



IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBP No. 9 of 2024

Shri Binaya Kumar Naik *Petitioner*

Mr. Bibhu Prasad Mohanty, Advocate

-Versus-

Sanjay Kumar Naik and another *Opposite Parties*

Mr. Avijit Pal, Advocate (O.P.1)

Mr. Sumit Mohanty, Advocate (O.P.2)

CORAM:

HON'BLE THE CHIEF JUSTICE

ORDER

11.12.2024

Order No.

08.

This matter is taken up through Hybrid mode.

2. This application has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator to adjudicate the dispute between the parties.

3. Learned counsel appearing on behalf of the opposite party no.1 has relied on Supreme Court's decision in the case of *Vidya Drolia and others v. Durga Trading Corporation, (Civil Appeal No. 2402 of 2019 decided on 14.12.2020)*. He has submitted that it is apparent from the notice issued by the petitioner to the opposite parties for appointment of arbitrator that the dispute relates to infringement of copyright. Such dispute, he submits, is not arbitrable in view of Supreme Court's decision in the case of *Vidya Drolia* (supra). He has heavily relied on the observation made in paragraph-30 of the decision, which reads thus:-

“30. A judgment is a formal expression of conclusive adjudication of the rights and liabilities of



the parties. The judgment may operate in two ways, in rem or in personam. Section 41 of the Indian Evidence Act, 1872 on the question of relevancy of judgments in the context of conclusiveness of a judgment, order or decree provides:

“41. Relevancy of certain judgments in probate, etc., jurisdiction.—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, [order or decree] declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, [order or decree] declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the



property of that person at the time from which such judgment, [order or decree] declares that it had been or should be his property."

*A judgment in rem determines the status of a person or thing as distinct from the particular interest in it of a party to the litigation; and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided. Such a judgment "settles the destiny of the res itself" and binds all persons claiming an interest in the property inconsistent with the judgment even though pronounced in their absence.²¹ By contrast, a judgment in personam, "although it may concern a res, merely determines the rights of the litigants inter se to the res".²² Distinction between judgments in rem and judgments in personam turns on their power as res judicata,²³ i.e. judgment in rem would operate as res judicata against the world, and judgment in personam would operate as res judicata only against the parties in dispute. Use of expressions "rights in rem" and "rights in personam" may not be correct for determining non-arbitrability because of the inter-play between rights in rem and rights in personam. Many a times, a right in rem results in an enforceable right in personam. *Booz Allen & Hamilton Inc.* refers to the statement by Mustill and Boyd that the subordinate rights in personam derived from rights in rem can be ruled upon by the arbitrators, which is apposite. Therefore, a claim for*



infringement of copyright against a particular person is arbitrable, though in some manner the arbitrator would examine the right to copyright, a right in rem. Arbitration by necessary implication excludes actions in rem.”

4. In my considered view, the submission advanced on behalf of opposite parties is wholly misconceived. I do not find at any place in the judgment of the Supreme Court in the case of *Vidya Drolia* (supra), it has been held that dispute relating to infringement of copyright is non-arbitrable.

5. Having regard to the facts and circumstances of the case and with the consent of learned counsel for the parties, the Court appoints **Dr. Justice Akshaya Kumar Rath, Former Judge** of this Court, as the sole Arbitrator to adjudicate the disputes between the parties. The arbitration shall take place under the aegis of the High Court of Orissa, Arbitration Centre.

6. The arbitration petition is disposed of accordingly. A copy of this order be communicated to the learned Arbitrator forthwith.

(Chakradhari Sharan Singh)
Chief Justice

Arun Mishra

Signature Not Verified

Digitally Signed
Signed by: ARUN KUMAR MISHRA
Designation: ADR-Cum-Addl. Principal Secretary
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 12-Dec-2024 12:11:17

