2026:DHC:600-DB

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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 13.01.2026***
Judgment pronounced on: 27.01.2026
Judgment uploaded on: 27.01.2026

\+ FAO(COMM.) 123/2023

ARUN MEHROTRA .....Appellant
Through: Mr. Tushar Mahajan, Mr. Bhaavan Mahajan and Mr. Tanmay S. Surana, Advs.

versus

KISHAN LAL .....Respondent
Through: Mr. Mayank Khurana, Adv.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996[1], the Appellant (Petitioner before the learned District Judge) assails the correctness of the Judgment and Order dated 27.03.2023 [hereinafter referred to as '**Impugned Order**'], whereby the learned District Judge dismissed the petition filed by the Appellant under Section 34[2] of the A&C Act, on the ground of lack of territorial jurisdiction without looking into the merits of the matter of the Award dated 02.11.2018 [hereinafter referred to as '**the Award**'] passed by the learned Arbitrator.

[1] A&C Act
[2] Section 34

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2. Herein, the Appellant contends that the learned District Judge, after completion of the pleadings and after discussing the merits of the contentions raised by the Appellant, dismissed the Section 34 petition on the sole ground of jurisdiction. The learned District Judge held that the arbitration proceedings were conducted under the aegis of Delhi International Arbitration Centre [hereinafter referred to as '**DIAC**'] at DIAC, New Delhi, and 5, Siri Fort, New Delhi, and thus this place of arbitration does not fall within the jurisdiction of the District Court, Dwarka, Delhi [hereinafter referred to as '**Dwarka Courts**'].

3. Accordingly, the issue that falls for consideration before this Court is whether the proceedings under Section 34 challenging the Award were maintainable before the Dwarka Courts or not.

FACTUAL MATRIX:

4. In order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed.

5. The Appellant entered into a Civil Construction Contract dated 26.04.2012 [hereinafter referred to as '**the subject Contract**'] with the Respondent for the construction of the property bearing no. B-1/231, Janakpuri, Delhi-110058 [hereinafter referred to as the '**suit premises**'].

6. It is noted that the construction at the site was already underway, and the Respondent was engaged during the ongoing work. After the engagement of the Respondent, a formal written Agreement, enumerating the terms on which the property was to be constructed, was executed by the parties. It is the case of the Appellant that since

the beginning, the services of the Respondent were not satisfactory, and they had engaged one Sh. Ramesh Chand, as a mason, handed over the work to him, and thereafter, the Respondent very occasionally visited the site under construction.

7. It is the further case of the Appellant that, under the subject Contract, the Respondent was required to execute the construction along with procurement of materials, the contract price being inclusive thereof and without any separate labour rates; however, from the inception, the Respondent failed to procure materials and undertook only labour work, while also executing the construction in a deficient manner and contrary to the terms of the agreement. Despite being informed of the deficiencies and deterioration in quality by email dated 19.02.2013, the Respondent neither rectified the defects nor visited the site thereafter and ultimately abandoned the work midway, compelling the Appellant to engage labourers on daily wages and retain certain existing labourers to complete the construction under its own supervision within a couple of months, though some works left incomplete by the Respondent continue to remain pending.

8. It is further stated that, on 17.11.2015, the Appellant received a notice from the Respondent raising an illegal demand of Rs.24,03,653/-. The Appellant thereafter contacted the Respondent and clarified that no amount was due and payable; on the contrary, the Respondent had received amounts in excess despite deficiencies in service and breach of the contractual terms. Subsequently, on 27.05.2016, the Appellant received a notice seeking initiation of arbitral proceedings, and in November 2016, they were served with

notice from this Court in ARB.P. No.655/2016, filed by the Respondent seeking reference to arbitration, pursuant to which the matter was referred to arbitration by order dated 01.12.2016.

9. Pursuant to the same, the learned Arbitrator passed the Award, directing the Appellant to make the payment of Rs.22,06,778.90/- along with the interest @ 9% per annum with effect from the date of filing of the ARB.P. No.655/2016 till realization and further directing the Appellant to make the payment of the costs of arbitration and litigation.

10. Aggrieved by the same, the Appellant instituted the Section 34 petition, assailing the Award as being, *inter alia*, patently illegal on the face of the record. However, the learned District Judge, *vide* the Impugned Judgment, dismissed the Section 34 petition on the ground of lack of territorial jurisdiction.

CONTENTION OF THE PARTIES:

11. Heard learned Counsel for the parties at length and, with their able assistance, perused the paperbook. The written submissions filed on behalf of the parties are on record.

12. Learned Counsel for the Appellant, while contending that the Section 34 petition is maintainable before the Dwarka Courts, has advanced the following submissions:

i. The parties had expressly chosen and agreed upon "Delhi" as the seat of arbitration, and DIAC was merely a common venue for

conducting the arbitral proceedings, and, the mere situs of the Arbitral Tribunal does not confer territorial jurisdiction.

ii. The property forming the subject matter of the dispute is situated within the territorial jurisdiction of the Dwarka Courts, which, being the supervisory courts, are competent to exercise jurisdiction over the arbitral proceedings.

iii. The Respondent had submitted to the jurisdiction of the Dwarka Courts by filing an application under Section 29A(3)[3] of the A&C Act seeking extension of time for making the Award, thereby attracting the bar under Section 42[4] of the Act.

iv. No objection as to jurisdiction was raised by the Respondent during the pendency of proceedings before the Dwarka Courts for nearly three years.

13. *Per contra*, learned Counsel for the Respondent contended that since the arbitral proceedings were conducted at DIAC and at 5, Sri Fort Road, New Delhi, the said place of arbitration does not fall within the territorial jurisdiction of the Dwarka Courts.

14. No other submissions have been made on behalf of the learned counsel representing the parties.

ANALYSIS AND FINDINGS:

15. This Court has carefully examined the submissions advanced by the learned Counsel for the parties and has perused the record. The

[3] Section 29A(3)
[4] Section 42

core issue which arises for determination is whether the learned District Judge was justified in dismissing the Appellant's petition under Section 34 solely on the ground of lack of territorial jurisdiction, without entering upon the merits of the challenge to the Award.

16. At the outset, it is necessary to examine the arbitration clause contained in the subject Contract, which reads as under:

> *"In cases of any dispute arising out of this agreement, the dispute shall be decided by the owner and the contractor at 1st instance and in case of disagreement, the dispute shall be referred for arbitration to a mutually agreed arbitrator as agreed by both parties.* ***Otherwise, subject to Delhi Jurisdiction only****."*
>
> **(Emphasis supplied.)**

17. A plain and purposive reading of the aforesaid clause demonstrates that the parties expressly agreed to submit themselves to the jurisdiction of courts at Delhi. The stipulation "subject to Delhi jurisdiction only" is unambiguous and leaves no manner of doubt that the parties intended to exclude the jurisdiction of courts outside Delhi.

18. Further, the Supreme Court, in ***Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.***[5], has reaffirmed the principle that where parties agree to a particular court having jurisdiction, such agreement must be given effect to, and all other courts stand excluded. The Supreme Court further clarified that the use or non-use of expressions such as "exclusive jurisdiction" is not determinative, and what is relevant is the intention of the parties as gathered from the contract as a whole. The relevant observations are reproduced hereinbelow:

[5] (2020) 5 SCC 462

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> *"18.* ***Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts****. As held in Swastik, non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference.*
>
> *19. When the parties have agreed to have the "venue" of arbitration at Bhubaneswar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned is liable to be set aside."*
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> (**Emphasis supplied.**)

19. In the present case, the learned District Judge dismissed the Section 34 petition on the premise that since the arbitral proceedings were conducted at DIAC and at 5, Siri Fort Road, New Delhi, the Dwarka Courts lacked territorial jurisdiction. This approach, in the considered view of this Court, proceeds on an erroneous conflation of the concepts of seat and venue of arbitration.

20. It is now well settled that the seat of arbitration is the juridical centre of the arbitral proceedings and determines the court which exercises supervisory jurisdiction over the arbitration, whereas the venue is merely the place where arbitral hearings are conducted for convenience. The two concepts are distinct and cannot be used interchangeably. Merely because arbitral proceedings are conducted at a particular place does not *ipso facto* confer exclusive supervisory jurisdiction upon the courts of that place, unless such place is designated as the seat either by agreement of the parties or by a determination of the arbitral tribunal.

21. In the present case, neither the arbitration clause nor any subsequent agreement between the parties designated a seat of arbitration. The order dated 01.12.2016 passed by this Court in ARB.P. No.655/2016 merely directed that the arbitration be conducted under the aegis of DIAC and in accordance with its Rules. The said order does not designate DIAC, New Delhi, or any other place as the juridical seat of arbitration. The conduct of proceedings at DIAC, therefore, cannot be elevated to the status of a determination of seat. The direction issued in the aforesaid order is reproduced hereinbelow:

> *"7. Accordingly, with the consent of the parties, it is directed that an Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DIAC). The representatives of the parties shall appear before the Co-ordinator, DIAC on 23.12.2016 at 11.00 a.m. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules."*

22. The learned District Judge relied upon ***Cinepolis (India) (P) Ltd. v. Celebration City Projects (P) Ltd***[6] and ***BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd.***[7] to hold that the place where arbitration is conducted constitutes the seat. However, the reliance on these decisions is misplaced. In ***Cinepolis*** *(supra)*, the arbitration clause itself stipulated New Delhi as the place of arbitration, and in ***BBR (India)*** *(supra)*, the arbitral tribunal expressly determined Panchkula, Haryana, as the seat of arbitration. In both cases, therefore, the seat stood clearly identified. The present case stands on a fundamentally different footing, as no such determination exists.

[6] 2020 SCC OnLine Del 301
[7] (2023) 1 SCC 693

23. In the absence of an agreed or determined seat, the legal position laid down by the Supreme Court in ***BGS SGS SOMA JV v. NHPC Ltd.***[8] becomes applicable. The Supreme Court has categorically held that where no seat is designated, or where the stated place is merely a convenient venue, courts where a part of the cause of action has arisen may exercise jurisdiction. The Court further clarified that in such cases, Section 42 would apply, and the court first approached, provided it otherwise has jurisdiction, would exercise exclusive control over the arbitral proceedings. The relevant observations are as follows:

> "*61. Equally incorrect is the finding in Antrix Corporation Ltd. (supra) 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 agreementany 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 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*

[8] (2020) 4 SCC 234

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."

(Emphasis supplied.)

24. In the present case, it is undisputed that the suit premises is situated within the territorial jurisdiction of the Dwarka Courts and that substantial parts of the cause of action arose therein. Further, the Appellant had approached the Dwarka Courts at the earlier stage by filing the Section 34 petition. Additionally, the Respondent itself invoked the jurisdiction of the Dwarka Courts by filing an application under Section 29A(3) seeking extension of time for making the Award. Such conduct amounts to a clear submission to the jurisdiction of the Dwarka Courts and attracts the bar under Section 42.

25. The object of Section 42 is to avoid multiplicity of proceedings and conflicting decisions by ensuring that all applications arising out of an arbitration agreement are decided by one court alone. The dismissal of the Section 34 petition on a hyper-technical view of territorial jurisdiction defeats this legislative intent and results in unnecessary prolongation of arbitral litigation, contrary to the fundamental objectives of the A&C Act.

26. In light of the aforesaid discussion, this Court is of the considered opinion that the learned District Judge erred in law in holding that the Dwarka Courts lacked territorial jurisdiction to entertain the Section 34 petition. The Impugned Order, therefore, cannot be sustained, having been passed on an erroneous

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interpretation of the law relating to seat and venue of arbitration and the applicability of Section 42.

CONCLUSION:

27. In view of the foregoing discussion and for the reasons recorded hereinabove, we are of the considered view that the Impugned Judgment passed by the learned District Judge is liable to be set aside.

28. Accordingly, the present Appeal is allowed.

29. The learned District Court, Dwarka is directed to decide the matter afresh on merits, strictly in accordance with law and uninfluenced by any observations contained in this judgment.

30. The parties, through their counsel, are directed to appear before the learned District Court, Dwarka on 05.02.2026.

31. The present Appeal stands disposed of in the above terms.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

JANUARY 27, 2026/sp/sh