

Raheja Developers Limited v. Proto Developers and Technologies Limited & Ors¹.**BACKGROUND**

1. Parties entered into a Development Agreement dated 2 May 2006 ("**Agreement**"), wherein they had vested exclusive jurisdiction over all disputes under the Agreement to the courts at Delhi and fixed the venue of arbitration as Delhi as well.
2. Arbitration was initiated by one of the parties following certain disputes, and subsequently an application under section 29-A (5) of the Arbitration and Conciliation Act, 1996 ("**the Act**") was filed before the Delhi High Court ("**Delhi HC**") seeking extension of time for making the arbitral award.
3. The issue which arose for consideration before the Delhi HC was whether, in light of section 42 of the Act, it would have jurisdiction to entertain the application though the parties had previously filed a section 11 application before the High Court of Punjab and Haryana ("**Punjab HC**").

OBSERVATIONS

4. The Delhi HC referred to the decision in *State of West Bengal v. Associate Contractors*², wherein the Supreme Court culled out the following principles-

"(a) Section 2(1)(e) contains an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" for the purpose of Part-I of the Arbitration Act, 1996.

(b) The expression "with respect to an arbitration agreement" makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an Award is pronounced under Part-I of the 1996 Act.

(c) However, Section 42 only applies to applications made under Part-I if they are made to a court as defined. Since applications made under Section 8 are made to judicial authorities and since applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.

(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.

(e) In no circumstances can the Supreme Court be "court" for the purposes of Section 2(1)(e), and whether the Supreme Court does or does not retain seisin after appointing an Arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil court having original jurisdiction in the district as the case may be.

(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-I.

(g) If a first application is made to a court which is neither a Principal Court of original jurisdiction in a district or a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject matter jurisdiction would be outside Section 42."

5. Relying upon the above decision, the Delhi HC held that section 42 of the Act would not be attracted in the present case. The Delhi HC observed that if it otherwise had jurisdiction to entertain the petition under section 29-A of the Act, such jurisdiction would not be ousted merely because an application was filed under section 11 of the Act.
6. The Delhi HC also referred to the decision of the Supreme Court in *Datawind Private Ltd & Ors*³, wherein it was held that, once the seat of arbitration is designated under a contract, it is akin to an exclusive jurisdiction clause. The Delhi HC relied on the said decision to hold that, since the seat and court having exclusive jurisdiction in the present case was New Delhi, it

¹ *Raheja Developers Limited v. Proto Developers and Technologies Limited & Ors*, 2018 SCC OnLine Del 6966

² *State of West Bengal v. Associate Contractors*, 2015 (1) SCC 32

³ *Indus Mobil Distribution (P) Ltd. v. Datawind Innovations Private Limited & Ors.*, (2017) 7 SCC 678

had the jurisdiction to decide the application.

CONCLUSION AND ANALYSIS

7. In the present case, the Delhi HC relied on *Associated Contractors*⁴, which rightly held that section 42 of the Act would not be attracted in cases merely because a section 11 application was filed. However, what remains to be seen is how the courts will decide on the applicability of section 42 of the Act to cases other than section 11, in light of the *Datawind*⁵ judgment.

SC HELD: THE REQUIREMENT OF CERTIFICATE FOR ELECTRONIC RECORDS UNDER SECTION 65-B (4) CAN BE RELAXED BY THE COURT IN THE INTEREST OF JUSTICE

*Shafhi Mohammad v. State of Himachal Pradesh*⁶

One of the issues that arose for consideration before the Supreme Court in *Shafhi Mohammad*⁷ was whether the requirement of furnishing a certificate under Section 65-B of the Indian Evidence Act, 1872 (“**Evidence Act**”) is mandatory for the evidence to be admissible.


Relying upon its decisions in *Ram Singh And Others*⁸, *Tukaram S. Dighole*⁹, *Tomaso Bruno*¹⁰, and *Navjot Sandhu*¹¹, the Apex Court laid down as follows:

- i) Sections 65-A and 65-B are procedural provisions and clarificatory in nature.
- ii) Sections 65-A and 65-B cannot be construed as a complete code on the subject of admissibility of electronic evidence.
- iii) The procedural requirement to furnish a certificate under Section 65-B (4) of the Evidence Act, is applicable only when the electronic evidence is produced by a person who is in a position to provide such certificate i.e. a person who is in control of the electronic device from which the electronic evidence was generated.
- iv) If the electronic evidence is produced by a person who does not have possession of the electronic device from which the document was generated, Sections 63 and 65 of the Evidence Act can be invoked. The procedure prescribed under Section 63 and 65 of the Evidence Act will safeguard parties who are in possession of authentic evidence, but are unable to prove such evidence in the absence of a certificate under Section 65-B(4) of the Evidence Act.

The Supreme Court ruled that “the applicability of the requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies.”

While the decision of the SC is welcome as it expressly extends the applicability of Sections 63 and 65 of the Evidence Act relating to admissibility of secondary evidence to electronic records, the circumstances under which the courts will deem it fit to relax the requirement of submitting a certificate under Section 65-B of the Evidence Act remains to be seen.

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⁴ *State of West Bengal v. Associate Contractors*, (2015) 1 SCC 32

⁵ *Indus Mobil Distribution (P) Ltd. v. Datawind Innovations Private Limited & Ors.*, (2017) 7 SCC 678

⁶ SLP (Cri.) No. 2302 of 2017

⁷ SLP (Cri.) No. 2302 of 2017

⁸ *Ram Singh v. Ram Singh*, 1985 Supp SCC 611

⁹ *Tukaram S. Dighole v. Manikrao Shivaji Kokate*, (2010) 4 SCC 329

¹⁰ *Tomaso Bruno v. State of U.P.*, (2015) 7 SCC 178

¹¹ *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600