IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. No. 136 of 2015

In the matter of :
Sri Sushanta Malik @ Susanta Malik
Vs.
Srei Equipment Finance Limited and Anr.

B E F O R E:
The Hon'ble Justice INDIRA BANERJEE
And
The Hon'ble Justice SAHIDULLAH MUNSHI

For the appellant : Mr. Gopal Chandra Ghosh,
Mr. Om Narayan Rai

For the respondents : Mr. Swatarup Banerjee,
Mr. Subhankar Chakraborty,
Mr. Aasif Hussain,
Mr. Avishek Guha,
Mr. Arijit Ghosh.

Heard on : 03.07.2015, 08.07.2015, 16.07.2015, 24.07.2015

Judgment on : 08.09.2015

INDIRA BANERJEE : By an order dated 19th March, 2015, the Single Bench (Tandon, J.) has referred to the Division Bench, the question of whether the learned City Civil Court has jurisdiction to entertain proceedings under the Arbitration and Conciliation Act, 1996, hereinafter referred to as 'the 1996 Act', where the pecuniary value of the subject matter of arbitration, is less than Rs.10 lakhs or whether the High Court in exercise of its ordinary original civil jurisdiction has exclusive jurisdiction to entertain all proceedings under the 1996 Act, irrespective of pecuniary value thereof.

The question has arisen in view of the definition of 'Court' in Section 2(1)(e) of the 1996 Act which is set out hereinbelow for convenience:-

> *"2. Definitions. – (1) In this part, unless the context otherwise requires, -*

> *(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction,* ***having jurisdiction to decide the questions 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 of a grade inferior to such principal Civil Court, or any Court of Small Causes;"*

Section 9 of the 1996 Act provides that a party may before, or during arbitral proceedings, or at any time after the making of the arbitral award, but before it is enforced in accordance with Section 36, apply to a Court for inter alia interim measures of protection in respect of any of the matters specified in Section 9(ii) of the 1996 Act. Similarly, under Section 14(2), parties may apply to the Court to decide any controversy on the termination of the mandate of the arbitrator, if the arbitrator becomes de jure or de facto unable to perform his functions, or fails to act without delay, or withdraws from his office, or if the Court finds that the parties had agreed to termination of his mandate. Section 34 provides for recourse to a Court, against an arbitral award, on grounds stipulated in Section 34(2).

Section 42 of the 1996 Act provides as follows:-

> *"**Jurisdiction. –** Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."*

Section 42 provides that notwithstanding anything contained elsewhere in Part I of the 1996 Act, or in any other law for the time being in force, where in respect of an arbitration agreement, any application under Part I has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings, and all subsequent applications arising out of that arbitration

agreement or out of the arbitral proceedings, shall be made in that Court and in no other Court.

There can be no doubt, that in view of the definition of 'Court' in Section 2(1)(e) of the 1996 Act, a Court for the purpose of Section 9, or for that matter, Section 34 or Section 14(2), would mean the principal Civil Court of original jurisdiction in the district, and would include 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 would not include any Civil Court inferior to such principal Civil Court, or any Court of small causes.

In ***Mrs. Hosenara Begum Vs. Sk. Asraf Ali & Ors.*** being A.P. No.1048 of 2013, Sanjib Banerjee, J., held that "*In view of Section 2(1)(e) of the 1996 Act, not all civil courts of original civil jurisdiction are entitled to entertain petitions under Part-I of the 1996 Act. Only a principal civil Court of original jurisdiction in a district is entitled to exercise jurisdiction under the 1996 Act and a principal civil Court of original jurisdiction in a district would be the High Court if it exercises ordinary original civil jurisdiction. As per the relevant statute as at the time that the previous Section 9 petition was filed by this petitioner, the City Court was entitled to entertain matters which were below the floor-limit set for the High Court to exercise its ordinary original civil jurisdiction. However, it does not appear that the value of a claim or a matter can be of any relevance in a petition filed under Part-I of the 1996 Act in view of the definition of "Court" in such Act. Not only has the word "principal" been used in the opening limb of the definition, but it has been emphasised in the last limb of the definition that the Court authorised to receive matters covered by part-I of the 1996 Act would not include any civil Court or a Court inferior to the principal civil Court identified in the opening part of the definition.*

In such circumstances, it does not appear that the City Civil Court at Calcutta has any jurisdiction to receive a petition under the Arbitration and Conciliation Act, 1996 as long as the High Court at Calcutta exercises ordinary original civil jurisdiction."

In this revisional application under Article 227 of the Constitution of India, the respondent financier questioned the jurisdiction of the City Civil Court to entertain an application under the 1996 Act, relying on the judgment of Sanjib Banerjee, J., in ***Mrs. Hosenara Begum Vs. Sk. Asraf Ali & Ors. (supra).*** Since Tandon, J., could not agree with the finding of Sanjib Banerjee, J., that the value of the claim was of no relevance in a petition filed under Part I of the 1996 Act, and that the City Civil Court would not have jurisdiction to receive a petition under the 1996 Act, as long as the High Court exercised ordinary original civil jurisdiction, irrespective of whether the value of the claim exceeded Rs.10 lakhs or not, Tandon, J., referred the question to the Division Bench.

Mr. Satarup Banerjee appearing on behalf of the respondent financier submitted that the City Civil Court being subordinate to the High Court exercising its ordinary original civil jurisdiction, it was only the Original Side of the High Court, which was the principal Civil Court of original jurisdiction in the district. The High Court alone could, therefore, entertain applications under Sections 9, 14 or 34 of the 1996 Act.

There can be no doubt that the City Civil Court is a Court subordinate to, and therefore, inferior to the High Court, as argued by Mr. Banerjee. However, 'Court' has been defined as the principal civil Court of original jurisdiction in a district and would include the High Court exercising its ordinary original civil jurisdiction, provided it has jurisdiction to decide the

questions forming the subject matter of arbitration, if the same had been the subject matter of a suit.

In construing the expression 'Court' in Section 2(1)(e), we cannot overlook the phrase "having jurisdiction to decide the questions forming the subject-matter of the arbitration, if the same had been the subject-matter of a suit".

The question of what is jurisdiction fell for consideration before a three Judge Bench of the Supreme Court in ***Official Trustees West Bengal Vs. Sachindra Nath Chatterjee*** reported in ***AIR 1969 SC 823***. Relying on the Full Bench judgement of this Court in ***Hriday Nath Roy Vs. Ramchandra*** reported in ***AIR 1921 Cal 34 (FB)*** the Supreme Court held:

> *"**13.** What is meant by jurisdiction? This question is answered by Mukherjee Acting C.J., speaking for the full bench of the Calcutta High Court in Hirday Nath Roy v. Ramchandra Barna Sarma, ... explained what exactly is meant by jurisdiction. We can do not better than to quote his words :*
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> *"In the order of Reference to a Full Bench in the case of Sukhlal v. Tara Chand, (1905) ILR 33 Cal 68 (FB), it was stated that jurisdiction may be defined to be the power of a Court to 'hear and determine a cause, to adjudicate and exercise any judicial power in relation to it:' in other words, by jurisdiction is meant 'the authority which a "Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.' An examination of the cases in the books discloses numerous attempts to define the term 'jurisdiction', which has been stated to be 'the power to hear and determine issues of law and fact' "the authority by which the judicial officers take cognizance of and decide causes"; 'the authority to hear and decide a legal controversy' "the power to hear and determine the subject matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them"; "the power to hear, determine and pronounce judgment on the issues before the Court"; "the power or*

authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgements into effect"; "the power to enquire into the facts, to apply the law, to pronounce the judgement and to carry it into execution". (Emphasis (herein ' ') supplied).

Proceeding further the learned Judge observed:

"This jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value and nature of the subject matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matters of prescribed value. It may be competent to deal with controversies of a specified character, for instance, testamentary or matrimonial causes, acquisition of lands for public purposes, record of rights as between landlords and tenants. This classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject-matter is obviously of a fundamental character."

The question is whether the High Court exercising its ordinary original civil jurisdiction, could have entertained a suit of pecuniary value of less than Rs.10 lakhs. The answer to the aforesaid question would necessarily have to be in the negative, in view of Section 5(2) of the City Civil Court Act, 1953, which provides that subject to the provisions of Sub-sections (3) and (4) of Section 5, the City Civil Court shall have jurisdiction and the **High Court shall not have jurisdiction** to try suits and proceedings of a civil nature, not exceeding Rs.10 lakhs in value.

In view of sub-section (4) of Section 5, the City Civil Court does not have jurisdiction to try certain classes of suits and proceedings, such as admiralty suits, and other suits as specified in the first Schedule to the City Civil Court Act, which are exclusively triable by the High Court, irrespective of the pecuniary value thereof.

The State Legislature is, inter alia, competent to legislate in respect of administration of justice, constitution and/or organization of Courts except the Supreme Court and the High Court and to invest all Courts in the State, including the High Court with jurisdiction and powers in respect of any matters in List II of the Seventh Schedule of the Constitution. Just as the State Legislature can invest the High Court with jurisdiction and powers, the State Legislature can also denude the High Court of the State, of jurisdiction and powers except ofcourse, those guaranteed by the Constitution of India.

The City Civil Court Act, enacted by the State Legislature is valid legislation as held by Sinha, J., in ***Amarendra Nath Roy Chowdhury Vs. Bikash Chandra Ghosh and Anr.*** reported in ***61 CWN 630***, cited by Mr. Ghosh. Sinha, J., followed the Constitution Bench judgment of the Supreme Court in ***State of Bombay Vs. Narottam Das Jethabai & Anr*** reported in ***AIR 1951 SC 69***, where the Supreme Court upheld the validity of the Bombay City Civil Court Act, 1948.

In ***Nakuleswar Banerjee and Ors. Vs. Sakhi Sova Dasi*** reported in ***70 CWN 371***, a Division Bench of this Court affirmed the power of the City Civil Court to entertain suits which would have lain in the Original Side of this Court, but for the amending Act XXVII of 1957.

Section 21 of the City Civil Court Act gives overriding effect to the provisions of the City Civil Court Act notwithstanding anything to the contrary in any other law, including in particular, the Letters Patent of the High Court.

The City Civil Court (Amendment) Act, 2013 (West Bengal Act XVIII of 2013) amended certain provisions of the City Civil Court Act, 1953, including Section 5(2) referred to above, by adding after Section 5(2) the following proviso:

"Provided that the City Civil Court and the High Court at Calcutta shall have concurrent jurisdiction to try suits and proceedings of a civil nature, the value of which exceeds rupees ten lakhs but does not exceed rupees one crore."

In the ***State of Maharashtra Through Executive Engineer, Road Development Division No.111, Panvel and Anr. Vs. Atlanta Limited*** reported in ***(2014) 11 SCC 619***, cited by Mr. Banerjee, the Supreme Court held as follows:-

"..... In terms of the mandate of Section 15 of the Code of Civil Procedure, the initiation of action within the jurisdiction of Greater Mumbai had to be "in the court of lowest grade competent to try it". We are, however, satisfied, that within the area of jurisdiction of the Principal District Judge, Greater Mumbai, only the High Court of Bombay was exclusively the competent court (under its "ordinary original civil jurisdiction") to adjudicate upon the matter. The above conclusion is imperative from the definition of the term "court" in Section 2(1)(e) of the Arbitration Act:

24.1. *Firstly, the very inclusion of the High Court "in exercise of its ordinary original civil jurisdiction", within the definition of the term "court", will be rendered nugatory, if the above conclusion was not to be accepted. Because, the "principal Civil Court of Original Jurisdiction in a district", namely, the District Judge concerned, being a court lower in grade than the High Court, the District Judge concerned would always exclude the High Court from adjudicating upon the matter. The submission advanced by the learned counsel for the appellant cannot therefore be accepted, also to ensure the inclusion of "the High Court in exercise of its ordinary original civil jurisdiction" is given its due meaning. Accordingly, the principle enshrined in Section 15 of the Code of Civil Procedure cannot be invoked whilst interpreting Section 2(1)(e) of the Arbitration Act.*

24.2. *Secondly, the provisions of the Arbitration Act, leave no room for any doubt, that it is the superior-most court exercising original civil jurisdiction, which had been chosen to adjudicate disputes arising out of arbitration agreements, arbitral proceedings and arbitral awards. Undoubtedly, a "Principal Civil Court of*

Original Jurisdiction in a district", is the superior-most court exercising original civil jurisdiction in the district over which its jurisdiction extends. It is clear that section 2(1)(e) of the Arbitration Act having vested jurisdiction in the "Principal Civil Court of Original Jurisdiction in a district", did not rest the choice of jurisdiction on courts subordinate to that of the District Judge. Likewise, "the High Court in exercise of its ordinary original jurisdiction", is the superior-most court exercising original civil jurisdiction, within the ambit of its original civil jurisdiction. On the same analogy and for the same reasons, the choice of jurisdiction will clearly fall in the realm of the High Court, wherever a High Court exercises "ordinary original civil jurisdiction".

24.3. *Under the Arbitration Act, therefore, the legislature has clearly expressed a legislative intent different from the one expressed in Section 15 of the Code of Civil Procedure. The respondent had chosen to initiate proceedings within the area of Greater Mumbai, it could have done so only before the High Court of Bombay. There was no other court within the jurisdiction of Greater Mumbai, where the respondents could have raised their challenge. Consequently, we have no hesitation in concluding that the respondent by initiating proceedings under Section 34 of the Arbitration Act, before the Original Side of the High Court of Bombay, had not violated the mandate of Section 2(1)(e) of the Arbitration Act. Thus viewed, we find the submission advanced at the hands of the learned counsel for the appellants, by placing reliance on Section 15 of the Code of Civil Procedure, wholly irrelevant."*

In ***Atlanta Limited (supra),*** an application under Section 34 for setting aside an award, of pecuniary value in respect of which the Bombay High Court had jurisdiction to decide a suit in its Original Side, was filed in the Bombay High Court. The appellant contended that the application should have been filed in the District Court at Thane, which also had concurrent jurisdiction, in view of Section 15 of the Code of Civil Procedure, which requires that a suit should be filed in the lowest Court competent to decide the same.

The proposition which emerges from the judgement of the Supreme Court in ***Atlanta Limited (supra)***, is that where the District Court and the High Court have concurrent pecuniary jurisdiction, an application should be filed before the High Court in view of Section 2(1)(e) of the 1996 Act.

It does not appear to have been the intention of the 1996 Act, that an application should be filed in the High Court in its Original Side, even though the High Court might lack pecuniary jurisdiction. In this context, it would be pertinent to note the observation of the Supreme Court in paragraph 33 of its judgment in ***Atlanta Limited (supra)***, which is set out hereinbelow :

> *"**33.** It is not the case of the appellants before us, that because of pecuniary dimensions, and/or any other consideration(s); jurisdiction in the two alternatives mentioned above, would lie with the Principal District Judge, Greater Mumbai. Under the scheme of the provisions of the Arbitration Act, therefore, if the choice is between the High Court (in exercise of its "ordinary original civil jurisdiction") on the one hand, and the "Principal Civil Court of Original Jurisdiction" in the district i.e. the District Judge on the other; Section 2(1)(e) of the Arbitration Act has made the choice in favour of the High Court. This in fact impliedly discloses a legislative intent. To our mind therefore, it makes no difference, if the "Principal Civil Court of Original Jurisdiction", is in the same district over which the High Court exercises original jurisdiction, or some other district. In case an option is to be exercised between a High Court (under its "ordinary original civil jurisdiction") on the one hand, and a District Court (as "Principal Civil Court of Original Jurisdiction") on the other, the choice under the Arbitration Act has to be exercised in favour of the High Court."*

In ***Atlanta Limited (supra)*** the Supreme Court held that when an option was to be exercised between a High Court and a District Court, the choice

under Arbitration Act has to be exercised in favour of the High Court. This is not a case where the appellant had any choice of filing the application in the High Court as High Court lacked pecuniary jurisdiction.

In ***Md. Nasim Akhtar Vs. Union of India and Ors.*** reported in ***AIR 2015 CALCUTTA 64,*** the award was of Rs.71,58,180/-. This Court exercising its original jurisdiction had the pecuniary jurisdiction to decide the subject matter of arbitration as if it were the subject matter of a suit, though in view of the insertion of the proviso to Section 5(2) of the City Civil Court Act, by the City Civil Court Amendment Act of 2013, the City Civil Court also had concurrent jurisdiction. Somadder, J. rightly held that it was the High Court and not the City Civil Court, which was the Principal Civil Court competent to entertain and adjudicate applications under the 1996 Act.

In support of his submission that the High Court would have exclusive jurisdiction to entertain applications under the 1996 Act, irrespective of pecuniary value, Mr. Banerjee cited a Full Bench judgment of the Bombay High Court in ***M/s. Fountain Head Developers and etc. etc. Vs. Mrs. Maria Arcangela Sequeira deceased by L.R.'s and Ors.,*** reported in ***AIR 2007 Bombay 149***.

In ***M/s. Fountain Head Developers (supra)***, the question was whether the Civil Judge (Senior Division) or the District Court should be construed as being the principal Court of original jurisdiction, for the purpose of a petition under Section 34 of the 1996 Act.

The Full Bench of Bombay High Court compared the definition of Court in Section 2(1)(e) of the 1996 Act with the definition of 'Court' is Section 2(c) of the Arbitration Act, 1940 set out hereinbelow for convenience:-

"(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 arbitration proceedings under section 21, including a Small Cause Court;"

On such comparison, the Special Bench held that the definition of 'Court' in the Act of 1996 and the definition of Court in the Arbitration Act 1940 would manifestly and very clearly demonstrate that in the Act of 1940 'Court' was defined to mean a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference as if the same had been the subject matter of a suit. However, under the 1996 Act, the meaning of the term 'Court' had been narrowed down and confined to mean the principal civil Court of original jurisdiction in a district and included the High Court in exercise of its ordinary original civil jurisdiction **having jurisdiction to decide the subject matter of the arbitration, if the same had been the subject matter of a suit**.

The Special bench held:

".....The Parliament has, clearly, narrowed down the definition of the term "Court". The only condition contemplated in the definition of "Court" is that ***it should have jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit.*** *In our opinion, the definition of "Court" in the Act of 1996, does not contemplate that such Court should have jurisdiction over the subject matter of the dispute. What it means is the jurisdiction to decide "the question forming the subject matter of the arbitration" if the same had been the subject matter of a suit. The pecuniary jurisdiction of a Court, therefore, has no significance for the purposes of the Act of 1996. The Court, however, must have a territorial jurisdiction. The expression "subject matter of the arbitration", therefore, cannot be read to mean a Court where the suit can be filed in respect of that cause of action and would, therefore, cover all the provisions from Sections 16 to 20 of the Code of Civil Procedure. In other words, the pecuniary*

jurisdiction is no longer a material for deciding the jurisdiction of a Court being the principal Court of original jurisdiction for the purpose of a petition under Section 34 of the Arbitration and Conciliation Act.

.....

18. *We, accordingly, answer the question formulated by us in paragraph 2 of the judgement as follows: The principal civil Court of original jurisdiction in a district for the purpose of a petition under Section 34 of the Act of 1996 is a District Court and does not include any other Court inferior to the District Court."*

As observed by the Special Bench of Bombay High Court, the condition contemplated in the definition of Court in Section 2(1)(e) of the 1996 Act is that, **it should have jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been the subject matter of a suit.**

Mr. Banerjee emphasized on the sentence "The pecuniary jurisdiction of a Court has no significance for the purpose of the 1996 Act", to argue that the High Court being superior to the City Civil Court, it was the High Court which was the Principal Civil Court, and therefore competent to entertain an application under the 1996 Act, irrespective of the pecuniary value of the claim.

A judgment is a precedent for the issue of law that is decided. Sentences in a judgement must be read and understood in the context of the statutes under consideration of the Court and its findings on the issues before it. Sentences in a judgment are not to be read in isolation, in a truncated manner, and construed as statutes.

We are unable to accept the submission that the sentence "The pecuniary jurisdiction of a Court has no significance for the purpose of the 1996 Act" can be construed as a finding of the Special Bench of Bombay High

Court that the High Court might entertain an application under the 1996 Act, even if it lacks pecuniary jurisdiction to entertain a suit in respect of the subject matter of arbitration.

Mr. Ghosh argued, and perhaps rightly, that the Special Bench judgement of the Bombay High Court does not operate as a binding precedent on this Court. However, a judgement rendered by a Bench of coordinate strength or by a larger Bench of a different High Court, on a question in issue before this Court is certainly to be given due respect and followed unless the Court finds reasons for not concurring with the judgment.

The judgment of the Special Bench of the Bombay High Court was rendered inter alia upon consideration of laws applicable in Maharashtra, the provisions of which are materially different from the provisions of the Bengal, Agra and Assam Civil Courts Act, 1887, applicable in the State of West Bengal or the provisions of the City Civil Courts Act, 1953, in consideration before us.

In ***M/s. Sundaram Finance Ltd Vs. M.K.Kurian and Anr.*** reported in ***AIR 2006 Mad. 218***, the issue before the Division Bench of the Madras High Court was, whether the Madras High Court, exercising original civil jurisdiction under the Letters Patent, or the principal Judge of the City Civil Court constituted under the Chennai City Civil Court Act, 1892, was 'Court' within the meaning of Section 2(1)(e) of the 1996 Act, competent to exercise jurisdiction in respect of matters under the 1996 Act, value of which did not exceed Rs.10 lakhs.

The Division Bench of Madras High Court held that the High Court would have jurisdiction since the Civil Court had limited pecuniary jurisdiction to deal with matters of value of less than Rs.10 lakhs, whereas under Clause 12 of the Letters Patent, the High Court had unlimited jurisdiction and this

jurisdiction had expressly been saved under Section 16 of the Chennai City Civil Courts Act.

Section 16 of the Chennai City Civil Court Act, previously known as the Madras City Civil Court Act, provides as follows:-

> *"**16.** Nothing in this Act contained shall affect the original civil jurisdiction of the High Court:*
>
> *Provided that –*
>
> *(1) If any suit or other proceeding is instituted in the High Court which, in the opinion of the Judge who tries the same (whose opinion shall be final), ought to have been instituted in the City Court, no costs shall be allowed to a successful plaintiff and a successful defendant shall be allowed the costs [at the maximum admissible under the Madras High Court Fees Rules for suits set down for final disposal];*
>
> *(2) in any suit or other proceeding pending at any time in the High Court, any Judge of such Court may, at any stage thereof make an order transferring the same to the City Court if in his opinion such suit or proceeding is within the jurisdiction of that Court and should be tried therein;*
>
> *(3) in any suit or other proceeding so transferred. The Court-fees Act, 1870, shall apply, credit being given for any fees levied in the High Court."*

Since, the High Court as well as the City Civil Court had jurisdiction to entertain suits of the subject matter of up to Rs.10 lakhs, the Court rightly held that, it was the High Court which would be the principal Court, in view of the definition of Court under Section 2(1)(e) of the 1996 Act.

In contrast to Section 16 of the Chennai City Civil Court Act, the City Civil Court Act enacted by the West Bengal State Legislature, bars the

jurisdiction of the High Court to try suits and proceedings of a civil nature, not exceeding Rs.10 lakhs in value. Furthermore, Section 21 of City Civil Court Act gives overriding effect to the City Civil Court Act over the Letters Patent.

In ***State of West Bengal and Ors. Vs. Associated Contractors*** reported in ***(2015) 1 SCC 32***, cited by Mr. Banerjee, the Supreme Court drew a distinction between the definition of 'Court' in Section 2(c) of the Arbitration Act, 1940 and Section 2(1)(e) of the 1996 Act, which was materially different and held that the Supreme Court could not possibly be considered to be 'Court' within the meaning of Section 2(1)(e), even if it retains seisin over the arbitral proceedings inter alia holding:

> *".....Firstly, as noted above, the definition is exhaustive and recognizes only one of two possible courts that could be "court" for the purpose of Section 2(1)(e). Secondly, under the 1940 Act, the expression "civil court" has been held to be wide enough to include an appellate court, and therefore would include the Supreme Court as was held in the two judgments aforementioned under the 1940 Act. Even though this proposition itself is open to doubt, as the Supreme Court exercising jurisdiction under Article 136 is not an ordinary appellate court, suffice it to say that even this reason does not obtain under the present definition, which speaks of either the Principal Civil Court or the High Court exercising original jurisdiction. Thirdly, if an application would have to be preferred to the Supreme Court directly, the appeal that is available so far as applications under Sections 9 and 34 are concerned, provided for under Section 37 of the Act, would not be available. Any further appeal to the Supreme Court under Article 136 would also not be available. The only other argument that could possibly be made is that all definition sections are subject to context to the contrary. The context of Section 42 does not in any manner lead to a conclusion that the word "court" in Section 42 should be construed otherwise than as defined. The context of Section 42 is merely to see that one court alone shall have jurisdiction over all applications with respect to arbitration agreements which context does not in any manner enable the Supreme Court to become a "court" within the meaning of Section 42.*

> *It has aptly been stated that the rule of forum conveniens is expressly excluded by Section 42 see JSW Steel Ltd. v. Jindal Praxair Oxygen Co. Ltd., SCC at p. 542, para 59). Section 42 is also markedly different from Section 31(4) of the 1940 Act in that the expression "has been made in a court competent to entertain it" does not find place in Section 42. This for the reason that, under Section 2(1)(e), the competent court is fixed as the Principal Civil Court exercising original jurisdiction or a High Court exercising original civil jurisdiction, and no other court. For all these reasons, we hold that the decisions under the 1940 Act would not obtain under the 1996 Act, and the Supreme Court cannot be "court" for the purposes of Section 42."*

The question of whether the High Court exercising ordinary original civil jurisdiction would be 'Court' within the meaning of Section 2(1)(e) of the 1996 Act, even though it might lack pecuniary jurisdiction to entertain a suit of equivalent pecuniary value, was neither in issue nor decided by the Supreme Court in ***Associated Cement (supra)***.

In ***Surat Singh Vs. State of Himachal Pradesh and Anr.*** reported in ***2003(3) Arb. LR 606 (HP) (DB)***, cited by Mr. Banerjee, a Division Bench of the Himachal Pradesh High Court held that, irrespective of the valuation of the subject matter of a reference or any application filed under Part 1 of the 1996 Act, including an application filed under Section 34 of the 1996 Act, no Court other than the Court of a District Judge would have the jurisdiction to decide such a reference or such an application. In other words, the Court of Senior Sub-Judge would not have the jurisdiction to decide such a reference or such an application.

Significantly, in ***Surat Singh's*** case, an application under Section 34 of the 1996 Act, for setting aside an arbitral award, was first filed in the High Court. On noticing that the High Court did not have the pecuniary jurisdiction, a Single Bench directed that the application for setting aside the award be

returned to the petitioner, for being presented in the Court of the Senior Sub Judge, Shimla. The Senior Sub-Judge, Shimla entertained a doubt with regard to his jurisdiction to deal with an application for setting aside an arbitral award under Section 34 of the 1996 Act in view of the definition of 'Court' in Section 2(1)(e) of the 1996 Act.

In ***Surat Singh (supra)*** the Court of the District Judge did not lack pecuniary jurisdiction to entertain the claim. The Court of the District Judge obviously being a Court of higher grade than the Court of Sub-Judge, the Court of the District Judge would be the principal Civil Court. Moreover, the Division Bench did not hold that the High Court should have decided the application, notwithstanding the pecuniary value of the arbitral award.

A statute must be construed and interpreted by ascertaining the intention of the legislature, which enacted the statute. It is the duty of the Courts to give effect to "the mens or sententia legis", that is the true intention of the legislature.

The intention of the Legislature must be found by reading the statute as a whole. It is well-settled that when the words of a statute are clear, plain and unambiguous, that is, they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. This proposition finds support from the judgment of the Supreme Court in ***Nelson Motis Vs. Union of India*** reported in ***AIR 1992 SC 1981 (p. 1984)***.

The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said, as held by the Supreme Court in

Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodina of Vested Forests reported in ***AIR 1990 SC 1747***.

A construction, which requires for its support, addition or substitution of words, or which results in rejection of words should be avoided. The Court cannot add to or alter the statutory provisions, or by construction, make up deficiencies in the statutory provisions. It is contrary to all rules of construction to read words into a statute, or overlook words in a statute, unless it is absolutely necessary to do so, to give effect to the statute.

In this case, as observed above, Section 5(2) bars the jurisdiction of this High Court to try suits and proceedings of a civil nature not exceeding Rs.10 lakhs in value in its Original Side and Section 21 of the City Civil Court Act provides that the provisions of the City Civil Court Act shall have effect, notwithstanding anything contrary in any other law, including in particular the Letters Patent of the High Court. The City Civil Court Act, 1953 has overriding effect over the Letters Patent of the High Court.

In construing 'Court' under Section 2(1)(e) of the 1996 Act, we cannot overlook the phrase "having jurisdiction to decide the question forming the subject matter of the arbitration, if the same can be the subject matter of a suit". As held by the Full Bench of this Court in ***Hriday Nath Roy (supra)*** and affirmed by the Supreme Court in ***Official Trustees West Bengal Vs. Sachindra Nath Chatterjee (supra)***, jurisdiction may have to be considered with reference to place, value and nature of the subject matter. The classification of jurisdiction into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject matter is of a fundamental character.

In construing the phrase "having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject

matter of a suit" in the definition of "Court" in Section 2(1)(e) of the 1996 Act, there is no reason why the expression jurisdiction should only be read as territorial jurisdiction, to the exclusion of pecuniary jurisdiction. Such a construction would amount to substitution of the words having jurisdiction in Section 2(1)(e) with the words having territorial jurisdiction or alternatively reading into the definition, the words 'excluding territorial jurisdiction', which is not permissible.

The 1996 Act being a comprehensive special statute, exhaustively dealing with matters relating to arbitration, an application under the said Act would have to be filed before the highest Civil Court in the district, including the High Court, exercising original civil jurisdiction, and having jurisdiction to decide the subject matter of the arbitration as if the same had been the subject matter of a suit, notwithstanding Section 15 of the Civil Procedure Code, which requires a suit to be filed in the lowest Court having pecuniary jurisdiction. However, where the Court lacks pecuniary jurisdiction it would not be Court within the meaning of Section 2(1)(e) of the 1996 Act.

It is true that there is a difference between the definition of Court in Section 2(1)(e) of the 1996 Act and the definition of Court in Section 2(c) of the Arbitration Act, 1940. Under the Arbitration Act, 1940 an application could be filed in any civil Court having jurisdiction over the subject matter of the arbitration, if the same had been the subject matter of a suit. However, under the 1996 Act it is the principal Court having jurisdiction to decide the questions forming the subject matter of arbitration, if the same had been the subject matter of a suit. Jurisdiction to adjudicate the subject matter of a suit includes, territorial jurisdiction, pecuniary jurisdiction and jurisdiction in respect of the subject matter. Where the highest Court has jurisdiction territorial, pecuniary and in respect of the subject matter, it is that Court alone which is competent to decide matters under the 1996 Act.

For the reasons discussed above, we are unable to agree with the view of Sanjib Banerjee, J., in ***Mrs. Hosenara Begum Vs. Sk. Asraf Ali & Ors. (supra)*** that the City Civil Court would not have jurisdiction to receive a petition under the 1996 Act, irrespective of the value of the claim, as long as the High Court exercised ordinary original jurisdiction.

We agree with the Tandon, J. and hold that where the value of the subject matter of the disputed claim in arbitration does not exceed Rs.10 lakhs, the Original Side of this Court has no jurisdiction to entertain an application under the 1996 Act. If the value of the subject matter of the dispute in arbitration does not exceed Rs.10 lakhs an application under the 1996 Act can only be entertained by the City Civil Court at Calcutta and not the High Court exercising original jurisdiction. However, where the value of the subject matter of the dispute in arbitration exceeds Rs.10 lakhs it is the Original Side of the High Court alone which would have jurisdiction to entertain an application under the 1996 Act.

The revisional application may be remitted before the learned Single Bench for decision on merit.

Urgent xerox certified copy, if applied for, be delivered to the learned counsel for the parties, upon compliance of all usual formalities.

(INDIRA BANERJEE, J.)

I Agree

(SAHIDULLAH MUNSHI, J.)