

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.8141 of 2014 (O&M)

Date of decision : 18.09.2015

A.A. Associates and another

...Appellants

Versus

Philips India Ltd. and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Rajesh Sethi, Advocate with
Mr. Arun Biriwal, Advocate for appellants.

Mr. Nitin Thatai, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

CM No.2766-CII of 2015

Application stands infructuous.

Main Case

Challenge in the present appeal is to the impugned order dated 08.09.2014 passed by the Additional District Judge, Gurgaon, whereby interim custody of the machine stated to have been hypothecated with respondent No.1, has been directed to be handed over to the Service Engineer of the appellants till the disposal of the arbitration proceedings in accordance with law.

Mr. Rajesh Sethi, learned counsel appearing on behalf of appellants submits that as per terms and conditions of the agreement, Court at Gurgaon did not have territorial jurisdiction, but only Court at New Delhi. Furthermore, no cause of action had accrued in favour of the respondent No.1 to invoke the provision of Section 9 of Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act'). He has drawn attention of this Court to Clauses 16 and 17 of the agreement to contend that cause of action if any had accrued, the Court at Delhi would have had jurisdiction to entertain and try the petition under Section 9 and not at Gurgaon.

Mr. Nitin Thatai, learned counsel appearing on behalf of respondent No.1 submits that Arbitrator has already entered into the reference and the arbitration proceedings are pending. Vide impugned order, interim measures have already directed to be maintained in respect of fact that claims with regard to the custody and as well as the payment of the machinery involved in the dispute, much less, hypothecated, are yet to be adjudicated before the Arbitrator.

I have heard learned counsel for parties and appraised the paper book.

It would be apt to reproduce Clauses 16 and 17 of the agreement:-

“16. Governing Law and Jurisdiction

The rights and obligations of the parties under this agreement shall be governed by the laws of India, without giving effect to principles of conflict of laws thereof, and shall be subject to the exclusive jurisdiction of courts at

Gurgaon, Haryana.

17. Arbitration

If any dispute arises between the parties out of or in connection with this agreement whether in the nature of interpretation or meaning of any term hereof or as to any claim by one against the other, or otherwise the same shall be referred to sole arbitrator to be appointed by Philips and the arbitration shall be governed by the Arbitration and Conciliation Act, 1996. The seat or legal place of arbitration shall be New Delhi. The language to be used in the arbitral proceedings shall be english. The award given by the arbitrator upon such references shall be final and binding upon the parties, and each party shall bear its own expenses in relation to such arbitration. Unless otherwise awarded by the arbitrator, the arbitration fees shall be shared equally by the parties.”

On perusal of the aforementioned clauses, laws of India are to be made applicable to the parties with regard to any rights and obligation. The jurisdiction of Courts at Gurgaon, Haryana shall have a exclusive jurisdiction but, vis-a-vis the arbitration proceedings, place of the arbitration, shall be at New Delhi. The Hon'ble Supreme Court in *M/s Swastik Gases P. Ltd. Vs. Indian Oil Corporation Ltd., 2014(1) RCR (Civil) 52*, had an occasion to ponder upon the interpretation of the clauses, by observing where the word “exclusive” or “only” have been mentioned in the agreement and jurisdiction of a particular court would be the same, where, the parties set their hands by subjecting themselves to jurisdiction of a particular Court and that Court would have a jurisdiction, irrespective to the fact that cause of action had accrued elsewhere.

Since the respondent-petitioner had sought the indulgence of

the Court by moving application under Section 9 of the Act and the said petition has been disposed of, but during the interregnum, the Arbitrator has already been appointed, the petitioner would a right to seek interim order as per Section 16 of the Act.

I do not find any illegality and perversity in the impugned order. Impugned order cannot be said to have been passed without jurisdiction.

The appellants would be at liberty to claim damages in terms of money or through other measures by filing claim/counter claim and as well as any interim measures/or protection as per provision of Sections 16 and 17 of the Arbitration Clauses.

In view of reasons aforementioned, appeal is accordingly dismissed.

18.09.2015

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**(AMIT RAWAL)
JUDGE**