice of the filing of the award be issued to the parties. In seeking this relief the 1st respondent contended in the petition that the reference was D made to the arbitrator by this Court; that further directions were given by this Court and this Court has seisin of the matter and therefore this Court alone has jurisdiction to entertain the award in view of the provisions contained in section 31 (4) of the Act.

During the pendency of this petition, by an order in C.M.P. E No. 14078 of 1977, the proceedings before Delhi High Court were stayed.

The appellant filed a counter-affidavit and contested the petition *inter alia* contending that Delhi High Court would be the Court within the meaning of section 14 (2) in which award ought to F have been and has rightly been filed. It was contended that if the court withdrew the proceedings to itself, the appellant would be denied the valuable right of appeal under the letters patent and a further appeal to this Court under Article 136 of the Constitution.

The narrow question in this case therefore is whether in view G of the circumstances herein delineated, which is the court which would have jurisdiction to entertain the award; in other words which is the court having jurisdiction in which the award should be filed by the arbitrator?

H At the outset relevant provisions of the Act may be noticed. The expression 'Court' has been defined in section 2 (c) as under:

A

2 (c) "Court" means a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject matter of a suit, but does not, except for the purpose of the arbitration proceedings u/s 21, include a Small Cause Court."

B

Section 14 provides for filing of the award. Sub-section 2 is relevent for the present purpose which reads as under :

"14 (2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award."

C

D

Section 31 deals with the jurisdiction of the court in respect of an award which reads as under :

E

"31 (1) Subject to the provisions of this Act an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed and by no other court.

F

G

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed and to no other court.

H

A (4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all B subsequent applications arising out of that reference, and the arbitration proceedings shall be made in that Court and in no other Court."

The dictionary meaning of expression 'Court' in section 2 (c) C has to be applied wherever that word occurs in the Act, but with this limitation that if there is anything repugnant in the subject or context, the dictionary meaning may not be applied to the expression 'Court.' Assuming that there is nothing repugnant in the subject or context the expression 'Court' in the Act would mean that civil court which would have jurisdiction to decide the question forming D the subject-matter of the reference if the same had been the subject matter of a suit but does not include a Small Cause Court though it is a civil court except for the arbitration proceedings under section 21. Section 14 sub-section (2) provides for filing of the award in the court and in view of the definition of the expression 'Court' the arbitrator will have to file the award in that court E which would have jurisdiction to entertain the suit forming the subject-matter of reference.

Paraphrasing this clause in simple lanaguage it would mean that the court in which the suit involving a dispute in arbitration would be required to be filed alone would have jurisdiction to F entertain the award. This will by necessary implication incorporate the provisions as to jurisdiction of court to entertain civil suits as set out in the Code of Civil Procedure, 1908. In fact, Section 41 of the Act provides that subject to the provisions of the Act and Rules made thereunder, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court and G to all appeals under the Act. In other words, in the absence of an arbitration agreement if a dispute was required to be resolved by initiating proceedings in a civil court, that court which will have jurisdiction to entertain the suit alone would have jurisdiction to entertain the award and the arbitrator in view of section 14 sub-H section (2) would have to file the award in that court. There was some controversy between the High Courts whether the expression 'Court' would comprehend appellate court in which the award can

A

be filed but it was finaliy resolved by the decision of this Court in *Ct. A. Ct. Nacchiappa Chettiar Others* v. *Ct. A. Ct. Subramanium Chettiar*, (1) wherein it was held that the expressions 'suit' and 'court' in section 21 of the Act would also comprehend proceedings in 'appeal' and 'appellate Court' respectively. This Court observed that the expression 'court' in section 21 includes the appellate court proceedings which are generally recognised as continuation of the B suit; and the word 'suit' will include such appellate proceedings. Indisputably, award will have to be filed in the court in which, in the absence of an arbitration proceeding a suit will have to be filed touching the subject-matter involved in the suit. If sub-section (2) of section 14 was the last word on the question of jurisdiction of C the court in which the award is to be filed, there is considerable force in the submission of Mr. Narula that the award in this case will have to be filed in Delhi High Court alone.

Section 31 of the Act provides the forum in which an award may be filed. Sub-section (1) of section 31 provides that an award D may be filed in any court having jurisdiction in the matter to which the reference relates. Incorporating the definition of the expression 'court' as set out in section 2 (c) in sub-section (1) of section 31 would mean that the award will have to be filed in that court in which the suit in respect of the dispute involved in the award would have been required to be filed. This is quite consistent with the provision contained in sub-section (2) of section 14. So far E there is no difficulty. The scheme disclosed in sub-sections (2),(3) and (4) of section 31 clearly indicates that to the exclusion of all other courts only one court will have jurisdiction to deal with the proceedings incidental to the reference and the arbitration. Sub-section (3) clearly points in this direction when it provides that all applications regarding the conduct of arbitration proceedings or F otherwise arising out of such proceedings shall be made to the court where the award has been or may be filed and to no other court. Then comes sub-section (4). It opens with a non-obstante clause and is comprehensive in character. The non-obstante clause excludes anything anywhere contained in the whole Act or in any other law for the time being in force if it is contrary to or inconsistent G with the substantive provision contained in sub-section (4). To that extent it carves out an exception to the general question of jurisdiction of the court in which award may be filed elsewhere

(1) [1960] 2 SCR 209.

H

A provided in the Act in respect of the proceedings referred to in sub-section (4). The provision contained in sub-section (4) will have an over-riding effect in relation to the filing of the award if the conditions therein prescribed are satisfied. If those conditions are satisfied the court other than the one envisaged in section 14 (2) or section 31 (1) will be the court in which award will have to be filed. B That is the effect of the non-obstante clause in sub-section (4) of section 31. Sub-section (4) thus invests exclusive jurisdiction in the court, to which an application has been made in any reference and which that court is competent to entertain as the court having jurisdiction over the arbitration proceedings and all subsequent C applications arising out of reference and the arbitration proceedings shall have to be made in that court and in no other court. Thus sub-section (4) not only confers exclusive jurisdiction on the court to which an application is made in any reference but simultaneously ousts the jurisdiction of any other court which may as well have jurisdiction in this behalf. To illustrate the point, if an award was D required to be filed under section 14 (2) read with section 31 (1) in any particular court as being the court in which a suit touching the subject-matter of award would have been required to be filed, but if any application in the reference under the Act has been filed in some other court which was competent to entertain that application, then to the exclusion of the first mentioned court the latter court E alone, in view of the overriding effect of the provision contained in section 31 (4), will have jurisdiction to entertain the award and the award will have to be filed in that court alone and no other court will have jurisdiction to entertain the same.

The provision contained in sub-section (2) of section 14 will F neither be rendered otiose nor stand in disharmony on the construction that we place on sub-section (4) of section 31 because the expression 'court' as defined in section 2 (c) will have to be adhered to unless there is anything repugnant in the subject or context in which it is used. Therefore, the expression 'court' as used in section 14 (2) will have to be understood in this background.

G

On a pure grammatical construction as well as taking harmonious and overall view of the various provisions contained in the Act it is crystal clear that ordinarily that court will have jurisdiction to deal with the questions arising under the Act, except H the one in Chapter IV, in which a suit with regard to the dispute involved in the arbitration would be required to be filed under the

provisions of the Code of Civil Procedure. However, where an application is made in any reference to a court competent to entertain it, that court alone will have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall have to be made in that Court alone and in no other court.

In this case an application was made to Delhi High Court under section 20 of the Act for a direction to file the arbitration agreement in the court. As provided in sub-section (2) of section 20, the proceeding was numbered as a suit. The suit ended in an order of reference to the arbitrator, the 2nd respondent. A subsequent application was made to Delhi High Court under section 5 read with section 11 of the Act for removal of the 2nd respondent as arbitrator. On this application being dismissed, the matter was brought to this Court in appeal being Civil Appeal No. 17 of 1977. By the decision of this Court in the appeal the 2nd respondent was removed as arbitrator and the 3rd respondent was appointed as sole arbitrator. Indisputably, therefore, the arbitrator was appointed by this Court. The order appointing the 3rd respondent as arbitrator gave a further direction that the arbitrator shall enter upon the reference within 15 days from the date of the order of the Court and he should try to dispose of the same as expeditiously as possible. The final order was that the appeal was disposed of in terms hereinabove indicated. A contention that thereafter this Court was not in seisin of the matter was urged relying upon the fact that the appeal was disposed of by the order of the court and that there was no further proceeding before this Court. This contention has merely to be stated to be rejected, as will be presently pointed out. After the disposal of the appeal, CMP No. 896/77 was presented to this Court for clarification and/or modification of the order of the Court dated January 5, 1977. This Court by its order dated February 10, 1977, gave further directions and a specific time limit was fixed by this Court directing the 3rd respondent as arbitrator to conclude the proceedings within four months from the date of order of the Court. Even with regard to the conduct of proceedings this Court directed that the 3rd respondent should proceed with the reference from the stage where it was left by the 2nd respondent and that not only that he may permit additional evidence to be led but he must consider the pleadings and evidence already placed before the previous arbitrator. This will indisputably show that this Court had complete control over the proceedings before the arbitrator.

Mr. R.S. Narula, learned counsel for the appellant pointed out that subsequently an application was made by the appellant before Delhi High Court that the 3rd respondent must also resolve the dispute arising out of a counter-claim made by the appellant against the 1st respondent and that this application was entertained by Delhi High Court and that therefore, it cannot be said that this Court alone was in seisin of the matter or was seized of the matter. There is no substance in this contention because the 1st respondent had challenged the jurisdiction of Delhi High Court to entertain the same and ultimately the application filed by the appellant was dismissed, *albeit* upon a compromise between the parties enlarging the jurisdiction of the arbitrator by consent. But the petition having been dismissed and the contention having been taken as to jurisdiction, it cannot be said that Delhi High Court had control over the arbitration proceedings. In the light of this uncontroverted evidence in view of the provision contained in sub-section (4) of section 31 the arbitrator will have to file the award in this Court and he rightly approached this Court upon a notice being given by the 1st respondent for filing the award in this Court.

Curiously, an officer of this Court took it into his head to advise the arbitrator to file the Award in Delhi High Court without obtaining any direction of the Court. We must record our displeasure about this usurpation of jurisdiction of the Court by an officer of this Court. We say no more. In view of the fact that a reference was made by this Court to the 3rd respondent and that this court gave further direction about the manner and method of conducting the arbitration proceedings and fixed the time for completion of arbitration proceedings, this Court alone would have jurisdiction to entertain the award.

The view which we are taking is completely borne out by the decision of this Court in *State of Madhya Pradesh* v. *M/s Saith & Skelton (P) Ltd.* (1). In that case the facts were that the State of Madhya Pradesh had entered into a contract with M/s Saith & Skelton (P) Ltd. for the supply and erection of penstocks for Gandhi Sagar Power Station, Chambal Hydel Works. Clause 21 of the contract incorporated an arbitration agreement. Disputes having arisen between the parties to the contract, the contractor intimated to the Madhya Praeesh State nominating one Shri T.R.

(1) [1972] 3 SCR 233.

Sharma as an arbitrator under clause 21 of the contract. On receipt of the intimation the Government nominated one Shri G.S. Gaitonde as an arbitrator and on his resignation one Shri R.R. Desai was nominated as an arbitrator. The arbitrators appointed Shri R.C. Soni as umpire. On a disagreement between the arbitrators the reference was taken over by the umpire. A petition was moved on behalf of the Government in the Court of the Additional Distt. Judge, Mandsaur for setting aside the nomination as arbitrator of both Shri T.R. Sharma and Shri R.R. Desai as also the appointment of Shri R.C. Soni as umpire. The learned Additional Distt. Judge held that the appointment of Shri R.R. Desai as arbitrator and Shri R.C. Soni as umpire was invalid. The contractor filed an appeal before the High Court of Madhya Pradesh which was converted into a revision petition. The High Court by its order dated August 6, 1970, appointed Shri R.C. Soni as the sole arbitrator and to that extent modified the order of the Additional Distt. Judge. The State approached this Court by petition for special leave to appeal which was granted. This Court by consent of both the parties appointed Shri V.S. Desai, Senior Advocate of this Court as the sole arbitrator. During the pendency of the proceedings, this Court gave directions to call for the records and to be sent to the arbitrator. The Court also extended time initially granted to the arbitrator to complete the proceedings. The arbitrator thereafter gave his award and filed the same in the Supreme Court. A petition was filed by the Contractor for passing a judgment and decree according to the award. The State filed a petition praying for an order declining to take the award on its file or in any event to set aside or modify the same. On behalf of the State it was, *inter alia*, contended that the Supreme Court is not the court contemplated by section 14 (2) read with section 2 (c) of the Act where the award can be filed. Negativing this contention this Court held as under :

> "According to Mr. Shroff the Award should have been filed, not in this Court, but in the Court of the Additional District Judge, Mandsaur, as that is the Court which will have jurisdiction to entertain the suit regarding the subject matter of the reference. We are not inclined to accept this contention of Mr. Shroff. It should be noted that the opening words of section 2 are "In this Act, unless there is anything repugnant in the subject or context". Therefore the expression "Court" will have to be under-

stood 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.

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.

Mr. Shroff referred us to the fact that in the order dated January 29, 1971, it is clearly stated: "The appeal is allowed". According to him, when the appeal has come to an end finally, this Court had lost all jurisdiction regarding the arbitration proceedings, and therefore the

filing of the award, should be only in the court as defined in section 2 (c) of the Act. Here again, we are not inclined to accept the contention of Mr. Shroff. That the appeal was allowed, is no doubt correct. But the appeal was allowed by setting aside the order of the High Court and this Court in turn appointed Mr. V.S. Desai as the sole arbitrator. All other directions contained in the order dated January 29, 1971, and the further proceedings, as pointed out earlier, indicate the retention of full control by this Court over the arbitration proceedings".

The reasoning therein will *mutatis mutandis* apply to the facts which are more or less identical in the case before us. Therefore, both on principle and on authority this Court alone will have jurisdiction for the filing of the award.

Mr. Narula contended that the decision of this Court in *Kumbha Mawji* v. *Union of India* (1) will indicate that section 31 (4) is not confined to applications made after the reference is made or during the pendency of the reference but may take within its sweep an application made earlier to the reference being made. And that if such an application is made that court alone will have jurisdiction to entertain subsequent applications. Proceeding from this basis Mr. Narula contended that the initial application under section 20 for filing the arbitration agreement was made to Delhi High Court and, therefore, all subsequent applications will have to be made to that court alone. In *Kumbha Mawji's* case a contention was raised before this Court that section 31 (4) is merely confined to applications during the course of pendency of a reference to arbitration. This Court after analysing the scheme of section 31, held that there is no conceivable reason why the legislature should have intended to confine the operation of sub-section (4) only to applications made during the pendency of an arbitration, if as is contended, the pharse 'in any reference' is to be taken as meaning 'in the course of a reference'. Ultimately this Court held that the phrase 'in any reference' used in sub-section (4) of section 31 means 'in the course of any reference', and concluded that section 31, sub-section (4) would vest exclusive jurisdiction in the court in which an application for the filing of an award has been first made under section 14 of the Act. We fail to see how this decision would help in answering the contention canvassed on behalf of the

(1) [1953] SCR 878.

A appellant. In fact the decision in *Kumbha Mawji's* case was further explained by this Court in *Union of India* v. *Surjeet Singh Atwal.* (1) The contention in the latter case was whether an application under section 34 of the Act for stay of the suit was an application made in a reference within the meaning of section 31 (4) of the Act and, therefore, subsequent application can only be made to that court in B which stay of the suit was prayed for. In support of this contention reliance was placed on *Kumbha Mawji's* case urging that the expression 'in any reference' under section 31 (4) of the Act is comprehensive enough to cover application first made after the arbitration is completed and a final award made and the sub-section is not confined to applications made during the pendency C of the arbitration proceeding. Negativing this contention this Court held that accepting the wider meaning given to the phrase 'in any reference' as implying 'in the course of a reference' an application under section 34 is not an application in a reference within the meaning of the phrase as elaborated in *Kumbha Mawji's* case. The Court took notice of various sections under which an application D can be made before a reference has been made. Therefore, the decision in *Kumbha Mawji's* case would not mean that a proceeding earlier to the reference in a court would clothe that court with such jurisdiction as to render the provision contained in section 31 (4) *otiose.*

E Mr. Narula lastly urged that if this Court were to arrogate jurisdiction to itself by putting on sub-section (4) of section 31 a construction as canvassed for on behalf of the 1st respondent it would deprive the appellant of its valuable right to prefer an appeal under the Letters Patent and approach this Court under Article 136 F of the Constitution. If this Court has jurisdiction to entertain the award and this Court in view of section 31 (4) alone has jurisdiction for entertaining the award meaning that the award has to be filed in this Court alone and no other, the same cannot be defeated by a specious plea that the right of appeal would be denied. In an identical situation in *M/s Saith & Skelton (P) Ltd.* case, this Court G held that the award has to be filed in this Court alone which would certainly negative an opportunity to appeal because this is the final court. Conceding as held by this Court in *Garikapatti Veeraya* v. *N. Subbiah Choudhury,* (2) that the right of appeal is a vested right and such a right to enter the superior court accrues to the litigant

H

(1) [1970] 1 SC R 351.
(2) [1957] SCR 488.

A

and exists as on and from the date the *lis* commences, by the view we are taking such a right is not denied or defeated because the highest court to which one can come by way of appeal will entertain all contentions that may have to be canvassed on behalf of the appellant. The door of this Court is not being closed to the appellant. In fact the door is being held wide ajar for him to raise all contentions which one can raise in a proceeding in an originating summons. Therefore, we see no merit in this contention and it must be rejected.

B

Accordingly we allow CMP 14079 of 1977 and declare that this Court is the Court having exclusive jurisdiction wherein the award dated November 11, 1977, should be filed and we further direct the 1st respondent to approach the Registrar of the Delhi Court to collect the award alongwith the record of proceedings of the 3rd respondent in the reference made by this Court and the same be filed in this Court. We direct that on the receipt of the Award and the proceedings a notice of the filing of the award should be issued to the appellant and the 1st respondent and the further proceedings should be held. The costs of the present hearing will abide the final outcome of the matter.

C

D

V.D.K. *Petition allowed.*