CASE COMMENT: ROGER SHASHOUA & OTHERS v MUKESH SHARMA & ORS

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Judicial Body	Supreme Court of India
Name of the case	Roger Shashoua & Others V. Mukesh Sharma & Others.
Year of the case	2017
Petitioners	Roger Shashoua & Others
Respondents	Mukesh Kumar & Others
Judges	Justice R. Banumathi, Justice Deepak Misra
Acts Involved	Arbitration and Conciliation Act, 1996
Sections Involved	Section 34 of the Ārbitration and Conciliation Act, 1996

The ruling in Roger Shashoua v. Mukesh Sharma by the Indian Supreme Court clarifies the court's interpretation of arbitration agreements in more detail, especially with regard to the parties' implied choice of seat. The court determined that, in the absence of an express designation of a seat, designating London as the arbitration's ‘venue’ would imply that the parties had agreed that, without any other indications, London would serve as the arbitration’s

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seat.

BACKGROUND AND BRIEF FACTS OF THE CASE

The parties in Shashoua provided that, 'the venue of the arbitration shall be London, United Kingdom'. Additionally, they also said that the arbitration would follow the arbitration procedures established by the International Chamber of Commerce and that Indian law would control the substantive law of the contract. There was no assigned seating available. After the arbitral tribunal rendered its decision, the debtor of the award filed an application to have the award annulled under Section 34[1]. Since the parties had not specified a seat, the respondent, the award debtor, argued that the arbitration should be interpreted as having occurred in India. As a result, the award could be overturned by the Indian courts.

ISSUES OF THE CASE

Back in 2009, the London Commercial Court rendered a ruling stating that London served as the arbitration's seat and that London's courts had supervisory jurisdiction over the relevant proceedings.

Having upheld the principles of the 2009 ruling, the Indian Supreme Court (SC) has collaborated with a foreign ruling to set a precedent that will bind India's subordinate courts. The evidence that the SC used to support its decision is a little complicated. The disputing parties (arbitration agreement) signed a shareholders agreement containing an arbitration clause. On behalf of Roger Shashoua and the other appellants (appellants), a commercial court granted an anti-suit injunction against Mukesh Sharma and the other respondents (respondents).

Since London was the arbitration's seat, Roger Shashoua and the other appellants (the "appellants") requested an anti-suit injunction against Mukesh Sharma and the other respondents (the "respondents") from a commercial court in London to stop them from engaging in arbitration or from starting any proceedings outside of London. The Supreme Court's ruling has protected judicial comity from domestic courts' "home-wrecking" meddling. A weak foundation can never support a long-lasting union, and the Supreme Court's decision is likewise firmly based on its clear insights from the cases BALCO v. Kaiser Aluminum[2] and

[1] Arbitration and Conciliation Act 1996, s 34
[2] BALCO v. Kaiser Aluminum [2012] 9 SCC 552

Enercon (India) Private Limited v. Enercon GMBH[3].

When it comes to upholding the sovereignty of a foreign award in cases where the parties intended a foreign seat, the Supreme Court's ruling is consistent with global best practices.

ENGLISH HIGH COURT PROCEEDINGS

In a previous attempt, the respondent in Shashoua had argued that the arbitration should take place in India instead of London. In an application for interim measures under Section 44 of the (English) Arbitration Act, the respondent argued that, since the parties had applied Indian law to the substantive provisions of the agreement and had only designated London as the venue for the arbitration hearings, India should be the appropriate location for the arbitration.

In Shashoura v. Sharma[4], Cooke J. determined that London was the location of the arbitration because there was no other designated seat, the parties had agreed to abide by a supranational set of rules (the ICC Rules), and London was specifically named as the venue.

He pointed out that Indian law was chosen as the substantive law without much consideration, and that foreign parties often choose 'London arbitration' in conjunction with a different governing law. Reiterating that India was the arbitration's seat, the respondent filed an application to have the award set aside under Indian law following the tribunal's decision in response to the High Court's decision.

JUDGMENT

Before taking up this case, the Indian Supreme Court had previously cited Cooke J.'s reasoning in Shashoua v. Sharma in a number of other cases, including BALCO. The respondent argued that the Supreme Court's references to Cooke J.'s decision were not included in the ratio of those cases and that it was an English High Court interim ruling that should not be given significant weight.

The Supreme Court rejected these arguments, stating that it had relied on the reasoning of Shashoua v. Sharma in earlier rulings and had cited it with approval. It concluded that Cooke J's ruling belonged in the "propositional pyramid" that served as the foundation for the earlier

[3] Enercon (India) Private Limited v. Enercon GMBH [2014] 5 SCC 1
[4] Shashoura v. Sharma 2009 EWHC 957 (Comm)

Indian rulings.

CRITICAL ASSESSMENT OF THE JUDGMENT

The ruling in Roger Shashoua v. Mukesh Sharma (Roger Shashoua) by the Supreme Court clarifies the court's interpretation of arbitration agreements in more detail, especially with regard to the parties' implied choice of seat. The Court concluded that, in the absence of any express designation of a seat, designating London as the arbitration's 'venue' would imply that the parties had agreed that, absent any contrary indications, London would serve as the arbitration's seat.

The parties have been using the terms 'place', 'venue' and 'seat' interchangeably in their contracts, which gives rise to the disagreement over the choice of seat law. The parties' agreement has been interpreted by Indian courts in a number of cases to establish the applicable law of the seat.

Considering the importance of the dispute, even though a great deal of information has been presented visually in both the written note of submissions and the petitions requesting leave to appeal, we will only discuss the facts that are absolutely required to decide the case at hand. The High Court provided a detailed account of the facts in a number of areas because it was resolving a joint writ petition and a petition filed under Section 34[5] and it had to consider the 'seat of arbitration and venue of arbitration' in order to decide whether the petition could be maintained in Indian courts.

[5] Arbitration and Conciliation Act 1996, S 34