

In The Court of Addl.District judge No.1
Sriganganagar (Raj.)

Presiding Officer : Sunil Ranwaha, RJS

(Distt. Judge cadre)

Civil Misc. Case : 04/ 2018 (CIS No. 04/2018)

Surender Kumar & Ors.

Vs.

**Project Director- cum- S.E. Bikaner circle,
PWD office Bikaner & Ors.**

Application regarding jurisdiction of this court

Present:

- 1- Mr. Sanjay Potlia, Govt.Adv. for the Respondents./ Applicants.
- 2- Mr. A.S. Kalra and Mr. Dinesh Chhabra, Adv. for the Petitioners/ Non Applicants.

ORDER

Date: 18-07-2018

1- Respondents/applicants have filed application assailing the jurisdiction of this court to hear the matters pertaining to Arbitration and Conciliation Act, 1996 (hereinafter referred as the Act). Petitioners did not wish to file reply to the applications filed by the respondents and urged to hear the oral submissions.

2- In support of the application counsel for the applicants/ respondents submitted that the petitioners have filed the petitions for enforcement of the order dated 05.10.2016 passed by the arbitrator and to quash the orders subsequently passed by the arbitrator. It was submitted that the definition of the court has been provided in section 2(e) of the Act wherein it has been provided that the Court means the Principal civil court of the district. It has further been provided in the Act that jurisdiction regarding the petitions filed under the Act would of the Principal civil court. It was further submitted that the Court of District judge is the principal civil court of the district who only has the jurisdiction to hear the matters pertaining to the Act, therefore the Court of Additional District judge has no jurisdiction to hear the matters pertaining to the Act. Applicants relied on the decision of the Hon'ble Supreme Court reported in AIR 2015 SC 260, AIR 2014 SC 1093, S.B.C.W.P. No. 763/2005 (Raj. High court,JDPR)

Order Dated 21-08-2017,AIR 2011 KARNATKA 38, 2009(3) APEX COURT JUDGMENTS 404 (S.C.) and 2012 Cr.L.R. (SC) 726.

3- In reply counsel for the petitioners submitted that Court of Addl. District judge has the jurisdiction to hear the matters pertaining to the Act. It was submitted that originally the petitions were filed before the District judge Sriganaganagar who transferred the matters to this Court for hearing. It was submitted that District judge can transfer the cases to Additional District judge to hear the cases. It was submitted that Additional District judge has similar powers which are possessed by the District judge. It was further submitted that Court of Additional District judge is not inferior to the District judge and possesses the same powers which District judge posses, therefore Additional District judge has the jurisdiction to hear the cases pertaining to chapter 3 of the Act. Petitioner relied on the judgment reported in AIR 2015 (cal) page 236, 2005 (4) W.L.C. 663, 2005 W.L.C. 724.

4- Heard the arguments of the rival parties, perused the record and judgment cited before the Court. In the Act of 1996 section 2(e) describe the Court for the purpose of the Act which is reproduced herein.

Section 2(e) : "Court means principal civil court of the original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the question forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil court grade inferior to such principal civil court of the district, or any court of Small causes".

5- A careful reading of the definition given in the Act would show that for the purpose of the Act Court means the Principal civil court of the District having jurisdiction over the subject matter of the arbitration but not a court grade inferior to it or a court of small causes. Now question comes whether the court of Additional District Judge is a grade inferior court to the court of District Judge in a district. If we consider the set up of the civil courts in Rajasthan, a District judge is appointed for each District judge having administrative control over the all courts of the district. Additional District judges are appointed to discharge the functions of a District Judge which the District Judge may assign to them, and in discharge of those functions, they shall have the same powers as the District Judge. Article 233 and 236 of The Constitution of India provide that District judge includes Additional District judge.

6- In the state of Rajasthan Civil Courts are setup as per the provisions of Rajasthan Civil Courts Ordinance 1950 as amended from time to time. Section 6 prescribes classed of Courts which are (1) the Court of District Judge (2) the Special Court (3) the Court of Senior Civil Judge/ Senior Additional Civil Judge (4) Court of Civil Judge/ Additional Civil Judge. Section 10 of the ordinance provides for appointment of Additional Judges. Section 10 is reproduced herein:

Section 10 Additional Judges- (1)When the business pending before any District judge or District Judges so requires for its speedy disposal, the State Government may, upon the recommendation of the High Court sanction the appointment of such number of , Additional judges for the Court or Courts of such District Judge or District Judges, as may be necessary.

(2)The provision of section 9 shall apply also to the appointment, posting and promotion of, and filling up of vacancies amongst Additional judges.

(3) Any Additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those function, he shall exercise the same powers as the District Judge.

7- From the bare perusal of section 10 it is clear that Additional District Judge is having same power as the District Judge. It is settled law that on transfer or assignment of a particular case to him by the District Judge the Additional District Judge has all the powers, authority and jurisdiction of the District Judge himself so far as the case transferred to him. Whether Additional District Judge is inferior or subordinate to District Judge reference of section 3 of the Code of Civil Procedure, 1908 (hereinafter referred as CPC) would be useful with regard to present case. Section 3 of CPC provides that for the purposes of the Code, a District Judge is subordinate to the High Court and every Civil Court of a grade inferior to that District Judge and every Court of Small Causes is subordinate to the High Court and District Court. Thus as per section 3 of CPC Additional District Judge is not subordinate to District Judge and has the same powers of the District Judge. More so appeal from the orders passed by Additional District Judge lies to the High Court, therefore from above discussion it is clear that the Court of

Additional District Judge is not inferior to the District Judge.

8- So far as the judgment relied on by the applicants is concerned the Hon'ble Apex Court in the judgement AIR 2015 SC 260 has said that Principal civil court would have the jurisdiction with regard to the cases of the Act of 1996 but Apex Court has not excluded the jurisdiction of Additional District Judge in the matters pertaining to the Act of 1996. In this regard section 2 (e) of the Act of 1996 says that Court means principal civil court of the original jurisdiction in the district. If the intention of the legislation would have to confer the jurisdiction only on the Principal District Judge then certainly legislation would have used the word Principal District Judge of the District instead of the expression 'Principal Civil Court'. The intention of the legislature was not to exclude the jurisdiction of the Additional District Judge in the matters of arbitration therefore the expression used is Principal Civil Court but not a court grade inferior to the District Judge. Certainly the court of Additional District Judge is not grade inferior to the District Judge and after assignment of the case to him by the District Judge, he is the Principal civil court regarding the matter assigned to him. In the case reported in AIR (cal) 2016 page 236 it was decided that court of Additional District Judge is not a court grade inferior to the court of District Judge and has the same powers as the District judge possess. It was further held that after assigning the matter to him by the District Judge, Additional District Judge is the principal civil court for such assigned matter. Hon'ble Rajasthan High Court has also held that the Court of Additional District Judge is competent to hear the matter to arbitration. In light of above discussion this court is of the view that after the case has been assigned/transferred to the Additional District Judge by the District Judge, the court of Additional District Judge has the jurisdiction in the matters pertaining to arbitration. So far as the other judgements relied upon by the applicants are of no help to the applicant as per the above discussion.

9- Upshot of the above discussion is that the applications filed by the respondents/applicants deserve to be dismissed and hereby dismissed accordingly.

(Sunil Ranwaha)

10- Order pronounce in open court on July 18, 2018.

(Sunil Ranwaha)