

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

Date of Reserve: 16.4.2009
Date of Order: 17th April, 2009

Arb. Appeal No. 1/2009

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17.04.2009

Govil Automobiles

... Appellant

Through: Ms. Radhika Chandrashekhar, Adv.

Versus

**Hindustan Petroleum Corporation
Limited & Anr.**

... Respondents

Through: Mr. P. Sinha with
Mr. A.K. Mishra, Advocates for HPCL

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

ORDER

This appeal has been filed by the appellant under Section 37 of the Arbitration & Conciliation Act, 1996 against an order dated 6.1.2009 passed by the learned Arbitrator. Notice of the appeal was sent to the respondents and the respondent no.1 has taken preliminary objection regarding jurisdiction of this Court to entertain the appeal. It is submitted by the respondent that it was important for this Court to decide this issue of jurisdiction at the preliminary stage

since Section 42 of the Arbitration & Conciliation Act, 1996 would thereafter bind the parties to make all subsequent applications to the Court where initial application has been made and entertained.

2. A perusal of contract/agreement between the parties would show that this contract/agreement was in respect of a petrol pump situated in UP in the jurisdiction of Court at Agra. The appellant was resident of Agra. The contract was entered with the respondent through its regional office at Mathura. Clause 65 of the contract/agreement specifically provided that agreement was made at Agra, all the payments shall be due and made at Agra and all claims, disputes in respect of the agreement shall be filed only in the Court at Agra.

3. Under the Arbitration Act, the parties are at liberty to select a judge of their choice viz. the Arbitrator. They also have liberty to have venue of arbitration of their choice. However, they cannot, by consent create jurisdiction of a Court which otherwise would not have jurisdiction. Although, if more than one Court have jurisdiction in natural course, by consent they can restrict themselves to the jurisdiction of one of those several courts. In the present case, the entire cause of action took place at Agra. Petrol Pump, the subject matter of dispute, is at Agra. It was specifically agreed by the parties that only the Courts at Agra would have jurisdiction. I consider that this appeal cannot be filed before Delhi Court merely on the ground that the Arbitrator was sitting in Delhi and holding hearings in Delhi. The location of Arbitrator cannot be a cause or reason

for deciding jurisdiction of the Court. The jurisdiction of the court has to be decided as per terms of Section 37 read with Section 2(1)(e) of the Arbitration & Conciliation Act, 1996. Section 2(1)(e) provides that the appropriate Court is the one having jurisdiction to decide the question if the same had been subject matter of a suit. I consider that even in case of appeal only that Court would have jurisdiction which is proper court as per CPC and is agreed upon by the parties in the agreement. I am of the opinion that only the Court at Agra has jurisdiction and the courts at Delhi have no jurisdiction in this case.

4. The appeal is dismissed for lack of jurisdiction with liberty to the appellant to file appeal before the Court of appropriate jurisdiction.

April 17, 2009
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SHIV NARAYAN DHINGRA, J.