

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 18 OF 2016

M/s. Banaras Auto Traders & Anr. ... Applicants

Versus

M/s. Reliance Webstore Limited and Ors. ... Respondents

Mr. Ravi Bhardwaj a/w. Mr. Avinav Rau for the Applicants.
None for the Respondents.

CORAM : S.J. KATHAWALLA, J.
DATED : 15th FEBRUARY, 2016

P.C.:

1. The Applicant No. 1 – M/s. Banaras Auto Traders & Another has filed the above Arbitration Application against Respondent No. 1 – M/s. Reliance Webstore Limited and Others under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act) for appointment of a sole Arbitrator to resolve the disputes arisen between the parties under the Franchise Agreement dated 8th October, 2004 (Exhibit-A to the Application) executed by and between Applicant No. 2 as the sole proprietor of Applicant No. 1 and the Respondent No. 1.

2. Clause 19 of the Franchise Agreement pertains to arbitration and the same is reproduced hereunder :

“SECTION 19 : DISPUTE RESOLUTION AND JURISDICTION

If any dispute arises in respect of this Agreement, the parties shall endeavour to settle the dispute by direct negotiations in good faith. If such negotiations do not settle the dispute, the parties agree to submit the matter to settlement proceedings under the rules of the Arbitration and Conciliation Act, 1999, (the 'Act') as applicable for the time being in force. The place of the

Arbitration will be Mumbai and the language of the proceedings will be English. The arbitral award shall be in writing and shall be final and binding on the parties. Judgment upon the award may be entered in any Court having jurisdiction thereof, provided, however, that this clause shall not be constructed to limit Reliance from bringing any action in any Court of competent jurisdiction from injunctive or any other provisional relief as Reliance deems to be necessary or appropriate to protect its System, Proprietary Rights, trade marks, trade names, service marks, logotypes, insignia, trade dress and designs or to enjoin or restraint Franchisee from otherwise causing immediate and irreparable harm to Reliance. Subject to the above, the Court of Mumbai shall have exclusive jurisdiction in respect of this Agreement.”

3. Since disputes arose between the parties in respect of the said Franchisee Agreement dated 8th October, 2004, the Applicant No. 2 through his Advocate issued a notice dated 20th June, 2007 to the Respondents invoking the Arbitration Agreement. Since the Respondents failed to respond to the same, the Applicants filed Arbitration Petition No. 57 of 2007 before the High Court at Allahabad under Section 11 of the Act. The Respondents appeared before the Court and challenged the jurisdiction of the Allahabad High Court to entertain the said Petition on the ground that the said Petition ought to be filed before the Bombay High Court. The learned Single Judge of the Allahabad High Court by his detailed order dated 12th November, 2014 has held as under :

“ A perusal of the demand made by the notice dated 20.06.2007 send by the applicants to the defendants is a useful material for coming to the conclusion that the dispute, as per the demand of the applicants, relate to

damages and claims and not to immovable property. In such a situation, under law, the suit could have been filed at Mumbai where the defendants resides, or where some cause of action arose, i.e. in the State of Uttar Pradesh. Hence, the relevant clause in the agreement conferring jurisdiction in the matter solely upon the Courts at Mumbai cannot be said to be illegal in view of the Supreme Court judgments noticed hereinabove.

In view of the aforesaid discussions, it is held that this application under Section 11 of the Act has been wrongly filed before this Court at Allahabad. The proper Court for filing such application would be at Mumbai. In that view of the matter, this application is dismissed, but with liberty to the applicants that they may prefer similar application before the competent Court at Mumbai.”

4. The Applicants have therefore filed the above Arbitration Application before this Court seeking appointment of an Arbitrator under Section 11 of the Act to adjudicate the disputes between the parties arising out of the Franchise Agreement dated 8th October, 2004. None appear for the Respondents though served. However, since there exists a valid Agreement between Applicant No. 2 and Respondent No. 1 to have their disputes arising out of the Agreement dated 8th October, 2004 resolved through Arbitration, this Court on 22nd January, 2016 passed the following order :

“1. The disputes in the above Arbitration Application are proposed to be referred to Mr. Vishal Kanade, Advocate. In view thereof, Mr. Vishal Kanade, Advocate shall submit disclosure under Section 11 (8) read with Section 12 (1) of Arbitration and Conciliation Act, 1996.

2. The Advocate for the Applicants shall forward a copy of this order to Mr. Vishal Kanade, Advocate.

3. *All concerned to act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court.*

4. *Stand over to 29th January, 2016.”*

5. Pursuant to the order passed by this Court dated 22nd January, 2016, Mr. Vishal Kanade, Advocate has filed disclosure under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996. The same is taken on record. The Respondents have failed to appear before this Court even at this stage. In view thereof, the following order is passed :

- i. The disputes arising out of the Franchise Agreement dated 8th October, 2004 between the parties are referred to the sole Arbitration of Mr. Vishal Kanade, Advocate.
- ii. The parties shall appear before the learned Arbitrator in his chambers, on 9th March, 2016 at 5.30 p.m. and obtain necessary directions.
- iii. The cost of arbitration shall initially be borne by the parties equally.
- iv. All contentions of the parties are kept open.
- v. The venue of Arbitration shall be at Mumbai.
- 6.. The Advocate for the Applicants shall forthwith forward a copy of this order to the Respondents by Speed Post A.D.
7. In view of this order, the above Arbitration Application is disposed of.

(S.J.KATHAWALLA, J.)