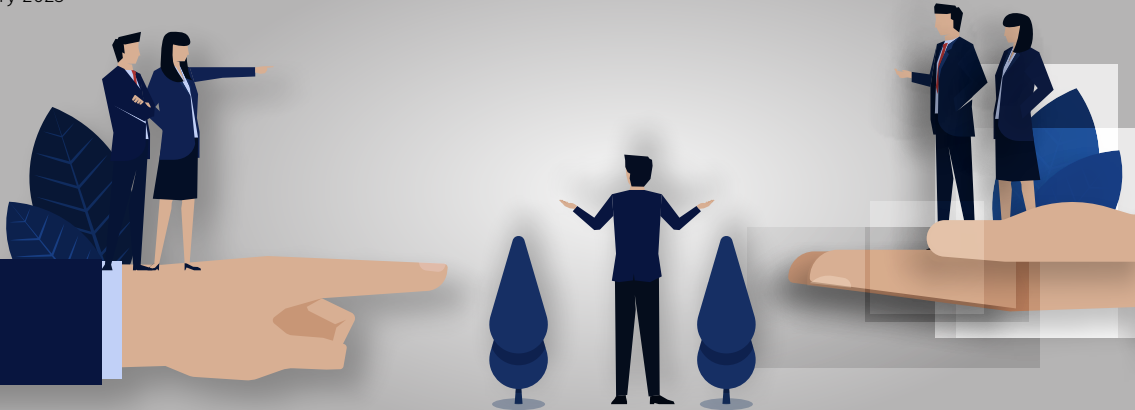


January 2025



High Court of Bombay reiterates that a tribunal has the discretion to change the venue agreed in an arbitration agreement without the consent of all parties if doing so is necessary to ensure the integrity of arbitration proceedings¹

Brief Facts

Dhule Municipal Commissioner (“**Petitioner**”) filed a writ petition (“**Petition**”) before the High Court of Bombay (“**Court**”) against an interim order (“**Impugned Order**”) passed in an arbitration between the Petitioner and Borse Borthers Engineers and Contractors Pvt. Ltd. (“**Respondent**”) vide which the arbitrator fixed the venue of the arbitration as Aurangabad. The arbitration agreement provided that “*The place of arbitration shall be Regional Headquarter Commissioner, D.M.C. but by agreement of the Parties, the arbitration hearing, if required, can be held elsewhere from time to time*”.

The Petitioner challenged the Impugned Order in a writ petition on the following grounds: (i) the venue cannot be fixed anywhere other than as provided in the arbitration agreement; (ii) the order appointing the arbitrator and the subsequent orders mandated that the place of arbitration shall be as per the arbitration agreement and the parties agreed that the place of arbitration agreed under Section 20(1) of the Arbitration and Conciliation Act, 1996 (“**Act**”) is the seat and also the venue for all purposes of the arbitration proceedings; and (iii) the arbitrator does not have jurisdiction to change the venue once the agreement provides for the same unless a different venue is subsequently agreed between the parties.

The Respondent contended as follows: (i) in terms of the arbitration agreement, the place of arbitration refers to the seat of arbitration and the venue is ordinarily the same place, however the arbitrator has the discretion to choose a different venue; (ii) in the present case, the arbitration clause does not specify the venue and accordingly, the arbitrator has decided Aurangabad as the venue of arbitration, considering submissions of the parties and the fact that the earlier arbitrators had difficulties in conducting proceedings at Dhule; and (iii) the High Court should refrain from exercising powers under Articles 226 and 227 of the Constitution of India in a factual situation as in the present case and such powers should be exercised in cases of grave illegality affecting the core of the matter.

Issues

Issue (i): Whether an arbitration can be conducted at a venue chosen by the tribunal, which is different from the venue stated in the arbitration agreement?

In this Issue

Brief Facts

Issues

Judgment

Analysis





Issue (ii): Whether a writ petition under Articles 226 and 227 of the Constitution is maintainable in the present case?

Judgment

Issue (i): The Court held that Section 20(3) of the Act does not completely bar a tribunal from changing the venue without the consent of parties when the venue is agreed in the arbitration agreement, if the tribunal reaches a conclusion that conducting the arbitration proceedings at the agreed venue is detrimental to the arbitration process (for instance, if one party assumes a dominant position at the agreed venue). This is because an arbitral tribunal exercises quasi-judicial functions and therefore, can change the venue to an alternative location that is convenient for all parties.

The Court relied on the judgment of the Supreme Court in **BBR (India) Private Limited v. P. Singla Constructions Private Limited**² wherein it was held that the arbitral tribunal is empowered to conduct hearings at any place of convenience, unless the parties have agreed otherwise. The Court further placed reliance on the Supreme Court's findings in **BGS SGS Soma JV v. NHPC Limited**³ and **Inox Renewables Limited v. Jayesh Electricals Limited**⁴ wherein it was held that once the seat of arbitration is designated by agreement between the parties, it functions like an exclusive jurisdiction clause. It was also held that a plain reading of Section 20 of the Act states that where the place of arbitration is in India, the parties are free to agree to any place or seat within India be it Delhi, Mumbai etc. The Court also relied on the High Court of Delhi's decision in **Jagson Airlines Ltd. v. Bannari Amman Exports (P) Ltd.**⁵ wherein it was held that when there is an express agreement on the venue of the arbitration, the tribunal cannot alter it without the consent of the parties. The Court concurred with the decision of the High Court of Allahabad in **U.P. Ban Nigam, Almora v. Bishan Nath Goswami, (Deceased by L.Rs.)**⁶ which held that when there is no agreement on the venue between the parties, the same is decided by considering the convenience of the parties. The Court also relied on the Supreme Court's judgment in **Lombard Engineering Limited v. Uttarakhand Jal Vidyut Nigam Limited**⁷ wherein the Court permitted deviation from the agreement where one of the parties did not have bargaining power to modify the contract.

Accordingly, the Court refrained from interfering with the Impugned Order and held that the arbitrator passed the Impugned Order on the basis of the following: (i) there is no agreement on the venue. Although there is an agreement on the seat, the venue can be shifted to a more convenient location without changing the seat of arbitration; (ii) the arbitrator noted that the earlier arbitrators faced difficulties while conducting proceedings at the stated seat and specifically, at the particular venue; and (iii) on at least nine occasions, the arbitral proceedings were conducted far from the stated venue in Nashik, which is 160 kilometers away from Dhule.

Issue (ii): The Court relied on the decision of the High Court of Delhi in **Surender Kumar Singhal v. Arun Kumar Bhalotia**⁸ wherein it was held that it is prudent to not exercise jurisdiction under Articles 226 or 227 of the Constitution of India and interference should be in exceptional circumstances only. Thus, the Court refrained from exercising jurisdiction under Articles 226 and Article 227, and the issues of whether the agreement did provide for consensus on the venue or whether there were sufficient grounds to alter the venue were left to be decided by the court at the appropriate stage.

In this Issue

Brief Facts

Issues

Judgment

Analysis





Analysis

The Court's decision reinforces that arbitrators can modify the venue of the arbitration when the integrity of the proceedings would otherwise be jeopardised or when logistical difficulties make the agreed venue impractical. The Court, while limiting the arbitrator's discretion, ruled that the arbitrator must be judicious in modifying the venue to ensure neutrality and convenience for all parties.

The present decision also distinguishes the seat and venue of arbitration in that while the seat governs jurisdiction, the venue is a logistical factor which can be modified to guarantee fair and effective arbitration proceedings.

This decision is critical for both, arbitrators and parties since it emphasises the tribunal's role in harmonising procedural fairness with the terms of the contract, particularly in cases where impartiality and efficiency may be jeopardised.

Endnote

- 1 Authored by Suhani Dwivedi, Partner, Trisha Mukherjee, Principal Associate and Chetan Kr. Kabra, Associate; *Dhule Municipal Commissioner v. Borse Borthers Engineers and Contractors Pvt. Ltd.*, Writ Petition No. 7735 of 2024, High Court of Bombay, 2024 SCC OnLine Bom 3330, judgment dated 15 October 2024.

Coram: Arun R. Pedneker, J.

- 2 (2023) 1 SCC 693.
- 3 (2020) 4 SCC 234.
- 4 (2023) 3 SCC 733.
- 5 (2003) 69 DRJ 490.
- 6 AIR 1985 All 351.
- 7 Order dated 6 November 2023 passed in Arbitration Petition No. 43 of 2022.
- 8 (2021) 279 DLT 636.

In this Issue

Brief Facts

Issues

Judgment

Analysis

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