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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 18.04.2018

% *Judgment delivered on: 01.06.2018*

\+ **FAO 203/2016**

RAM AVTAR JAKHAR & ANR. ..... Petitioners

versus

CHAUDHARY AVADESH KUMAR & ORS. .... Respondents

Advocates appeared in this case:

For the petitioners: Ms. Shalini Kaul, Advocate

For the Respondents: Mr. Akhil Sibal, Sr. Advocate with Mr. Saurabh S. Sinha, Mr. Aditya Dev Triguna & Ms. Janahvi Mitra, Advocates.
Mr. Ruchir Mishra and Mr. Mukesh Kumar Tiwari, Advocates for R-3/ IOA,
Mr. Chiranjeev Kumar & Mr. Mukesh Sachdeva, Advocates for R-4/ UOI.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

FAO 203/2016 & CM Nos. 16899/2016, 16900/2016, 16903/2016 & 26675/2017

1. This appeal impugns the order dated 27.04.2016 passed by the Addl. District Judge-02, Patiala House Courts, New Delhi under Section 9 of the Arbitration & Conciliation Act, 1996 (Act) protecting the remaining elected tenure of respondent no.1 as President of the Volleyball Federation of India (Federation). The said tenure of the respondent got over on 13.07.2017.

2. The Federation was formed as a voluntary society in 1951 and was later registered as a Society with the Registrar of Societies at Madras (now

Chennai) with Registration No. 110/1987. Disputes arose between respondent no.1 and the other members of the Executive Committee (EC) of the Federation which led to filing of a suit by the said respondent before the Courts at Delhi. The relief sought therein was declined in March, 2016.

3. In January 2016 the respondent allegedly informed the EC of the Federation that he had decided to engage a private company to sponsor the Indian Volleyball League for which he had received an amount of Rs. 10.60 crores from the said company. The said unilateral decision was questioned by the EC, but respondent no.1 persisted that the Federation ought to enter into the agreement with the company identified by him. The following month respondent no.1 dissolved the core committee formed by the EC by an email communication and intimated that he had already executed an agreement with the private company he had chosen and had also received sponsorship fee for the same. Two days after the aforesaid dissolution, the Core Committee of the Federation met on 22.02.2016 and accepted a bid by another private company for the sponsorship. Simultaneously, the EC also requested respondent no.1 to call for a Special General Body Meeting/ Extraordinary General Body Meeting on 11.03.2016 in order to assess the conduct and doubtful activities of the respondent. Two days later, i.e. on 24.02.2016 respondent no.1 unilaterally declared publically that the Indian Volleyball League in conjunction with the private company he had chosen had been launched as its sponsor. It is another matter though that the Federation i.e. the other Members of the EC did not approve the association with the said private sponsor. On 25.02.2016 respondent no.1 called for a parallel meeting to be conducted on 03.03.2016 at Nagpur. Simultaneously, the EC called for another emergent meeting on 03.03.2016. Show cause notice too was issued to respondent no.1 apropos the

cases mentioned in the said notice. No response was received to the same. Thereafter, on the same day respondent no.1 suspended all office bearers who had questioned his actions. He issued notice suspending fourteen members of the EC and also suspended 10 of the 29 State Units without according any opportunity to them. According to the petitioner the only sin of the said persons was that, that they had dissented with the opinion/ decision/ action of respondent no.1 and for having participated in the meeting held on 22.02.2016.

4. Aggrieved with the decision taken in the meeting on 01.03.2016 respondent no.1 sought an injunction against the same in Suit No. 203/2016 in a Delhi Court. He sought an injunction against the decision of the EC declining to approve the sponsorship with the private company chosen by respondent no.1 and instead of which the EC had awarded the IVL sponsorship to another private company. The relief sought was never granted, however, the very next day on 02.03.2016 the Federation through its EC filed an Original Application under Section 9 of the Act being no. 123/2016 (OA) before the Madras High Court seeking a stay on the suspension of the office bearers of the Federation and State Union announced by respondent no.1 as well as an injunction restraining him from holding a parallel meeting on 03.03.2016 at Nagpur. On 02.03.2016 the Madras High Court directed that the decision of the meeting scheduled to be held the following day, would be subject to the outcome of the OA proceedings. A communication to that effect was issued to respondent no.1. Relief sought by the petitioner in suit no. 203/2016 was declined. The Delhi Court had noted that respondent no.1 had the liberty to participate in the Emergency EC Meeting scheduled on the next day at Chennai.

5. The aforesaid meeting was convened on the next day i.e. 03.03.2016 at

11.00 a.m. The members present waited for respondent no.1 to participate and waited for 45 minutes for him to turn up and participate, but he did not do so. In default of his appearance or any communication, the committee chose the Vice-President of the Federation as its Chairman and proceeded to conduct the meeting as per its bye-laws. It revoked the purported suspensions issued and declared by respondent no.1 and removed him from the post of President, for his various acts, which the committee deemed to be high-handed, illegal and laced with impropriety. The agreement of respondent no.1 with the private sponsorship entity too was declared void. Subsequently, in the Special/ Extraordinary General Body Meeting held on 11.03.2016 a decision was taken to hold fresh elections under Mr. Justice Rajeshwaran, retired Judge of the Madras High Court as the Returning Officer. He consented to conduct the elections. Requisite notifications commencing the election process were issued by him on the same day and posted on the official website of the Federation.

6. Meanwhile respondent no.1 on 19.03.2016 filed an application under Section 9 of the Act in Delhi seeking a stay on the resolutions passed on 03.03.2016 and 11.03.2016. The election process was stayed on 21.03.2016 in the said petition. According to the appellant, while respondent no.1 communicated the order dated 21.03.2016 to the Federation by email, he defaulted in complying with the provisions of Order 39 Rule 4 CPC by not providing a copy of the pleadings and documents filed along with it. Aggrieved by the same, the appellant challenged the stay order of 21.03.2016 by way of an appeal being FAO No. 146/2016. By order dated 08.04.2016 in the said appeal, the elections were permitted to be conducted as originally scheduled. However, the results thereof were directed to filed in a sealed

cover before the Trial Court as well as before this Court. Additionally, on 07.04.2016 they raised preliminary objections apropos the jurisdiction of the Trial Court to have passed the impugned stay order on 21.03.2016, however, the case was adjourned to 19.04.2016.

7. The elections were conducted. Its results were not declared but were kept in a sealed cover before this Court and the Trial Court on 13.04.2016 and 19.04.2016 respectively. On the latter date, the appellant's preliminary objection to jurisdiction was argued and order was reserved. The appellant's grievance was that the impugned order instead of adjudicating only on the issue of jurisdiction, went on to not only reject the said objection but also decided the case on merits.

8. The petitioners have impugned the said order on the following grounds: (i) the section 9 petition in Delhi was not maintainable because apropos the same arbitration agreement a motion under Section 9 of the Act had already been initiated before the Madras High Court on 02.03.2016, hence the subsequent Section 9 petition filed by respondent no.1, seventeen days later on 19.03.2016 was barred under section 42 of the Act; (ii) the Delhi Courts had no territorial jurisdiction to entertain the petition because respondent nos. 2, 3 & 4 were not relevant for adjudication of any dispute with the Federation which has its registered office at Jawahar Lal Nehru Stadium, Chennai,; (iii) the appellants had argued and filed a written synopsis on the issue of jurisdiction of the Trial Court, to entertain the Section 9 application and had not addressed the merits of the matter in detail, and thus they were denied the opportunity to put their case fully before the said court and would still want an opportunity to argue the case before the Court on merits. However, the impugned order adjudicated the case not only on jurisdiction but on merits as

well.

9. On 27.04.2017, this Court had noted as under:

> *".... 3. Fresh elections on 11.4.2016 were conducted by Volleyball Federation of India pursuant to the order dated 8.4.2016 passed by the learned single Judge of this Court in FAO No. 146/2016. Results of the elections are kept in a sealed cover and which sealed cover is lying in this Court in FAO No.146/2016. Effectively therefore on account of non-declaration of results the entire operation of the Volleyball Federation of India has come to a standstill as rightly argued on behalf of the appellants although the issue in these proceedings is only as regards the rights of the respondent no.1 to the post of President of Volleyball Federation of India and not for the 28 other posts.*
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> *4. In fact I find that the respondent no. 1 (petitioner in the petition under Section 9 of the Act) is trying to bite of much beyond what he can chew because I fail to understand that in spite of repeated queries to the respondent no.1 that the locus standi of the respondent no. 1 is only to seek his continuation as a President as per the earlier elections held for a period of four years and which period would expire soon in around the middle of July 2017 as per the case of the respondent no. 1 himself, yet the counsel argues that results of even the 28 other posts be not declared. Therefore, the arguments and contentions urged on behalf of the respondent no.1 are only to stall the complete elections and are thus most mala fide and amounts to making a prayer to overreach the court. Whether the actions of the respondent no.1 amount to contempt of court would be examined on the next date of hearing, however, for the present the impugned order dated 27.4.2016 passed by the court below is clarified that by this order dated 27.4.2016 it is not held and nor could it have been held that election results of the Volleyball Federation of India for even the 28 other posts, and to which posts there are no disputes by the existing holders of these posts or the new holders of the posts who would occupy the same on results being declared, would be halted. The operative portion of the impugned order is contained in para 22 of the impugned*

order and which para 22 reads as under:-

> *"22. Since the Hon'ble High Court has already seized with the matter vide FAO No.146/2016 in CM No.12263/2016 and the matter is listed for hearing for 16.05.2016 and the election is already directed to be conducted as per the directions of Hon'ble High Court no such order can be passed qua prayer no.c as made in the petition. However as it is clear from the above discussion that the petitioner is the elected President of the federation and he has not been ousted by following the mandate of the Constitution. Therefore he is entitled to preside over the federation in the capacity of elected President of the federation. Further, it is made clear that the petitioner shall be entitled to act as President till the result of the election is declared, as the same is already conducted with directions of Hon'ble High Court. Accordingly, in view of the above discussion, present petition is accordingly stands disposed off. File be put up for further proceedings awaiting the orders of the Hon'ble High Court as the Election result has been filed by the respondent with this Court in compliance of the order of Hon'ble High Court, in sealed cover.*
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> *Be put up on 07.07.2016 for further proceedings."*

5. Since the present respondent no. 1 has no locus standi whatsoever to question the elections to these 28 posts even as per the pleadings in the Section 9 petition, accordingly it is ordered that the election results of Volleyball Federation of India conducted as per the election dated 11.4.2016 would be declared by the Returning Officer, a retired Judge of the Madras High Court Hon'ble Mr. Justice Rajeshwaran. The sealed cover lying in this court with respect to election results of the election conducted on 11.4.2016 be handed over to Hon'ble Mr. Justice Rajeshwaran (Retd.) so that he can declare the results of the elections. It is made clear that the election results which would be declared will operate for the 28 posts, except the post of President of Volleyball Federation of India, and the election results declared for the post of President will not come into effect

or operate till further orders are passed by this Court.

6. The sealed envelope containing the election results filed on behalf of Hon'ble Mr. Justice Rajeshwaran (Retd.) was filed in this Court through the counsel for the appellants and counsel for the appellants be given this envelope under her undertaking to deliver this sealed envelope in the sealed condition to Hon'ble Mr. Justice Rajeshwaran (Retd.) within a period of one week of receipt of the same from this Court.

7. The prayer made on behalf of the appellants with respect to costs as against the respondent no. 1 for holding up the entire business of the Volleyball Federation of India by seeking interim orders much beyond the scope of the entitlement of the respondent no. 1 would be looked into on the next date of hearing and also would be looked into the aspect as to whether as per the case of the appellant the term of the President expired not in July 2017 but by March 2017. Of course, respondent no. 1 will be equally entitled to argue as per his case that the case of the appellant is incorrect and that respondent no. 1 was entitled to hold the post of the President of Volleyball Federation of India till July 2017...."

10. Apropos the fact that the tenure of respondent no.1 got over on 13.07.2017, the impugned order itself notes inter alia as under:

"... However as it is clear from the above discussion that the petitioner is the elected President of the federation and he has not been ousted by following the mandate of the Constitution. Therefore he is entitled to preside over the federation in the capacity of elected President of the federation. Further, it is made clear that the petitioner shall be entitled to act as President till the result of the election is declared, as the same is already conducted with the direction of Hon'ble High Court...."

11. In effect, the protection available to the erstwhile President (respondent no.1) of the Federation was in the first instance, available only till the elected tenure or till such time that the results of the election were directed by this

Court to be declared. On 17.04.2018, this Court had noted as under:

> *"... In effect, all persons will be considered elected except for the President. The impugned order under Section 9 of the Act protected the respondent only till such time that the elections results were declared. The results have been declared. It does not extend to extending the protection till such time that the effect is given to the said results. It is the appellant's contention that in any case, the tenure will be got over by 13.07.2017. However, on the last date of hearing, this Court had recorded a concern that the interest of the volleyball players should be paramount, particularly the fact that they should play under the Indian National Flag in international competitions..."*

12. Ms. Kaul, the learned counsel for the appellants, contends that under Article (II) of the Constitution and bye-laws of the Federation, the jurisdiction of the Court extends to the whole of India. The Federation is registered at Madras (now Chennai) but the location of its office is almost peripatetic inasmuch as under Article (II)(b) a practical arrangement has been made as under:

> *"..... **Article No. II***
> *(a) Jurisdiction: The territory under the jurisdiction of the Federation shall be the territory of the Union of India including Jammu & Kashmir.*
> *(b) Location of office: Headquarters office as "Registered office" of the Volleyball Federation of India and as approved by the council. Jurisdiction and location of office of the Volleyball Fedration of India for all practical and legal purposes shall be at the place and city, where the Secretary General of the Volleyball Federation of India resides...."*

13. In other words, all requisite documents pertaining to the functioning of the Federation go to the Secretary General but the records are maintained at

Chennai. She submits that, be that as it may, the cause of action arose in Chennai and cognizance of the same was taken by the Madras High Court in an application filed by the appellants on 02.03.2016 under section 9 of the Act. The said OA was filed by the Federation through the Secretary General (the present appellant) showing the address of the Federation at Jawahar Lal Nehru Stadium, Chennai. Orders had been passed on the said Section 9 petition by the Madras High Court on 02.03.2016 itself and directed that "*any decision taken in the meeting to be conducted on 03.03.2016 or any date, either by the respondent or by the application, is subject to the result of these applications*". The said order was communicated to respondent no.1, through the counsel for the appellants on the same date through Speed Post, which according to the tracking report of the India Post shows that the same was delivered to respondent no.1 on 08.03.2016.

14. Ms. Kaul argues that simply because Indian Olympic Association is based in Delhi, would not confer any jurisdiction on the Delhi Courts. No meeting was held in Nagpur on 03.03.2016 as called by respondent no.1. The only meeting that was held was at Madras. Respondent no.1 unfairly sought to create jurisdiction in Delhi by impleading respondent nos. 2, 3 & 4, who have a Delhi address; the resolutions in the Chennai meeting had him removed as its President, and suspension of all Office Bearers and Units had been revoked; 22 of the 29 members voted in favour of the Resolution and the Government of India too has accepted the said Resolution. She further submits that the Section 9 petition of respondent no.1 challenged the Resolution of the meeting held in Chennai on 03.03.2016 when the Madras High Court was seized of the same issue in OA No. 123/2016, prayer clause (a) and (b) of which read as under:

"... (a) Stay the operation of the notice/ agenda and resolutions/ minutes of the alleged Special General Meeting/ Extra Ordinary General Meeting dated 11.03.2016 as well as of alleged executive committee meeting dated 03.03.2016 (minutes of which were never, circulated however fining reference in the resolution claimed to be passed on 11.03.2016) alleged convened by the Respondent No. 1 to 3, illegally claimed to suspend the petitioner who is duly elected President of the Federation for the term of 2013-2017 and initiating the election process, while the petitioner is still holding the post.

(b) Direct the Respondent jointly and severally that the petitioner being elected President shall act and perform as the president of the Vollyball Federation of India till the pendency of the present petition and its final outcome...."

15. Before the sole arbitrator in the proceedings initiated on a claim of the Federation as well as the then Secretary General Mr. Ram Avtar Singh Jakhar, the appellant herein, the then executive Vice President Mr. Raj Kumar and then Joint Secretary Mr. J Nadarajan against respondent no.1 before the sole arbitrator, following reliefs were sought in the claim petition:

"...(a) For a permanent injunction restraining the Respondent from violating the resolution of Claimant No. 1, dated 03.03.2016 and 11.03.2016 by holding out himself as the President of Claimant No. 1 Volleyball Federation of India (society registered under the TN Societies Registration Act 1976 bearing No. 110/1987) as and from 03.03.2016.

(b) To restore status quo as on 03.03.2016 and thereby nullify all announcements, communications, resolutions, decisions and actions of the Respondent as and from 03.03.2016 in purported exercise of powers as President of the Claimant No. 1 and to indemnify the Claimant No. 1 against all claims arising therefrom.

(c) To direct that the Respondent shall indemnify Claimant No.1 for all actions, expenses, costs, penalties, damages and losses

caused or likely to be caused to the Claimant no.1 in the event of any claim against Claimant No. 1 based upon any agreement, communication or promise made by the Respondent (as President of Claimant No.1) in violation of resolution dated 02.01.2016, 09.01.2016 and 03.03.2016 of Claimant No.1.

(d) Permit the release of the result of elections held on 11.04.2016 by returning officer Shri S Rajeswaran (Retd. Judge Madras High Court) if the same are not released earlier by the Hon'ble High Court New Delhi.

(e) Permanent injunction restraining the Respondent or any person claiming through or under him or claiming to have been elected at any meeting called/ conducted by him from conducting any tournament/ event purporting to be sanctioned by Claimant No.1 or falsely representing that their tournament/ event is recognized by Claimant No. 1 and from conducting any meetings, public announcements, or events in the name of Claimant No.1 and be restrained from interfering or obstructing the activities of Claimant No. 1 in any manner whatsoever, either directly or indirectly..."

16. In his statement of defence, the respondent no.1 had sought following reliefs:

"..... (1) Dismiss the Claim Statement.

(2) Declare the all Acts, announcements, communications, resolution, decisions and actions done after the date of suspension of the Claimants on 26.02.2016 as null and void.

(3) To direct the Claimant NO. 2 to 4 to indemnify Claimant No.1 and Respondent from all actions, expenses, costs, penalties, damages and losses caused or likely to be caused to the Claimant No. 1 or the Respondent in the event of any claim against Claimant No. 1 based upon any agreement, communication or promise made by Claimants No. 2 to 4 for which they had no authorization.

(4) Permanent injunction restraining the Claimant No. 2 to 4 from conducting any tournament/ event purporting to be

sanctioned by Claimant No. 1 or falsely representing that their tournament/ event is recognized by Claimant No. 1 and from conducting any meetings, public announcements, or events in the name of Claimant No. 1 and be restrained from interfering or obstructing the activities of Claimant No. 1 in any manner whatsoever, either directly or indirectly.

(5) To handover the VFI Office, FIVB Development Centre, Bank Accounts, Letterheads, Seal, tamp, Website and other related material of Claimant 1 to the Respondent for its genuine use of promoting the sports on National & International level...."

17. In effect the arbitration proceedings before the learned Arbitrator was apropos the same disputes, emanating from the meeting and the decisions taken on 03.03.2016 at Chennai. Cognizance of the same has been taken by the Madras High Court on 02.03.2016, permitting the said meeting to be held but subject to the Section 9 application. Ms. Kaul relies upon the judgment of the Supreme Court in ***Kusum Ingots & Alloys Ltd. vs Union of India & Anr. (2004) 6 SCC 254***:

"...18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

19. Passing of a legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefor.

20. A distinction between a legislation and executive action should be borne in mind while determining the said question..."

18. She submits that when the jurisdiction of the Court is challenged, the same ought to be decided as a preliminary issue without entering into its merits. In support of this contention she relies upon the following decisions:

Jagraj Singh vs Birpal Kaur 2007 (2) SCC 564; ***Mssr. Jyothi Turbopower Services Pvt. Ltd., by its General Manager, Biswajit Nath vs Mssr. Shenzhen Shandong Nuclear Power Construction Company Ltd., by its Deputy Project Manager, Liy Yan Zheng and Syndicate Bank, Branch Manager, (2011) 3 Arb. LR 442 (DB)*** and ***DLF Industries Ltd. vs ABN Amro Bank & Ors. 2000 (55) DRJ 470***.

19. Mr. Sibal, the learned senior counsel for the respondent, refutes the aforesaid contentions on the following grounds: (i) that embargo under Section 4 of the Act would be applicable only when the parties are the same and when the arbitration agreement and the arbitral proceedings too, are the same. He argues that the arbitration proceedings before the Madras High Court in OA No. 123/2016 dealt with a different subject matter, between the different parties than the ones which were before the Trial Court at Delhi. This Court, however, is unable to agree with the said contention in view of the preceding comparison of the reliefs sought in both the Section 9 proceedings – and in view of the Statement of Claim and Statement of Defence as mentioned hereinabove.

20. The learned counsel argues that in terms of article (x) and (viii)(b) the arbitration agreement had not been defined between the parties; each dispute raised by different parties is to be dealt with on a case to case basis; whether the disputes are the same is to be determined in each case. Indeed the said article contains four different kinds of disputes: (a) between the Federation and its constituent members; (b) between the office bearers of the Federation and the Federation; (c) between the constituent members inter se, and (iv) between office bearers of the Federation. He argues that OA No. 123/2016 relates to a

dispute between the Federation and its office bearers, whereas the dispute in the present case is between the office bearers of the Federation. Hence, the two cannot be deemed to be the same dispute. He argues that in the present case the parties are different because respondent nos. 2. 3 & 4 are not parties to OA No. 123/2016. The Federation is not a party to the present proceedings unlike the Section 9 petition initiated by the Federation itself before the Madras High Court. He contends that in view of the above, it cannot be said that the arbitral proceedings under Section 42 of the Act are the same in the present case.

21. On "cause of action" the learned counsel relies upon the dicta in ***Alchemist Ltd. & Anr. vs State Bank of Sikkim & Ors. (2007) 11 SCC 335***. The Court would note that the said case dealt with a Writ Petition under Article 226 of the Constitution of India and not with proceedings under the Arbitration Act, it held to the effect that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. The test is to see whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the cause of action. It also held that in determining the question, the substance of the matter and not the form thereof has to be considered.

22. Applying the aforesaid tests to the issues which were before the Madras High Court in OA No. 123/2016, and in the subsequent application before the Trial Court at Delhi, what emanates is that both proceedings were based on the cause of action emerging from a decision of the present appellant to call a meeting at Chennai on 03.03.2016 and the decisions which were taken in the

said meeting. The respondent no.1 is also aggrieved by the said decisions and simply arraying respondent nos. 2, 3 & 4 in the present proceedings would not alter the substance of the matter. The addition of the said three parties i.e. respondent nos. 2, 3 & 4 at the whims and fancies of respondent no.2 will only change the format of the petition but will not and cannot change the substratum and essential dispute being considered both at the Madras High Court as well as in the Section 9 petition of respondent no.1. Just as respondent no.1 had impleaded respondent nos. 2 to 4 as parties, it could well have impleaded the Federation itself as a necessary party. Such impleadment would not make the proceedings in Delhi so different in form and substance as to distinguish the essence of the lis in both the proceedings. The respondent also relies upon the decision of the Supreme Court in ***State of West Bengal & Ors. vs Associated Contractors (2015) 1 SCC 32***, which held inter alia as under:

> *"...24. If an application were to be preferred to a court which is not a Principal Civil Court of original jurisdiction in a district or a High Court exercising original jurisdiction to decide questions forming the subject matter of an arbitration if the same had been the subject matter of a suit, then obviously such application would be outside the four corners of Section 42. If, for example, an application were to be filed in a court inferior to a Principal Civil Court, or to a High Court which has no original jurisdiction, or if an application were to be made to a court which has no subject-matter jurisdiction, such application would be outside Section 42 and would not debar subsequent applications from being filed in a court other than such court.*
>
> *25. Our conclusions therefore on Section 2(1)(e) and Section 42 of the Arbitration Act, 1996 are as follows:*
>
> *(a) xxxx*
>
> *xxxx*

> *(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....."*

23. The Court is unable to see how reference to the aforesaid case would assist respondent no.1 because the meeting was held in Chennai, therefore, the High Court having jurisdiction over that area would have jurisdiction. Indeed by virtue of the aforesaid para 25(g), the Madras High Court would clearly have original jurisdiction under Section 42 of the Act. The respondent also relies upon the decision of the Supreme Court in ***Indus Mobile Distribution Pvt. Ltd vs Datawind Innovations Pvt. Ltd. (2017) 7 SCC 678*** to contend that where a 'seat' of arbitration is designated, it will be akin to the Courts exercising supervisory powers over the arbitration. In the aforesaid case, interim injunction had been granted by the Court in Delhi in favour of the petitioner. While holding that, the Court at Mumbai alone had jurisdiction and not the Delhi Court but in allowing the interim injunction to continue for a period of four weeks, the Supreme Court held that if the Delhi Court did not have jurisdiction in the first place it could not have passed the interim injunction and this jurisdiction would lie exclusively with the Courts in Mumbai since that was the juridical seat of arbitration.

24. In the present case the Madras High Court was already seized of the issue sought to be adjudicated by respondent no.1 in the proceedings before the Delhi Courts. From a comparison of the aforesaid relief sought before Chennai and in Delhi what clearly emanates is that the first proceeding at Chennai clearly covered all the reliefs sought by respondent no.1, therefore,

under Section 42 of the Act, as well as in view of the bar under the said section, the Madras Court would clearly have original jurisdiction in the matter and the subsequent proceedings in the present case would not be maintainable. The reasoning of the impugned order that jurisdiction of the Delhi Court was not barred since no arbitral proceedings had commenced in terms of Section 9 sub-section (ii) within 90 days of such reference and, therefore, there would be no bar to arbitral proceedings in Delhi, is erroneous because Section 42 of the Act confers exclusive jurisdiction on that Court alone before which an application under Section 9 had been made, under the arbitration agreement and that Court shall have jurisdiction over the arbitral proceedings and over all subsequent applications arising out of that agreement. Section 42 of the Act reads as under:

> *"..**42. 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...."*

25. What emanates from the above is that, all arbitration proceedings would necessarily have to go before the same Court where the first Section 9 proceedings were initiated between the parties under the same arbitral agreement. The respondent's contention that agreement itself is not defined, is untenable because he himself refers to the same arbitral agreement, the Constitution and bye-laws of the Federation to delineate various kinds of disputes illustrated therein.

26. The appellants have referred to the decision of the Madras High Court which disposed of three applications, one of which was preferred by respondent no.1 against the Federation through its General Secretary, the present appellant, against the order of the learned Arbitrator dated 19.10.2016. While disposing of the said applications, the Madras High Court dealt with all the issues raised in the petition apropos the decision taken in the meeting held at Madras on 03.03.2016. It held inter alia as under:

> *"..... 29.1 The order passed does not in any way violate the interim order passed by the Patiala House Court that enabled the appellant to continue as President of VFI. However, does that by any token grant the appellant any exclusive right to operate, or run VFI by sidelining the Executive Committee or General Council? At least not in terms of the Constitution and Bylaw of the VFI. Article VIII thereof deals with the Duties and 30 Powers of the Executive Committee. Article VIII(5) enjoins the Executive Committee with the power or duty "to conduct and administer the day to day work of the Federation and to form standing sub-committee and such other sub-committees as may be considered necessary and define and determine their powers, duties, scope and terms of reference unless otherwise provided for." When compared with the Executive Committee, under Article XI Duties and Powers of the President are chiefly emergency or supreme emergency powers, and Article XI(4) insists that they shall be exercised only in the interest of the Federation (i.e. VFI). Under Article XI(2)and (6) such of the powers that the President exercises should be approve d or confirmed by the Executive Committee. In other words, the Office of the President of VFI carries an implied duty to report to the Executive Committee to a substantial extent. It is therefore apparent that the President of VFI within the scheme of its Constitution and Bylaw has no greater authority or power than the Executive Committee, and wherever he is granted independent powers they have to be exercised only in case of emergency or*

supreme emergency as the case may be, and that too only in circumstances where the interest of the VFI is in peril, and not otherwise.

29.2 Nowhere, and at no time thus far, the appellant has attempted to explain or justify that his actions to which the respondents are taking exceptions to, were done in the best interest of the VFI, nor has he 31 explained the pre-dominant interest of the VFI that he was anxious to secure, and/or alleged that the arbitrator has faulted in overlooking the bonafides of the action that he had so taken.

29.3 In any democratically run institution, any office created by its constitution or bylaw to preside over its affairs cannot ignore the spirit of the democratic principles that govern it. After all, VFI is not the personal property of its President or any of its other office bearers, or of the Committee created for its governance under its bylaw. It would have been appropriate if the appellant had attempted to convene the Executive Committee or the General Council, mustered support for his views or plan of actions and acted. Between an individual and the institution of which he is a member or an office bearer, the interest of the institution must always be considered paramount. Any position enjoined with duty to any democratically run body such as a Society, or a club, or any association of persons is fiduciary in character, and anyone who holds such position is bound by the obligations arising out of a fiduciary relationship. They are but trustees of the institution in general and of those members who have elected them in particular. They have been granted powers only for performing their duties to the institution whose affairs they manage for the time being. The order of the arbitrator reflects this principle broadly while granting prayer (b) of I.A.1/2016 and it is therefore in order, and it is not inconsistent with any of the principles that govern the grant of interim order by an arbitrator, more particularly in a case of individual Vs Institution.....

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31.2 As to the justification for the aforesaid order of the arbitrator, the reasons discussed in paragraph 29.3 is valid here too. Further, the attitude and conduct of the appellant that was on display prima facie would not inspire confidence in the mind of the right thinking. They hardly reconcile with the responsibility that he owe d the VFI by virtue of his office. 33 Otherwise, how to explain why he informed the Executive Committee that he had not signed any contract with SLE, why he suddenly pulled a surprise on the Executive Committee with his announcement that he had signed the contract at least a month before, why he participated in the decision to form a Core Committee to select a sponsor and why he dissolve d it unilaterally without taking the Executive Committee into confidence when the object for which the Core Committee was formed was in the final leg of its fulfillment, what is the emerge n cy or supreme emerge n cy that threatened the interest of VFI which warranted the unilateral exercise of Presidential powers within the scheme of the Constitution of VFI, and what is the manifest interest of VFI that he, in his capacity as the President of VFI, has pursued with his wild swinging patterns?

31.3 There are endless questions. They however, remain and continue to remain as an unresolved plot that the appellant has scripted and put up in exhibition. Now when it has all started? Was it not when the VFI contemplated on a IVL and searched for a sponsor? Why the IVL as an idea should inject faction? What is playing the spoilsport - Is it the sport, or the sponsorship? Why is the appellant hyper anxious to take on the Executive Committee of the Federation on the choice of the sponsor? Why is he hesitant to abide by the views of the majority in the Executive Committee? What is the rationale behind his actions? Not one was explained. It is this failure to explain any of them, and this inability to deny their factual content exposes the key to his cryptic puzzle and unravels the 34 plot within. Why fault the arbitrator, when the appellant himself has unloaded unexplainable deeds of uninspiring quality before the arbitrator? The conduct of the appellant is not beyond blames and lacks bonafides.

32. To conclude the appellant has not been able to convince this Court as to the merit of anyone of the three appeals that he has filed. Consequently he fails in all the three appeals.

33. Before dropping the curtains on this case, it requires to be recorded with immense anguish that those who litigate here appear to betray the interest of thousands of volleyball players in this country, the dreams they carry and the hopes this country holds. Under what authority is the sporting talent the country possesses is paralysed? Are they not the assets of our country, however short its duration might be? Somewhere in the voluminous papers mad e available it is indicated that the Asian Volleyball Confederation has banned all the international activities of the VFI, and during the pendency of these appeals before me, it is informed that the Sports Ministry of Government of India is said to have derecognised the VFI as it is embroiled in litigation. The factum of volleying litigation between those who avowed to protect and promote the game might be true, but what has the Sports Ministry done to arrest the damage? Rather than derecognising the Federation, why has it not attempted to involve itself in the mess and put the house in order? After all, in the General Council Meeting of the VFI dated 11-03-2016 in which the appellant was stripped off his office, a representative of Govt. of India was a participant. There is 35 therefore in display irresponsibility of varying degrees and content that appears to control the attitude of all those who have something to do with the governance of this sporting body. Every sporting body and those who administer it should remember that long away from the comfort of the court halls and meeting rooms, there nurtures our children, men and women, spread across our countryside and cities, a dream of playing for the nation. Dreams such as these bind this nation, keep alive its spirits, and propel it to move to the generation next with energy amidst all the cynicism that we, the people, are constantly fed with....."

27. The tenure of respondent no.1 as President of the said Federation has ended. Observations of this Court on 27.04.2017 and 17.04.2018 hold that

respondent no.1 could not have continued beyond the said period. In view of the preceding discussion, the impugned order holding that Delhi Court had jurisdiction to entertain the subsequent Section 9 application is clearly erroneous. Accordingly, it is set aside and the petition is allowed in the above terms.

NAJMI WAZIRI, J.

JUNE 01, 2018
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