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2026:AHC:214328

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 14071 of 2026

Up Jal Nigam (Urban) and another

.....Petitioner(s)

Versus

M/s Geo Miller and Co. Pvt Ltd

.....Respondent(s)

Counsel for Petitioner(s) : Rahul Sahai, Vimlesh Kumar Rai
Counsel for Respondent(s) :

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Supplementary affidavit filed today is taken on record.

2. Heard Sri Vimlesh Kumar Rai along with Sri Rahul Sahai, learned counsel for the petitioners/appellants.

3. In view of the order, which is being proposed to be passed, notices are not being issued to the contesting respondents.

4. The case of the petitioners/appellants is that it happens to be U.P. Jal Nigam (Urban), an instrumentality of the State which is engaged in water supply and sewerage works, and the petitioners herein invited E-Tender No. 371/Vividh 13/32 dated 05.03.2016 for survey, design, supply, erection, construction, testing, commissioning and trial run of a 120 MLD capacity Water Treatment Plant with PLC SCADA based upon automation and provision for recycling of the clarified sludge etc. Pre-bid meeting stood conducted on 22.03.2016. The contesting respondent was found successful in the bid and a work order dated 03.01.2017 was issued fixing the cost of Part-A (WTP) at Rs. 59,48,30,000/- and a Contract Agreement No. 05/SC/2017-18 dated 15.03.2018 was executed. Certain disputes stood occurred. Pursuant thereto, the respondents herein approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996 and by virtue of order dated 06.10.2021, a retired Judge of this Court was appointed as sole Arbitrator. The proceedings were registered as Arbitration Case No. 4 of 2021 and post submission of the claims, an award came to be passed on 13.01.2025. Aggrieved against

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the award, the petitioners herein preferred objection under Section 34 of the Act before the Commercial Court, Prayagraj, which was numbered as Arbitration Case No. 16 of 2025, *U.P. Jal Nigam (Urban) and others Vs. Geo Miller & Company Private Limited*. The proceedings under Section 34 of the Act was beyond limitation, being delayed, however by virtue of the order dated 12.05.2025, the delay was condoned. During the pendency of the proceedings under Section 34 of the Act, the respondent instituted execution proceedings being Execution Case No. 30 of 2026. However, an order came to be passed on 14.07.2026 and 12.05.2026 by the Commercial Court, whereby on the objections being raised by the rival parties, it was decided that the jurisdiction to entertain the said proceedings was at Prayagraj/ Allahabad, which was subject matter of challenge at the instance of the respondents, while preferring Matters under Article 227 No. 11133 of 2026, *M/s Geo Miller and Co. Pvt. Ltd. vs. UP, Jal Nigam (Urban) and others*, in which on 15.09.2026, the following orders came to be passed:-

"*1. Heard Sri S.D. Singh, learned Senior Advocate assisted by Sri Devvrat Mishra, learned counsel for the petitioner and Sri Vimlesh Kumar Rai, learned counsel for respondent.*

2. The present writ petition has been filed under Article 227 for the following relief:

"I). To allow the present petition under Article 227 of the Constitution of India and set aside the impugned order 14.07.2026 and the order dated 12.05.2025 holding that the jurisdiction of the Ld. Commercial Courts except Commercial Court Gautam Budh Nagar is excluded within the ambit of Section 42 of the Arbitration and Conciliation Act, 1996.

II). To allow the Application dated 01.07.2025 moved by the appellant before the Ld. ASJ on 02.07.2025 and grant the reliefs as prayed for in the said application holding that the court at Ld. Commercial Court Prayagraj does not have jurisdiction to entertain the application as moved by the respondent being Case No. 16 of 2025 under Section 34 of the Act and the said application is dismissed being not maintainable before the Ld. Commercial Court Prayagraj;

III). Or to pass any such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. Learned counsel for the petitioner submits that a work order was allotted in pursuance of publication of a tender document issued in e-tender dated 05.03.2016. The said tender was in two parts. During the commencement of the work, some

dispute arose between the parties. The petitioner filed Application No. 28 of 2022 under Section 9 of the Arbitration and Conciliation Act on 21.04.2022 at Commercial Court, Gautam Buddh Nagar. An interim order was passed by the Commercial Court on 21.04.2022 and restraint order was passed against the respondent.

4. In the meantime, arbitration proceedings were initiated and an order was passed on 13.01.2025 by the sole arbitrator at Prayagraj. The respondent challenged the said award under Section 34 before the Commercial Court, Prayagraj. An objection was filed by the petitioner under Section 42, stating that the Commercial Court, Prayagraj has no jurisdiction to entertain the said application under Section 34, as an order under Section 9 of the Act has already been passed by the Commercial Court, Gautam Buddh Nagar on 21.04.2022 and 05.05.2022, but the impugned order has been passed condoning the delay and issued notices, giving liberty to the petitioner to file an objection.

5. In support of his submission, he relies upon the following judgments:

a. State of West Bengal and others versus Associated Contractors, reported in (2015) 1 SCC 32 (Hon'ble Supreme Court)

b. Ravi Ranjan Developers Pvt. Ltd. versus Aditya Kumar Chatterjee, reported in 2022 SCC OnLine SC 568 (Hon'ble Supreme Court)

c. Devi Dayal Trust and others versus Rajhans Towers Pvt. Ltd., reported in 2024 SCC OnLine All 1681 (High Court, Allahabad)

6. Per contra, learned counsel for the respondent supports the impugned order and submits that the arbitration does not specifically provide for venue and seat, but the arbitration proceedings were initiated in which the petitioner participated and thereafter the award has been passed at Prayagraj. Therefore, the application has rightly been filed under Section 34 challenging the award by the respondent before the Commercial Court, Prayagraj. In support of his submission, he relies upon the judgment of Hon'ble Apex Court passed in the case of BGS SGS SOMA JV versus NHPC Limited, reported in (2020) 4 SCC 234.

7. After hearing the parties, the Court has perused the record.

8. The record shows that the agreement does not contemplate either venue or jurisdiction of any Court. It is an admitted fact that the arbitrator passed an award on 13.01.2025 at Prayagraj. It is an admitted case between the parties that an application was filed much before the appointment of an arbitrator before the Commercial Court, Gautam Buddh Nagar, and orders were passed on 21.04.2022 and 05.05.2022.

9. Once the proceedings had been initiated under Section 9 before the Commercial Court where part of the cause of action arose, as the agreement was executed within

the jurisdiction of Gautam Buddh Nagar, the project was executed, and maintenance thereafter was within the jurisdiction of the Gautam Buddh Nagar Court, the application under Section 9 was entertained. Once the application had been filed before initiation of arbitration proceedings, the Commercial Court, Gautam Buddh Nagar, was the competent Court.

10. The Apex Court in the case of Associated Contractors (supra) as held as under:

"18. In contrast with applications moved under Section 8 and 11 of the Act, applications moved under Section 9 are to the "court" as defined for the passing of interim orders before or during arbitral proceedings or at any time after the making of the arbitral award but before its enforcement. In case an application is made, as has been made in the present case, before a particular court, Section 42 will apply to preclude the making of all subsequent applications under Part I to any court except the court to which an application has been made under Section 9 of the Act.

.....

25. Our conclusions therefore on Section 2(1)(e) and Section 42 of the Arbitration Act, 1996 are as follows:

(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.

The reference is answered accordingly."

11. Further, the Apex Court in the case of Ravi Ranjan Developers (supra) as held as under:

"11. On 13th August 2021, the Calcutta High Court allowed the Arbitration Petition and appointed a retired judge of the Calcutta High Court as Sole Arbitrator. Mr. Ajit Kumar Sinha, learned Senior Counsel appearing on behalf of the Appellant submitted that even though the Appellant had opposed the application under Section 11(6) of the A&C Act, objecting to the territorial jurisdiction of the Calcutta High Court, the Calcutta High Court did not decide the objection. There is no finding by the Calcutta High Court with regard to its jurisdiction. The order of the High Court reads:-

"1. The present application has been filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 for appointment of the arbitrator for settlement of the disputes between the parties.

2. At the time of hearing it was not disputed by the learned Counsel appearing for the parties that there is a valid arbitration clause in the development agreement.

3. Learned counsel for both the parties have agreed to appoint ... to resolve the disputes sought to be raised by both the parties. Accordingly, ... Is appointed as arbitrator to settle the disputes between the parties.

4. The present application is accordingly disposed of."

12. This Court in the case of Devi Dayal Trust (supra) as held as under:

"15. In Manjusha Premi v. Prakash Gupta (supra), this Court held that the bar placed by Section 42 of the Act will apply to applications made under Section 9 of the Act. Relevant paragraphs are extracted herein:

"40. He had further submitted that since first application under section 9 of the Act was filed before the District Judge, Varanasi on 28.10.2006, the Varanasi Court In the light of section 42 of the Act would alone have the jurisdiction. The aforesaid case has also discussed in detailed in previous paragraphs.

41. Referring to the judgment of Hon'ble Apex Court in the case of Swastik Gases Private Limited (supra) he submitted that unless the jurisdiction of the Court is excluded in expression as such "exclusive" "alone" "only" the jurisdiction of a Court would not be excluded. For this purpose, a reference would not be excluded. On the

strength of the aforesaid, he submitted that since there was no specific clause providing jurisdiction to a Court, thus the jurisdiction of a Civil Court Is to be decided with reference to section 2(1)(e) of the Act and thus the same would be at Varanasi in the present case.

42. Srl. K.K. Arora had also placed reliance on a decision of Hon'ble Apex Court in the case of State of West Bengal (supra) to submit that if the proceedings Initiated is one of the nature of Section 8(before judicial authority) and section 11 of the Act (the Chief Justice or his delegates) applications filed before the Court inferior to the Principal Civil Court or to High Court having no original jurisdiction, the bar contained in section 42 would not apply. However, application filed under section 9 of the Act very much within the purview of section 42 as they are filed before the Court.

43. Undisputedly, the application under section 11 of the Act is filed before the Hon'ble Chief Justice or his delegates, which is not a "Court" in the eye of law and as such clearly, the provision of section 42 of the Act would not apply but the same would certainly be applicable if the application is filed under section 9 of the Act, which was done at the first Instance before the District Judge, Varanasi on 28.10.2006 in the present case.44. In view of the aforesaid discussion and the fact that admittedly the property in dispute Is situated at Varanasi and the first application under section 9 of the Act was filed on 28.10.2006 In the Court of District Judge, Varanasi, which is undisputedly the Principal Civil Court of original jurisdiction in a district having jurisdiction to decide questions forming subject-matter of the arbitration as provided under section 2(1)(e) of the Act, as section 42 of the Act had specifically provided that where with respect to any arbitration agreement when any application under this part (Part 1 of the Act which relates to domestic award) has been made in a Court, that Court shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of the agreement and the arbitral proceedings shall be made in that Court and in no other Court, leaves no doubt that the Principal Civil Court of original jurisdiction at Varanasi l.e., District Judge, Varanasi will have the jurisdiction to entertain application under section 34 of the Act against the arbitral award."

16. Accordingly, this Court holds that in light of Section 42 of the Act, the application under Section 34 of the Act, or for that matter any other application under Part 1 of the Act, will have to be made at Gautam Buddh Nagar."

13. In view of the above facts, this Court is of the opinion that in the light of Section 42 of the Act, an application under Section 34 of the Act ought to have been filed before the Commercial Court, Gautam Buddh Nagar, instead of Prayagraj.

14. In view of the above, the impugned order is set aside. The respondent is permitted

to file his case before the Commercial Court, Gautam Buddh Nagar, in accordance with law.

15. The writ petition is accordingly allowed."

5. According to the petitioner-appellant, now execution proceedings are going on and an order came to be passed on 19.08.2026 rejecting the stay application accompanied with Section 34 Application and attaching the bank account of the petitioner and Parwana has also been issued.

6. Questioning the same, assailing the same, the present petition has been preferred seeking the following reliefs:-

"*I. Issue a suitable order or direction setting aside the order dated 19.08.2026 passed by the Presiding Officer, Commercial Court, Prayagraj in Arbitration Case No. 16 of 2025 (U.P. Jal Nigam (Urban) & Another Vs. M/s Geo Miller & Co. Pvt. Ltd.) (Annexure No. 1 to the petition).*

П. Issue a suitable order or direction allowing the application Paper No. 15Ga of the petitioners and staying the effect and operation of the arbitral award dated 13.01.2025 passed by the learned Sole Arbitrator, Hon'ble Mr. Justice R.D. Khare (Retd.), in Arbitration Case No. 4 of 2021 (M/s Geo Miller & Co. Pvt. Ltd. Vs. U.P. Jal Nigam & Another) during the pendency/subsistence of Arbitration Case No. 16 of 2025, on such terms as this Hon'ble Court may deem fit, and consequently staying the proceedings of Execution No. 30 of 2026 pending before the Commercial Court, Gautam Buddh Nagar.

III. Issue any such other and further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

IV. Award the cost of the petition to the petitioners."

7. The matter was taken up on 06.10.2026, wherein the following order was passed:-

"*1. When the matter has been taken up pre-recess, argument was raised that the stay application accompanied with the application under section 34 of the Arbitration and Conciliation Act has been rejected by the Commercial Court Prayagraj in a cursory manner without considering the provisions contained under section 36 of the Arbitration and Conciliation Act, 1996. In particular, the fact that interim protection can be granted in terms of order 39 Rule 1 and 2 of the C.P.C. and time was taken to seek instructions about deposit of the money and a request was made to put the matter post-recess.*

2. Post-recess when the matter is being taken up, Shri Vimlesh Kumar Rai, who appears for the petitioner-appellant produced before this court an order dated 15.09.2026, passed in matters under Article 227 No. 11133 of 2026 (U.P. Jal Nigam (Urban) & Another Vs. M/s Geo Miller & Co. Pvt. Ltd), so as to contend that now the opportunity has been granted to the petitioner-appellant to file an application under section 34 of the Arbitration and Conciliation Act before the Commercial Court, Gautam Buddha Nagar and appointed query being raised whether any application under section 34 of the Act along with stay application has been filed before the Commercial Court, Gautam Buddha Nagar, he submits that the same would be filed and on a further query being raised as to what would be the legal position of the order under challenge passed by the Commercial Court, Prayagraj in the wake of the fact that now Commercial Court, Gautam Buddha Nagar is to decide the application under section 34 of the Act, he seeks time to obtain instruction.

3. Put up on 13.10.2026 as fresh.

4. The communication dated 06.10.2026 as well as the order passed in a matter under Article 227 No.11133 of 2026, decided on 15.09.2026 are taken on record and marked as appendix A and B."

8. Today, when the matter has been taken up, learned counsel for the petitioners has submitted that objection under Section 34 of the Act has been preferred before the Commercial Court, Gautam Buddha Nagar and on 09.10.2026, notices have been issued on the delay condonation application. Learned counsel for the petitioners thus submits that the relief as sought in its original form has lost its efficacy, particularly when by virtue of the order passed on 15.09.2026 in Matters under Article 227 No. 11133 of 2026, now the proceedings would lie before the Commercial Court, Gautam Buddha Nagar and thus, the relief so sought in the present petition has lost its efficacy with the passage of time, particularly when, now no proceedings in the eyes of law pertaining to Section 34 would exist in the eyes of law. Thus now, orally a prayer has been made that a direction be issued to the Commercial Court, Gautam Buddha Nagar to decide the said proceedings, including the delay condonation application, being Case No. 195 of 2026, within a time bound period, since now execution is at an advanced stage.

9. Having heard counsel for the petitioners, bearing in mind the relief as sought being pleaded in the relief clause as well as the oral relief sought

and also the fact that notices have not been issued to the respondents and the Court is at the ex-parte stage, thus this Court cannot, in view of the said handicap, pass a specific order, but this much is observed and expected that once proceedings under Section 34 of the Act are instituted, then the same should be given a logical end without granting unnecessary adjournments, bearing in mind that already execution proceeding is pending, which is at an advanced stage.

10. Since the order dated 19.08.2026 rejects the stay application, but once the proceedings itself were not maintainable before the Commercial Court, Prayagraj / Allahabad, thus in law, the said order would not come in the way for prosecuting the proceedings before Commercial Court, Gautam Buddha Nagar.

11. With the aforesaid observations, the petition stands **disposed of**.

(Vikas Budhwar,J.)

October 13, 2026
N.S.Rathour