

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 27TH DAY OF JANUARY 2016

THE HON'BLE MR. JUSTICE S.MANIKUMAR

A. Nos.3975, 6960 & 6961 of 2015

A.No.3975 of 2015

In the matter of Arbitration
and Conciliation Act 1996

and

In the matter of Agreement
dated 28/12/2012 Between
Applicant and Respondent.
Term Loan Agreement No.119-
017190-000201-03

M/s.Electronica Finance Ltd.,
Kailaschandra Apartment, S.No.128/1A,
Plot No.3, Paud Road,
Kothrud, Pune-411 038, and
also at No.1076-L, T.V.S.Colony,
Anna Nagar, West Extension,
Chennai-600 101.

Rep.by is Assistant Manager Mr.M.Murali

... Applicant

Vs

1. Jai Shree Polyplast Pvt.Ltd.,
C-583, RIICO Industrial Area,
Phase-1, Bhiwadi, Alwar-301019.

2. Uma Charan,
House No.3, Raj Narain Marg,
Civil Lines,
Delhi-110054

3. Babita Aggarwal,
House No.3, Raj Narain Marg,
Civil Lines,
Delhi-110054

.. Respondents

Application praying that this Hon'ble Court be pleased
to appoint Advocate Commissioner to seize and deliver the
subject schedule properties morefully described in the
Schedule to the Judge's Summons to the Applicant from the
premises of the Respondent or wherever found with Police

aid and break open of premises if necessary.

A.No.6960 of 2015

In the matter of Arbitration
& Conciliation Act, 1996
and

In the matter of Agreement
dated 08/06/2012 Between
Applicant and Respondent Term
Loan Agreement No.119-017190-
000201-01

M/s.Electronica Finance Ltd,
Rep by its Assistant Manager Mr.M.Murali
Kailaschandra Apartment,
S.No.128/1A, Plot No.3, Paud Road,
Kothrud, Pune-411 038 and
also at No.1076-L, TVS Colony,
Anna Nagar, West Extension,
Chennai- 600 101.

: Applicant

Vs.

Jai Shree Polyplast Pvt Ltd., (Borrower)
Rep by its Director Uma Charan
C-583, RIICO Industrial Area,
Phase-1, Bhiwadi,
Alwar-301019..

: Respondent

Application praying that this Hon'ble Court be pleased
to appoint an Advocate Commissioner to seize and deliver
the subject schedule properties more fully described in the
Schedule to the Judge's Summons to the Applicant from the
premises of the Respondent or wherever found with Police
aid and break open of premises if necessary.

A.No.6961 of 2015

In the matter of Arbitration
& Conciliation Act, 1996
and

In the matter of Agreement
dated 28/08/2012 Between
Applicant and Respondent Term
Loan Agreement No.119-017190-
000201-02

M/s.Electronica Finance Ltd,
Rep by its Assistant Manager Mr.M.Murali
Kailaschandra Apartment,
S.No.128/1A, Plot No.3, Paud Road,
Kothrud, Pune-411 038 and
also at No.1076-L, TVS Colony,
Anna Nagar, West Extension,
Chennai- 600 101.

: Applicant

Vs.

Jai Shree Polyplast Pvt Ltd., (Borrower)
Rep by its Director Uma Charan
C-583, RIICO Industrial Area,
Phase-1, Bhiwadi,
Alwar-301019..

: Respondent

Application praying that this Hon'ble Court be pleased
to appoint an Advocate Commissioner to seize and deliver
the subject schedule properties more fully described in the
Schedule to the Judge's Summons to the Applicant from the
premises of the Respondent or wherever found with Police
aid and break open of premises if necessary.

These application coming on this day before this court
for hearing the court made the following order:

<https://hcservices.ecourts.gov.in/hcservices/>

Application Nos. 3975, 6960 and 6961 of 2015 have

been filed under Section 9 of the Arbitration and Conciliation Act, for appointment of Advocate Commissioners to seize and re-possess the subject machineries, morefully described in the Judge's summons. The details culled out from the above three applications, filed by M/s. Electronics Finance Limited, is tabulated below :

S l . N o	Applica tion No.	Loan Agreemen t No.	Descript ion of the machiner y	Loan Amount (Rs.)	Last Due Date	Due Amount (Rs.)
1	3975/2015	119-17190- 2012-2-1 dt. 28.12.2012	Bag Conversion Machine Model BCS 850/40 Six Shuttal Circular Looms DSL 6	56,43,819/-	18.05.2015	19,71,028/-
2	6960/2015	119-17190- 2012-2-2 dt. 08.06.2012	Lohia -Circular Room LSL6 Mechanical -2 Nos Rajhans Screen Changer - dia 90 mm Rotary Cutter D.H. Panchal Six shuttle circular looks DSL 6	60,14,861/-	08.09.2015	16,18,852/-

S l . N o	Applica tion No.	Loan Agreemen t No.	Descript ion of the machiner y	Loan Amount (Rs.)	Last Due Date	Due Amount (Rs.)
3	6961/2015	119-17190- 2012-2-3 dt. 28.12.2012	Lexon Winders - Lexon Make high speed cheese winder model L200M	30,85,262/-	08.09.2015	81,207.45

2. Upon hearing the learned counsel for the finance company, this Court vide order dated 22.06.2015, in A. No. 3975 of 2015 has appointed an Advocate Commissioner and in A. No.6960 of 2015 vide order dated 14.10.2015 an Advocate Commissioner has been appointed. In A. No. 6961 of 2015, notice has been ordered.

3. In A. NO. 3975 of 2015, Mr. Martin D. Tharakan, the learned Advocate Commissioner has filed a Memorandum dated 15.09.2015 stating that the subject machinery in the above said Application has been seized and handed over to the applicant company.

4. In A. No. 6960 of 2015, Mr. D. Sampath Kumar, the learned Advocate Commissioner has filed a Memorandum dated 08.12.2015 stating that the machineries have been seized and handed over to the applicant finance company.

5. Thereafter, the respondent/ borrower in all the three applications, have filed counter affidavits, the contents of which are more or less the same. To avoid repetition, this Court deems it fit to extract the sum and substance in the counter affidavits.

6. Inter alia, the respondents/ borrowers have mainly objected to the maintainability of the applications, on the ground of jurisdiction. In A. NO. 3975 of 2015, the borrower, M/s. Jai Shree Polyplast Pvt. Ltd., has contended that the term loan agreement dated 28.08.2012 has been entered into between M/s. Electronica Finance Ltd., with its registered office at Pune and M/s. Jai shree Polyplast Pvt. Ltd., having its office at Delhi. The agreement between the parties was executed in the presence of the witnesses at Gurgaon, Haryana. The registered office of the applicant is at Pune and that of the respondent is at Delhi. As per Clause 17 of the Term Loan Agreements,

" All the disputes or differences arising between the parties hereto as to the interpretation of this Agreement or any covenants or conditions thereof or as to the rights, duties and liabilities of any part hereunder or as to any act, performance or non performance of any act,

deed or thing as agreed under this agreement or matter or thing arising out of or relating to or under this agreement (even though the agreement may have been terminated), the same shall be referred to and settled by the Sole Arbitration of Chief Executive or The General Manager or Assistant General Manager- Electronica Finance Ltd., having its registered office at Kailaschandra Apartment, S. No.128/1A, Plot No.3, Paud Road, Kothrud, Pune - 411 038. The said Arbitrator shall decide the dispute by adopting summary procedure only on the basis of affidavits and documents. The arbitration shall take place in Gurgaon and shall be conducted in English language. The decision of the said arbitrator shall be final, conclusive and binding upon the parties hereto. All the costs of Arbitration, including the Arbitrator's fees, advocate's fees, travelling costs and other miscellaneous expenses shall be borne equally by the parties hereto. "

further submitted that as per Clause 18 of the term loan agreements,

" Any dispute relating to this Agreement shall be resolved, decided and/or settled on the basis of the Laws of India and the Courts at Pune shall have exclusive jurisdiction."

7. Therefore, the borrower/ respondent has contended that as per the terms and conditions of the loan agreement dated 28.12.2012, arbitration shall take place only at Gurgaon, Haryana and the Courts at Pune alone have exclusive jurisdiction to resolve all the disputes under the loan agreement.

8. In Application No.6960 of 2015, M/s. Jai Shree Polyplast Pvt. Ltd.,/ the borrower, in his counter affidavit has contended that the term loan agreement dated 08.06.2012 was entered into, between M/s. Electronica Finance Ltd., having its registered office at Pune and M/s. Jai Shree Polyplast Pvt. Ltd., having its office at Delhi. The agreement was executed on 08.06.2012, in the presence of witnesses at Gurgaon, Haryana. Reference has been made to Clause 17 and Clause 18 of the Loan Agreement, wherein it is stated that the arbitration shall take place at Gurgaon, Haryana and any dispute regarding the agreement

shall be resolved, decided or settled before the Courts at Pune.

9. In A. NO. 6961 of 2015, M/s. Jai shree Polyplast Pvt. Ltd./ the borrower has contended that the term loan agreement dated 28.08.2012 has been entered into between the parties, M/s. Electronica Finance Ltd., having its registered office at Pune and M/s. Jai shree Polyplast Pvt. Ltd., having its office at Delhi. In this case also, placing reference to Clause 17 of the Term Loan Agreement, it is contended that the arbitration shall take place in Delhi and as per Clause 18 of the term loan agreement, the courts at Delhi shall have exclusive jurisdiction. As per Clause 17 of the Loan Agreement dt.28.08.2012,

" All the disputes or differences arising between the parties hereto as to the interpretation of this Agreement or any covenants or conditions thereof or as to the rights, duties and liabilities of any part hereunder or as to any act, performance or non performance of any act, deed or thing as agreed under this agreement or matter or thing arising out of or relating to or under this agreement (even though the agreement may have been terminated), the same shall be referred to

and settled by the Sole Arbitration of Chief Executive or The General Manager or Assistant General Manager- Electronica Finance Ltd., having its registered office at Kailaschandra Apartment, S. No.128/1A, Plot No.3, Paud Road, Kothrud, Pune - 411 038. The said Arbitrator shall decide the dispute by adopting summary procedure only on the basis of affidavits and documents. The arbitration shall take place in Delhi and shall be conducted in English language. The decision of the said arbitrator shall be final, conclusive and binding upon the parties hereto. All costs of Arbitration, including the Arbitrator's fees, advocate's fees, travelling costs and other miscellaneous expenses shall be borne equally by the parties hereto. "

WEB COPY

The borrower M/s. Jai Shree Polyplast Pvt. Ltd., has further submitted that as per Clause 18 of the term loan agreements,

" Any dispute relating to this Agreement shall be resolved, decided and/or settled

On the basis of the Laws of India and the Courts at Delhi shall have exclusive

jurisdiction."

10. Referring to the decision of the **Hon'ble Supreme Court in Rajasthan State Electricity Board vs. Universal Petrol Chemicals Limited, reported in (2009) 3 SCC 107** and based on the above averments, regarding the place of the registered offices of the company, who have entered into an agreement dated 28.12.2012, as the place of execution of the agreement at Gurgaon, Haryana, learned counsel for the borrower submitted that the place at which the arbitration shall take place at Gurgaon, Haryana and the courts at Pune to have exclusive jurisdiction. Contentions have been made that there is no cause of action, within the jurisdiction of this Court to entertain the Applications under Section 9 of the Arbitration and Conciliation Act, 1996.

11. Rejoinder affidavits dated 11.01.2016, have been filed in all the three applications, contending inter alia that though the agreements were executed in Gurgaon, Haryana, the place of arbitration and courts have been conferred with exclusive jurisdiction, in the agreements, averments have been made by the applicant M/s. Electronica Finance Ltd., in the supporting affidavits to all the applications, that the proposals for the loans have to be processed and sanctioned only after KYC [Know your customer] documents in the regional office, situated at

Anna Nagar, West Extension, Chennai, within the jurisdiction of this Court. In the above cases, all the documents have been sent to the Regional Office at Chennai, the request for loan has been processed and approved for sanction at Chennai. According to the applicant Finance Company, a part of cause of action, namely, processing and approval for sanction of the loan has arisen within the jurisdiction of Chennai, where the Regional office of the Finance Company is situated. Therefore, though the agreements have been entered into, between the parties, at Gurgaon, Haryana, and the parties have decided to have the arbitration at Pune and Delhi respectively, the courts at Chennai has jurisdiction to resolve the disputes. According to the Finance Company, this Court also has territorial jurisdiction to adjudicate all the disputes arising out of the loan agreement. The Finance Company has further submitted that the decisions relied on by the borrower, in the applications, is in-apposite to the facts of these cases.

WEB COPY

12. Learned counsel for the Finance Company submitted that in respect of the machineries seized and handed over, the same could not be sold, pending further orders in the Applications. Submission of the learned counsel for the applicant/ Finance Company is placed on

13. Heard the learned counsel for the parties and perused the material on record.

14. In all the above applications, the loan agreements have been executed at Gurgaon, Haryana and Pune. The relevant clauses, stipulating the place of arbitration and resolution of any disputes relating to the agreement, to be resolved or settled, conferring exclusive jurisdiction on the Courts at Pune and Delhi, have been extracted in the aforesaid paragraphs. The main thrust of the applicant's contention is that, part of cause of action in processing the loan proposal was done at Chennai and therefore this Court has jurisdiction to entertain the Applications filed under Section 9 of the Arbitration and Conciliation Act, 1996.

15. In support of the contentions, the Finance Company has relied on the decisions of the Hon'ble Supreme Court in ***A.B.C Laminart (P) Ltd., vs. A.P. Agencies, Salem reported in 1990(1) MLJ 10*** and the judgement of the ***Hon'ble Supreme Court in Jindal Vijayanagar Steel vs. Jindal Praxair Oxygen Company Ltd., in Appeal (Civil) No. 3773 of 2006, dated 29.08.2006.***

Agencies, Salem reported in 1990(1) MLJ 10, the first appellant therein was a manufacturer and supplier of metallic yarn having his registered office at Udyognagar, Mohamadabad within the jurisdiction of the Civil Court of Kaira. A.B.C Laminart (P) Ltd., entered into an agreement with the respondent A.P. Agencies, Salem to supply 500 bobbins of Rupalon Metallic Yarn to the respondent as stipulated in the different clauses of the agreement. Disputes having arisen out of the contract, the respondent filed a suit against the appellant and another, for the recovery of the balance of advance remaining in their hands and also damages in the Court of the Subordinate Judge, Salem. The trial court held that it had no jurisdiction to entertain the suit in view of Clause 11 of the agreement. In the appeal, the High Court set aside the judgment of the trial court and directed it to dispose of the suit on merits. The appellants therein, filed an appeal before the Hon'ble Supreme Court.

17. On the aspect of cause of action, the Hon'ble Supreme Court, at paragraph 12, in **A.B.C Laminart (P) Ltd., vs. A.P. Agencies, Salem reported in 1990(1) MLJ 10,** held as follows:-

"12. A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in

order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a fight to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the fight sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a fight to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

Further, at paragraphs 15 and 16, the Hon'ble Apex Court

<https://hcservices.ecourts.gov.in/hcservices/>
held as follows :-

"15. In the matter of a

contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the Law of Contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have

performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.

16. So long as the parties to a contract do not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to

cannot be said that the parties have by their contract ousted the jurisdiction of the Courts. If under the law several Courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. "

18. In **Jindal Vijayanagar Steel vs. Jindal Praxair Oxygen Company Ltd., in Appeal (Civil) No. 3773 of**

" The appellant was in the process of setting up an integrated steel plant having the capacity of 1.25 million tonnes of the manufacture of iron and steel in Bellary District, Karnataka. For its manufacturing operations, the appellant required large quantities of industrial gases, namely, oxygen, nitrogen and argon for such production. To this end, the appellant, in conjunction with M/s Praxair Pacific Limited decided to enter into agreements to incorporate the respondent-Company in Karnataka. The respondent- Company was to set up an Air Separation Plant (ASP) in the same complex in Bellary, Karnataka for the purpose of supplying the appellant with the required quantities of industrial gases.

The respondent-Company was incorporated in Bangalore with a 50:50% share holding between the appellant and the Praxair Pacific Limited, which was subsequently changed to 26:74%. On 19.02.1996, Pipeline Supply Agreement (PSA) was entered into

Bangalore wherein the respondent would supply to the appellant its requirement of industrial gases, namely, gaseous oxygen, gaseous nitrogen and the gaseous argon. Product Supply Agreement was entered into between the respondent and Praxair India Private Limited (PIPL), a wholly-owned subsidiary of Praxair Pacific Limited at Bangalore for supply of liquid oxygen, nitrogen and argon to PIPL. This agreement was entered into on 01.06.1996. As several disputes/issues of technical and commercial nature in relation to the implementation of the PSA and the performance of the ASPs had arisen between the parties, the representatives of the appellant, respondent, Praxair Pacific Limited, Praxair Inc. and PIPL made in Singapore to resolve the issues. On 23.06.2002, an agreement was arrived at between the parties (Settlement Agreement). The Settlement Agreement was approved by the Board of Directors of both the parties in Bangalore. The interpretation of the obligations of parties under various

provisions of the Settlement Agreement including the above provisions and the PSA is presently in dispute in arbitration invoked by the respondent against the appellant.

Accordingly, the respondent implemented those provisions of the Settlement Agreement which were favourable to it, whilst delaying the implementation of terms favourable to the appellant. As a result thereof in various issues/disputes including all power norms, reimbursement of excise duty and income-tax claims, maintenance of adequate quantities of suppliable liquids in the storage tanks of the respondent etc. arose between the parties.

WEB COPY

To settle the disputes, the respondent invoked dispute resolution process pursuant to [Article 17](#) of the PSA by issuing a notice from Bellary, Karnataka to the appellant in Bellary Karnataka."

Thereafter, certain meetings were held between the parties. The respondent therein filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, in Arbitration Petition No.459 of 2004 before the Bombay High Court. Notice of arbitration was issued by the respondent in Bellary, Karnataka and served upon the appellant in Bellary and Bangalore, Karnataka. The appellant filed Arbitration Petition No. 9 of 2005 before the Principal District Judge, Bellary on 06.02.2005 and sought for appropriate orders to restrain the respondent from breaching the PSA read with the Settlement Agreement. On 07.02.2005, an interim order was passed by the Principal District Judge, Bellary. The respondent, thereafter, filed an I.A. No.4 in the said arbitration petition under Section 151 of the CPC read with Section 42 of the Arbitration Act to dismiss the arbitration petition filed by the appellant at Bellary. On 05.03.2005, the Principal District Judge, Bellary dismissed I.A. No. 4 in arbitration petition and held that as the entire cause of action had arisen in Bellary, the Bellary Court had jurisdiction to decide the matter. An appeal was preferred by the respondent against the order passed by the Principal District Judge, High Court of Karnataka which allowed the appeal filed by the respondent and directed that the issue of jurisdiction would have to be decided by the Bombay High Court in respondent's Arbitration Petition No. 459 of 2004. By the impugned order dated 02.03.2006,

the Bombay High Court held that it had the jurisdiction to entertain Arbitration Petition No. 459 of 2004. Being aggrieved by the same, an appeal was filed. The contentions of the learned counsel for the appellant, summarised in the judgement in Jindal Vijayanagar Steel Ltd's case are as hereunder :-

"We heard Mr. R.F. Nariman, learned senior counsel for the appellant and Mr. C.A. Sundaram, learned senior counsel for the respondent. Mr. R.F. Nariman submitted that:

a) the High Court erred in rejecting the contention of the appellant that the Bombay High Court had no jurisdiction to entertain the petition filed by the respondent in the Bombay High Court under Section 9 of the Act;

b) the High Court erred in holding that by virtue of Clause 12 of the Letters Patent Act, the Bombay High Court has jurisdiction to entertain the petition filed by the respondent in the Bombay High Court;

c) the High Court failed to appreciate that as per Section 2(1)(e) of the Act, only a court having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, would have jurisdiction under the act;

d) the High Court failed to appreciate that

being a special enactment for arbitration, the provisions of the Act would prevail over the provisions of the Letters Patent when determining questions under the Act, including questions as to jurisdiction;

e) the High Court ought to have appreciated that for a court to exercise jurisdiction under section 9 of the Act, the court must be a "Court" as defined under Section 2(1)(e) of the Act and where the cause of action has arisen;

f) the High Court, after observing in paragraph 7 of the Impugned Order that no part of the cause of action had arisen at Mumbai failed to appreciate that it was only the Bellary Courts, which had the jurisdiction to entertain disputes arising from the PSA and the Settlement Agreement since the entire cause of action had arisen in Mumbai;

g) the High Court erred in ignoring the settled law that it is the situs of cause of action and not the place of business, which is the deciding factor in determining jurisdiction under Section 2(1)(e) of the Act;

h) the High Court failed to appreciate that the mere venue of arbitration, and situs of the corporate office of the respondent does not vest jurisdiction in a court under Section 2(1)(e) of the Act. It is also contended that the judgment of this Court

incuriam.

The High Court has failed to notice and appreciate that the cause of action as set out hereunder arose in Bellary:

- a) the disputes raised by both the parties emanate from the maintenance of product levels stored/supplied from the plants of both the parties, which are situated in Bellary, Karnataka;*
- b) at the relevant time, the registered office of the appellant was situated in Bellary, Karnataka;*
- c) the registered office of the respondent is situated in Bellary, Karnataka;*
- d) the action threatened by the respondent to limit the supply of Liquid Argon ("LAR") up to 40 Tonnes per day ("TPD") was proposed to be made in Bellary, Karnataka;*
- e) the consequences of such actions would also have an effect on the plant of the appellant and the ancillary units in the same situated in Bellary;*
- f) the entire chain of events leading to the unilateral threat issued by the respondent to restrict the supply of Liquid Argon occurred in Bellary.*

The High Court also is not correct in holding that since during the pendency of the petition filed by the respondent before it, the Registered Office of the appellant

had shifted to Mumbai, the appellant was carrying on business in Mumbai, and that this would vest jurisdiction in the Bombay High Court under [Section 9](#) of the Act, in relation to disputes which had arisen prior to the shifting of the Registered Office. According to learned senior counsel, the subsequent events do not retrospectively confer jurisdiction upon Courts to entertain pending cases, where there was no jurisdiction to entertain them at inception and that the sole intention of the respondent in filing a petition under [Section 9](#) of the Act before the Bombay High Court was to oust the jurisdiction of the competent Court under [Section 2\(1\)\(e\)](#) of the Act and that the High Court by claiming jurisdiction rendered the petition filed in the Bellary Court by the appellant nugatory and ineffective. Mr. Nariman also submitted that the test under [Section 2\(e\)](#) of the Act applies uniformly across India and that the principle in the explanation to Section 20 CPC should be applied to Clause 20 of the Bombay Letters Patent. Concluding his

argument, Mr. Nariman submitted that the High Court in passing the impugned order has mis-interpreted the provisions of the Act and Clause 12 of the Letters Patent and the net effect of the impugned order is that it renders nugatory the competency of the Courts having jurisdiction where admittedly the entire cause of action has arisen. Further it affords jurisdiction to courts on the basis of an enactment, namely, the Letters Patent which would not apply since in arbitration matters, jurisdiction must be solely determined by Section 2(1)(e) of the Act.

The contentions raised by the respondent that an order holding that the Court has no jurisdiction to entertain, try and dispose off an arbitration petition under Section 9 of the Act would necessarily imply or entail a refusal to grant relief under Section 9 of the Act and that such an order would, therefore, be an order under Section 9 of the Act and would, therefore, be appealable. In other words,

jurisdiction to entertain, try and dispose off a petition under Section 9 of the Act, such determination of an issue would be one in aid of determination of an issue under Section 9 and would, therefore, also be a decision under Section 9 of the Act. It is, therefore, submitted that an order on the issue of jurisdiction to entertain, try and dispose off an arbitration petition under Section 9 of the Act is clearly an appealable order under Section 37(1)(a) of the Act.

The respondent, the Bombay High Court has jurisdiction to entertain, try and dispose off the said arbitration petition for the following reasons:

- a) The High Court of Bombay is a Chartered Court under the Letters Patent;
- b) Clause XII of Letters Patent prescribes the jurisdiction of a Chartered Court;

Clause XII of the Letters Patent reads as under:- "Original jurisdictions as to suits.- And We do further ordain that the

the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, or the Bombay City Civil Court."

The Bombay High Court would have jurisdiction under Clause XII of the Letters Patent; if a defendant dwells or carries on business or works for gain within the limits of Mumbai. Where the

cause of action has accrued wholly or in part within or without the limits of the said jurisdiction is wholly irrelevant in the circumstances. Explaining further, Mr. Sundaram submitted that, in the present case, at the time of filing of Section 9 petition, the appellant had its Corporate Office at Mumbai and was, therefore, carrying on business within the local limits of the Ordinary Original Jurisdiction of the Bombay High Court. During the pendency of the said Section 9 petition, the Registered Office of the appellant was transferred to Mumbai. At the time when the issue of jurisdiction was argued before the learned Single Judge, the Registered Office of the appellant had already been transferred to and was situated in Mumbai within the local limits of the Ordinary Original Jurisdiction of the Bombay High Court.

It is submitted that by Section 120 of the CPC, various sections of the Code including

to Chartered High Courts like the Bombay High Court. Therefore, it is submitted that for determining the question of jurisdiction of the Bombay High Court as a Chartered Court, the provisions of Section 20 of the CPC are inapplicable and that only the provisions of Clause XII of the Letters Patent are applicable. Mr. Sundaram submitted further that the jurisdiction of a Court under Section 2(1)(e) of the 1996 Act is not in any manner restricted to the situs of the cause of action and that it is inconceivable that the legislature could have intended to restrict or circumscribe the scope and ambit of the jurisdiction of the Court under Section 2 (i) (e) of the 1996 Act and make it inferior to the jurisdiction of the Court prescribed under the Code of CPC or Letters Patent. We have given our careful consideration to the rival submissions made by the learned senior counsel appearing for the parties.

Adverting to the above contentions, with reference to

out the reasons therefor, the Hon'ble Supreme Court held as follows :-

"We are of the considered opinion that the Bombay High Court has jurisdiction to entertain Section 9 application of the respondents herein. We, therefore, request the Bombay High Court to proceed on merits to determine the matter in accordance with law. For the reasons set out above, the civil appeal ought to be rejected by this Court and we do so accordingly. No costs. In view of this order, the appellant is directed to file their affidavit in reply on merits in the pending Section 9 proceedings."

19. Letter dated 25.05.2012, an inter office note, written by the applicant Finance Company, would show that loan proposals have been forwarded to the Regional Office of the Finance Company, for verification and the same is extracted hereunder:

INTER OFFICE NOTE

Date : 25th May 2012

To

Sudarshan M
Electronics Finance Ltd.,
North Phase, Develop Plots
Guindy Industrial Estate
Ekkaduthangal
Chennai - 600 032.

Sub-- Request you to sanction the Loan Proposal in Jai Shree Polyplast having address at C 583, RIICO Industrial Area, Phase I, Bhiwandi, Alwar - 110019, through its Director Mr. Uma Charan Aggarwal and Mrs. Babita Aggarwal for CIRCULAR LOOMS LSL- 6 Nos., SCREEN CHANGER DIA 90MM AND ROTARY CUTTER, SIX SHUTTAL CIRCULAR LOOMS DSL - 6 No's.- machine.

Dear Mr. Sudarshan,
As per our policy and internal convenient we are forwarding you KYC documents in the captioned matter to sanction the Loan Proposal. KYC documents are mentioned in the Schedule hereunder.

In this case borrower approached us vide application dated 19th May 2012 for loan facility to purchase above mentioned machines, so you are requested to scrutinize the KYC documents and sanction the loan proposal so that we will disburse the loan amount to the borrower.

Hence request you to confirm the same at the earliest."

Letters dated 10.08.2012 and 11.12.2012, are also inter office notes, written by the applicant Finance Company on the same lines. Perusal of the letters dated 17.08.2015, addressed by the Finance Company to Mr. Amar Deshpande, produced before this Court shows that the Finance Company has intended to refer the matter to the General Manager of the company, as a Sole Arbitrator, to settle and decide the matter. Mr. Amar Deshpande has been requested to commence the arbitration proceedings at Pune and intimate all the concerned parties, the venue, time and date. Further, in the letters dated 30.05.2012, 13.08.2012 and 14.12.2012, addressed to the Manager of the Finance Company, Pune, they have stated that the loan facilities have been sanctioned after going through all the KYC documents. The first 3 letters, referred above are written to the office at Chennai for scrutiny of KYC documents. In the last 3 letters referred addressed to the Regional Office, Pune, the Finance company has stated that the loan facilities have been approved. The Regional Manager, Chennai Branch has requested the Manager at Pune to release the loan facilities at the earliest. From the above documents, extracted supra, it could be deduced that the only event that has taken place at Chennai and claimed to be a part of cause of action, is the scrutiny of KYC papers. In the letters dated 02.12.2015, the applicant company

M/s.Electronics Finance Ltd., has stated that in respect of all the loan agreements, the subject matters of Application Nos. 3975, 6960 and 6961 of 2015, the seat of arbitration will be Pune, though in one of the Loan Agreement No.119-17190-2012-2-3 dt. 28.12.2012, as per clause 18, the seat of arbitration has been fixed at Delhi.

20. In the light of the specific clauses in the agreements and letters, it is the submission of the learned counsel for the respondent/ borrower that in black and white, the parties have conferred the place of arbitration and the court of exclusive jurisdiction. It is also his submission that though directions have been issued by this Court, as early as 22.06.2015, that the arbitration proceedings should have been completed within four weeks, so far it has not been done. Arbitration Proceedings have not been commenced within the said time.

21. In **M/s.Patel Roadways Ltd., v. M/s.Prasad Trading Company** reported in **AIR 1992 SC 1514**, While explaining the scope of the words, "at such place" occurring at the end of the Explanation to Section 20 of the Civil Procedure Code and the word "or", for deciding the place of jurisdiction, the Hon'ble Supreme Court, at Paragraph 9, 12, 13 and 14, held as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

"9. Clauses (a) and (b) of

Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently clause (c) is not attracted to the facts of these cases. What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have

jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause

of action arises, the provisions of clauses (a), (b) and (c) together with the first part of the explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under clause (c) (irrespective of whether the corporation had a subordinate office in such place or not). This was, Therefore, not the purpose of the explanation. The explanation is really an explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for

the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the explanation would have read "and in respect of any cause of action arising at any place where it has a subordinate office, also at such place".

13. As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation,

however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one.

14. There may be only one extra-ordinary situation in which this interpretation may cause an apparent anomaly. This is where the plaintiff has also his/its place of business at the same place as the corporation but the cause of action has arisen at some other place. The above interpretation would preclude him from filing a suit in that place of business common to both parties and compel him to go to a court having jurisdiction over the place where the cause of action has arisen. But this is not really a hardship because such plaintiff must have had some nexus or connection with the place since some part of

the cause of action had arisen there; if he can have dealings with the corporation at such a place giving rise to the cause of action, there is no reason why he should find it disadvantageous or difficult to file a suit at such place. Equally, the corporation, having a subordinate office at the place, will suffer no disadvantage."

25. In **Kotak Mahindra Finance Ltd., v. T. Thomas Educational Trust, a Charitable and Educational Trust** reported in 2003 (3) Arb. L.R. 268, the petitioners therein invoked the provisions of Section 9 of the Arbitration & Conciliation Act, 1996. The contract was entered into, on 18th December, 2000. There was also no dispute that none of the respondents were residing or having their offices or carrying on business within the jurisdiction of this court. The only argument advanced at the hearing of the petition was that the letter of termination in respect of the subject matter of the contract was issued from Mumbai. There was a clause in the agreement under which it was set out that the Courts in Mumbai alone shall have the exclusive jurisdiction. It was therefore, contended on behalf of the petitioners herein that this Court would have jurisdiction to hear, entertain and decide this application relying on the judgment of the Apex Court

1971 (1) SCC 286 and A.B.C.Laminart (P) Ltd., v. A.P. Agencies reported in **1989 (2) SCC 163**. Reliance is also placed on the judgment in **Globe Transport Corporation v. Triveni Engineering Works** reported in 1983 (4) SCC 707.

26. In the above reported case, the respondents have contended that notwithstanding the clause in the contract, which provided for conferring of jurisdiction on this Court, as no part of the cause of action had arisen within the jurisdiction of this Court and hence, this Court would have no jurisdiction. It has been held that parties cannot confer jurisdiction on the Court which it does not have and it has also been pointed out that the petition under Section 9, could have only been maintained, if the predicates of explanation to Section 20 of the C.P.C. were met. In the said case, the petitioners have contended that they carry on business at Chennai, and have an office there. The agreement was entered into at Chennai, and consequently considering the explanation to Section 20, the Bombay High Court held that the Court at Chennai would have the jurisdiction. On the facts and circumstances of the above case, the Bombay High

Court, at Paragraphs 4 and 5, held as follows:

"4. If the law declared by the Apex Court is now so understood the question would be on the facts of the case as to which is the deemed place where the Corporation carries on business. Merely because the plaintiff issued the notice of termination at Mumbai that by itself would not give a cause for filing a suit in Mumbai if the defendants were not carrying on business in Mumbai or residing in Mumbai as admittedly the agreement was entered into at Chennai. The defendants reside or carry off business at Chennai. The clause pertaining to ouster was based on the fact that the petitioners were deemed to be carrying on business at Mumbai. Once petitioner had a subordinate office at Chennai, the loan was granted in Chennai as also the agreement was entered into at Chennai and it is that place where the cause of action has arisen which is the deemed place where the petitioners are carrying on business. If that be so the clause in the agreement would be of no consequence considering Sections 23 and 28 of the Indian Contract Act and consequently, the preliminary objection raised that this Court has no jurisdiction, will have to be upheld.

5. That would be the position under Section 20 of the C.P.C. Considering Section 120 of C.P.C. Sections 16, 17 and 20 shall not apply to the High Court in the exercise of its Original Civil Jurisdiction which includes this High Court. Therefore, the judgment in M/s. Patel Roadways Ltd. (supra) in so far as this

Court is concerned will be inapplicable as the judgment is based on the interpretation of the explanation to Section 20. Filing of Suits on the Original Side of this court are governed by Clause 12 of the Amended Letters Patent of this Court. The same reads as follows:-

"And we do further ordain that the said High Court of judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, lif, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Causes Court at Bombay, or the Bombay City Civil Court."

Applying Clause 12 it will be clear that as the defendants do not dwell, carry on business or personally work for gain and for that matter the suit is not in respect of immovable property situated within the jurisdiction of this Court and as no part of the cause of action has arisen, wholly within the jurisdiction of this Court, this Court could not be the Court having

jurisdiction over the subject matter considering Section 2(e) of the Arbitration & Conciliation Act, 1996. It is, therefore, clear that the application under Section 9 moved before this Court would be without jurisdiction."

27. In the reported case, except conferring jurisdiction on the Bombay Court, no part of cause of action has arisen, within the said Court and therefore, the contention that the parties cannot confer jurisdiction, on the Court, which had no jurisdiction, has been upheld. The said judgment cannot in strict sense, be applicable to the facts of this case, in the light of the material on record, where part of cause of action, has arisen, within the jurisdiction of Mumbai Court.

28. In **Firm Ashok Traders v. Gurumukh Das Saluja** reported in **2004 (3) SCC 155**, at Paragraph 13, the Apex Court, held as follows:

"13. A & C Act, 1996 is a long leap in the direction of alternate dispute resolution systems. It is based on UNCITRAL Model. The decided cases under the preceding Act of 1940 have to be applied with caution for determining the issues arising for decision under the new Act. An application under Section 9 under the scheme of A & C

Act is to a suit. Undoubtedly, such application results in initiation of civil proceedings but can it be said that a party filling an application under Section 9 of the Act is enforcing a right arising from a contract? "Party" is defined in Clause (h) of sub-Section (1) of Section 2 of A & C Act to mean 'a party to an arbitration agreement'. So, the right conferred by Section 9 is on 'a party to an arbitration agreement'. The time or the stage for invoking the jurisdiction of Court under Section 9 can be (i) before, or (ii) during arbitral proceeding, or (iii) at any time after the making of the arbitral award but before it is enforced in accordance with Section 36. With the pronouncement of this Court in *M/s.Sundaram Finance Ltd., v. M/s.NEPC India Ltd.*, AIR (1999) SC 565 the doubts stand cleared and set at rest and it is not necessary that arbitral proceeding must be pending or at least a notice invoking arbitration clause must have been issued before an application under Section 9 is filed. A little later we will revert again to this topic. For the moment suffice it to say that the right conferred by Section 9 cannot be said to be one arising out of a contract. The qualification which the person invoking jurisdiction of the Court under Section 9 must possess is of being a party to an arbitration agreement A person not party to an arbitration agreement cannot enter the Court for protection under

Section 9. This has relevance only to his locus standi as an applicant. This has nothing to do with the relief which is sought for from the Court or the right which is sought to be canvassed in support of the relief. The reliefs which the Court may allow to a party under clauses (i) and (ii) of Section 9 flow from the power vesting in the Court exercisable by reference to 'contemplated', 'pending' or 'completed' arbitral proceedings. The Court is conferred with the same power for making the specified orders as it has for the purpose of and in relation to any proceedings before it though the venue of the proceedings in relation to which the power under Section 9 is sought to be exercised is the arbitral tribunal. Under the scheme of A & C Act, the arbitration clause is separable from other clauses of the Partnership Deed. The arbitration clause constitutes an agreement by itself. In short, filing of an application by a party by virtue of its being a party to an arbitration agreement is for securing a relief which the Court has power to grant before, during or after arbitral proceedings by virtue of Section 9 of the A & C Act. The relief sought for in an application under Section 9 of A & C Act is neither in a suit nor a right arising from a contract. The right arising from the partnership deed or conferred by the Partnership Act is being enforced in the arbitral tribunal; the Court under Section 9 is only formulating interim

measures so as to protect the right under adjudication before the arbitral tribunal from being frustrated. Section 69 of the Partnership Act has no bearing on the right of a party to an arbitration clause to file an application under Section 9 of A & C Act."

29. What is decided by the Apex Court in the abovesaid judgment that the relief sought for in an application under Section 9 of the Act, need not be a right arising out of a contract, cannot be construed to mean that the Court, which has no territorial jurisdiction, can entertain an application, under Section 9 of the Act and grant the relief sought for.

30. In **Rajasthan SEB v. Universal Petrol Chemicals Ltd.**, reported in 2009 (3) SCC 107, agreements were entered into between the parties at Jaipur. Performance guarantees were executed by Allahabad Bank, at Jaipur Branch, on behalf of the main branch of Universal Petrol Chemicals Ltd., at Calcutta. Clause 30 of the general conditions of the contract, inter alia stipulates that, **"....The contract shall for all purposes be construed according**

to the laws of India and subject to jurisdiction of only at Jaipur in Rajasthan Courts only....."

Clause 31 of the general conditions, dealing with Arbitration Clause, runs as follows:

"31. ARBITRATION

(a) If at any time any question, dispute or difference whatsoever which may arise between the Purchaser and the Supplier upon or in relation to Contract, either party may forthwith to the order a notice in writing of the existence of such question(s)/dispute(s) differences and the same shall be referred to the Chairman, RSEB, Jaipur or any person appointed by him for the purpose (herein referred to the 'Arbitrator'). Such reference shall be deemed to be a submission to the arbitration within the meaning of the Indian Arbitration Act, 1940 and the statutory modifications made thereof.

(b) The award of the Arbitrator shall be final and binding on both the parties.

(c) Upon every or any such reference, the cost incidental to such reference and an award shall be in the discretion of the Arbitrator who may determine the amount thereof and direct the same to be borne and paid.

(d) Work under the Contract shall, if reasonably possible, continue during the arbitration proceedings and no

payment due or payable by the Purchaser shall be withheld on account of such proceedings."

Clause relating to jurisdiction of the Court is as follows:

"DISPUTES All disputes, differences or questions whatever which may arise between the Purchaser and the Supplier upon or in relation with or in connection with the contract shall be deemed to have arisen at Jaipur (Rajasthan) and **no Court other than the Court at Jaipur (Rajasthan) shall have jurisdiction to entertain or try the same.**"

Clause 7 was also incorporated in the bank guarantee, with respect to the jurisdiction of disputes, arising under the bank guarantee, which is as follows:

"All disputes arising in the said Bank Guarantee between the Bank and the Board or between the supplier or the Board pertaining to this guarantee shall be subject to the courts only at Jaipur in Rajasthan."

As a dispute arose between the parties, Rajasthan State Electricity Board, preferred a petition under <https://hcservices.ecourts.gov.in/hcservices/> Section 20 of the Arbitration and Conciliation Act,

1940, in the nature of suit in High Court, Calcutta. On the question of jurisdiction, a Hon'ble Division Bench of the Calcutta High Court, held that **the forum selection clause as appearing in the agreements between the parties would not operate in view of the specific prohibition under Section 31(4) of the Act.** It was also held that since the respondent had made an application before the Calcutta High Court having competent jurisdiction to try and decide the proceedings, the said Calcutta Court would be entitled to exercise its jurisdiction and that all subsequent applications would be made to that Court only as first application was made in that Court by the respondent. Consequently, the appeals were allowed and the judgment of the learned Single Judge was set aside. The matter was directed to be listed before the Single Judge for passing consequential orders in terms of the directions issued by the Division Bench. Being aggrieved by the same, the Electricity Board preferred appeals to the Hon'ble Supreme Court. Before the Apex Court, the appellant contended that the Court at Jaipur alone would have territorial jurisdiction, but the case of the respondent was that Calcutta Court alone had the jurisdiction. On the facts of the case,

"There is no dispute with regard to the fact that the parties entered into various agreements which are referred to above. The said agreements admittedly also contained forum selection clauses between the parties whereby and whereunder the parties agreed that the said contracts and agreements, in relation to any dispute or difference would be subject to the jurisdiction of courts at Jaipur in Rajasthan. Therefore, the issues which we are required to address here is whether the ouster clause in the agreement between the parties will also be applicable in ascertaining the competent court for making an application for reference under section 20 of the Act. As per Section 41 (1) of the act the provisions of the Code of Civil Procedure, 1908, (for short "the Code") shall apply to all proceedings before the Court, and to all appeals, under the Act."

सत्यमेव जयते

After referring to Section 20 of the Civil Procedure Code, 1905, with regard to jurisdiction and the aspect of validity of agreement, vesting jurisdiction in one such Court, where the cause of action has arisen in two or more Courts, at Paragraph 22, the Apex Court held as follows:

"There are number of decisions of this Court wherein it was held that where there may be two or more

competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therein, if the parties to the contract agree to vest jurisdiction in one such court to try the dispute which might arise as between themselves, such agreement would be valid and binding."

In **Universal Petrol Chemicals Ltd.**, 's case (cited supra), reference has been made to a decision made in **A.B.C.Laminart (P) Ltd., v. A.P. Agencies** reported in **1989 (2) SCC 163**, wherein, it has been held as follows:

"21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like "alone", "only", "exclusive" and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim "expressio unius est exclusio alterius" -- expression of one is the exclusion of another -- may be applied. What is an appropriate case shall

depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed."

The Apex Court in **Universal Petrol Chemicals Ltd., 's** case (cited supra), considered **Hakam Singh v. Gammon (India) Ltd.**, reported in 1971 (1) SCC 286. The said decision was rendered in the light of facts of a similar contract, where clause 12 of the tender provided for arbitration. Whereas, clause 13 reads as follows:

"Notwithstanding the place where the work under this contract is to be executed, it is mutually understood and agreed by and between the parties hereto that this Contract shall be deemed to have been entered into by the parties concerned in the city of Bombay and the court of law in the city of Bombay alone shall have jurisdiction to adjudicate thereon."

Yet another judgment considered by the Apex Court in **Universal Petrol Chemicals Ltd., 's** case (cited supra), is **Hanil Era Textiles Ltd., v. Puromatic Filters (P)**

Ltd., reported in [(2004) 4 SCC 671], wherein, it has been held that where two or more courts have

jurisdiction under the Code, it is permissible to have an agreement between the parties restricting the place of suing to any one of them and if such restriction is placed in the agreement, the same cannot be said to be contrary to public policy and does not contravene Section 28 of the Contract Act. It was however, made clear that such restriction cannot be made and the parties cannot by agreement confer jurisdiction on a court which otherwise, does not possess under the Code. The Supreme Court also considered the scope of Section 20 of the Code in the said case, and by referring to the said provision, held that,

"when ouster clause is clear, unambiguous and specific, accepted notions of contract would bind parties and unless absence of ad idem can be shown courts should avoid exercising jurisdiction."

While arriving at the said decision, the Hon'ble Supreme Court has referred the ratio laid down in **A.B.C. Laminart (P) Ltd. (supra)**.

On the applicability of Section 20 of the Code to the Arbitration Act, at Paragraph 27, the Apex Court held that,

"The aforesaid legal proposition settled by this Court in respect of territorial jurisdiction and applicability

of Section 20 of the Code to Arbitration Act is clear, unambiguous and explicit. **The said position is binding on both the parties who were contesting the present proceeding. Both the parties with their open eyes entered into the aforesaid purchase order and agreements thereon which categorically provide that all disputes arising between the parties out of the agreements would be adjudicated upon and decided through the process of arbitration and that no court other than the court at Jaipur shall have jurisdiction to entertain or try the same. In both the agreements in clause 30 of General Conditions of the Contract it was specifically mentioned that the contract shall for all purposes be construed according to the laws of India and subject to jurisdiction of only at Jaipur in Rajasthan Courts only and in addition in one of the purchase order the expression used was that the Court at Jaipur only would have jurisdiction to entertain or try the same."**

Explaining the effect of the ouster clause used in the agreement, ie., Courts at Jaipur alone", at Paragraph 28, the Apex Court held as follows:

"In the light of the aforesaid facts of the present case, the ratio of all the aforesaid decisions which are referred to hereinbefore would squarely govern and apply to the present case also.

There is indeed an ouster clause used in the aforesaid stipulations stating that the courts at Jaipur alone would have jurisdiction to try and decide the said proceedings which could be initiated for adjudication and deciding the disputes arising between the parties with or in relation to the aforesaid agreements through the process of arbitration. In other words, even though otherwise the Courts at Calcutta would have territorial jurisdiction to try and decide such disputes, but in view of the ouster clause it is only the courts at Jaipur which would have jurisdiction to entertain such proceeding."

Finally, at Paragraph 35, the Apex Court in **Universal Petrol Chemicals Ltd., 's** case (cited supra), held as follows:

"35. The parties have clearly stipulated and agreed that no other court, but only the court at Jaipur will have jurisdiction to try and decide the proceedings arising out of the said agreements, and therefore, it is the Civil Court at Jaipur which would alone have jurisdiction to try and decide such issue and that is the court which is competent to entertain such proceedings. The said court being competent to entertain such proceedings, the said Court at Jaipur alone would have jurisdiction over the arbitration proceedings and all subsequent applications

arising out of the reference. The arbitration proceedings have to be made at Jaipur Court and in no other court."

31. In **Balaji Coke Industry Pvt. Ltd., v. MAA Bhagwati Coke Gujarat Pvt. Ltd.**, reported in 2009 (9) SCC 403, a transfer petition was filed Article 139-A (2) of the Constitution of India, read with provisions of the Supreme Court Rules and Section 25 of the Code of Civil Procedure, by Balaji Coke Industries Pvt. Ltd., petitioner therein, for transfer of Arbitration Application No.1 of 2008, titled M/s Maa Bhagwati Coke (Guj) Pvt. Ltd. vs. Balaji Coke Industry Pvt. Ltd., pending in the Court of the Principal Senior Civil Judge at Bhavnagar (Gujarat) to the Calcutta High Court. The petitioner-Company therein, entered into an agreement, with the Respondent-Company to supply 15,000 Metric Tonnes of coking coal of Indonesian Origin. The agreement to sell stipulated that the cargo would be sold to the respondent on High Seas basis. The said agreement was executed in Kolkata, within the jurisdiction of Calcutta High Court. Clause 11 of the aforesaid agreement contained an Arbitration Clause, which reads as under :-

<https://hcservices.ecourts.gov.in/hcservices/> "In case of any dispute or difference arising between the parties

hereto or any claim or thing herein contained or the construction thereof or as to any matter in any way connected with or arising out of these presents or the operation thereof or the rights, duties or liabilities of either party thereof, then and in every such case the matter, differences in disputes shall be referred to an arbitrator in Kolkata, West Bengal, India in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996, or any other enactment or statutory modifications thereof for the time being in force. The place of arbitration shall be Kolkata."

Disputes arose between the parties. MAA Bhagwati Coke Gujarat Pvt. Ltd., respondent therein, invoked the arbitration clause and requested the Petitioner-Company therein, to confirm the appointment of a retired Judge of the Gujarat High Court, to be the Sole Arbitrator. By invoking Clause 11 of the Agreement, objection was raised by the petitioner therein, for appointment of Sole Arbitrator in Ahmedabad, and further contended that, as per the said Clause, all the disputes shall be referred to an Arbitrator only in Kolkata. While so, the petitioner-Company therein received a summon under Section 9 of

the Arbitration and Conciliation Act, 1996, from the Principal Senior Civil Judge, Bhavnagar (Gujarat). In the abovesaid circumstances, transfer petition has been filed in the Apex Court, contending inter alia that when the venue for arbitration had been expressly agreed to, between the parties to be, at Kolkata, it is only the Courts at Kolkata which had, both pecuniary and territorial jurisdiction, to entertain all applications, in connection with High Seas Sale Agreement. Decisions of the Delhi Court in **Geo. Miller & Co. Ltd. Vs. United Bank of India & others** [69 (1997) *Delhi Law Times* 616] and the Apex Court in **A.B.C.Laminart (P) Ltd., v. A.P.Agencies** [1989 (2) SCC 173] and **Hakam Singh v. Gammon (India) Ltd.,** [AIR 1971 SC 740 = (1971) 1 SCC 286], have been pressed into service. Per contra, opposing the relief sought for, submission has been advanced that after discharge of the goods at port, Pipavav in Gujarat, the same were stored in the godown of the Petitioner-Company, at its own premises, within the jurisdiction of Bhavnagar Court and since the relief prayed for, by the Respondent-Company was for release of 6,793 MT of coking coal from the said consignment, application under Section 9 of the Arbitration and Conciliation Act, 1996 had been rightly filed before the learned

Single Judge at Bhavnagar. According to the learned counsel for the respondent therein, since the agreement did not use expressions such as "alone", "only" and "exclusive", which could be construed to have completely ousted the jurisdiction of the Courts in Gujarat, it could not be contended that the jurisdiction of the Court in Bhavnagar, stood ousted, from entertaining the respondent's application under Section 9 of the Arbitration and Conciliation Act, 1996. In the abovesaid circumstances, the Apex Court framed the only question, whether notwithstanding the mutual agreement to make the High Seas Sale Agreement subject to Kolkata jurisdiction, it would be open to the Respondent-Company to contend that since a part of the cause of action purportedly arose within the jurisdiction of the Bhavnagar Court, the application filed under Section 9 of the Arbitration and Conciliation Act, 1996, before the Principal Civil Judge (Senior Division), Bhavnagar (Gujarat), would still be maintainable. Holding that the agreement between the parties that, one of the Courts would have the jurisdiction to decide the disputes between the parties and such an agreement would not be contrary to the provision of Section 28 of the Contract Act, 1872, and considering Clause 11 therein, which specified the

place of arbitration at Kolkata, at Paragraph 30 of the judgment, the Apex Court, held as follows:

"30. In the instant case, the parties had knowingly and voluntarily agreed that the contract arising out of the High Seas Sale Agreement would be subject to Kolkata jurisdiction and even if the courts in Gujarat also had jurisdiction to entertain any action arising out of the agreement, it has to be held that the agreement to have the disputes decided in Kolkata by an Arbitrator in Kolkata, West Bengal, was valid and the Respondent- Company had wrongly chosen to file its application under Section 9 of the Arbitration and Conciliation Act before the Bhavnagar Court (Gujarat) in violation of such agreement. The decisions of this Court in A.B.C. Laminart (P) Ltd. (supra) as also Hakam Singh (supra) are very clear on the point."

31. In **Tata Capital Ltd., v. Rani** reported in **2010 (1) CTC 176**, a loan agreement was entered into between the parties at Chennai and the amount was payable at Chennai. Hypothecation agreement was executed at Chennai. Office of the Financier was at Chennai. The Head Office of the Financing Company was at Mumbai. Arbitration Clause

24 conferred jurisdiction in the competent Court at Mumbai. An application under Section 9 of the Act was filed in this Court, for a pro-order and reliance was made to Section 20 of Civil Procedure Code and the judgments reported in **M/s.Patel Roadways Ltd., v. M/s.Prasad Trading Company [AIR 1992 SC 1514]**, **Kotak Mahindra Finance Ltd., v. T.Thomas Educational Trust [2003 (3) RAJ 606 (BOM)]** and **Tata Finance Ltd., v. Pragati Paribahan [2000 (3) Arb. L.R. 668 (Calcutta)]**. The said application was opposed on the grounds, inter alia that the Head Office was admittedly in Mumbai, the loan agreement was signed at Mumbai and therefore, Clause 24 of the Agreement, conferring jurisdiction in the competent Court at Mumbai, cannot be ignored. Reliance was also placed in **Rajasthan SEB v. Universal Petrol Chemicals Ltd.,** reported in **2009 (3) SCC 107** and **Hazari Lal v. Haryana Khadi and Village Industries Board and another** reported in **2002 (2) CTC 238 (DB)**. After considering the rival submissions and the judgments referred, this Court held that the application as maintainable. Paragraphs 13, 14, 16, 18, 19 and 22 are extracted hereunder:

"13. It is true that the said clauses confer jurisdiction to the competent Courts situate in Mumbai. In the absence of any material to show that any part of cause

of action has arisen within the jurisdiction of the Courts at Mumbai, so as to conclude that, that part of cause of action has arisen at Mumbai, apart from Chennai and Bangalore and therefore, the parties are well within their rights to choose anyone of three places for jurisdiction to decide the disputes between them, it is not possible to hold that the Courts at Mumbai alone have jurisdiction.

14. It is well settled law that the parties cannot confer jurisdiction on a Court within whose jurisdiction no part of cause of action has arisen. Section 20 of Civil Procedure Code which speaks about jurisdiction of Court in instituting a Suit states as follows:

"Section 20. Other Suits to be instituted where defendants reside or cause of action arises.— Subject to the limitation aforesaid, every Suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides, or carries on business, or personally works for gain,

provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I. (Omitted)

Explanation.— A Corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

16. It is well established as declared by the Apex Court as it is seen in *Rajasthan State Electricity Board v. Universal Petrol Chemicals Limited*, 2009 (3) SCC 107, that when two or more competent Courts can entertain a Suit on the basis that a part of cause of action has arisen within the jurisdiction of each and every Court, it is open to the parties to the contract to vest the jurisdiction in one such Court based on their convenience to decide and try the disputes between them. By referring to Section 20 of the Code of Civil Procedure and tracing various judgments of the Apex Court on this issue starting from *A.B.C. Laminart (P) Ltd. v. A.P. Agencies*, 1989 (2) SCC 163, till the latest judgment on the issue in *Hanil Era Textile Ltd. v. Puromatic Filters (P) Ltd.*, 2004 (3) CTC 220 (SC): 2004 (4) SCC 671, the Apex Court

in the above judgment in 2009 (3) SCC 107 has held as follows:

" 22. There are a number of decisions of this Court wherein it was held that where there may be two or more competent Courts which can entertain a Suit consequent upon a part of the cause of action having arisen therein, if the parties to the contract agree to vest jurisdiction in one such Court to try the dispute which might arise as between themselves, such agreement would be valid and binding."

18. On the other hand, the fact that the first respondent who is admittedly having her place of business at Bangalore has chosen to make an Application to the applicant/financier at Chennai as it is seen in the agreement makes it clear that this Court has jurisdiction apart from the competent Courts at Bangalore. In such view of the matter, it is not possible to accept the contention of the learned counsel for the respondents 1 to 3 that this Court has no jurisdiction to entertain the above Application under Section 9 of the Arbitration and Conciliation Act, 1996. Further, mere fixing the place of arbitration at Mumbai in the agreement does not take away the power of this Court under Section 9 of the Arbitration and Conciliation Act, 1996.

19. In the absence of any evidence to show that any part of the cause of action has arisen at Mumbai, it is not

possible to hold that under Clause 24 of the agreement, the Courts at Mumbai alone could have exclusive jurisdiction in this matter.

22. While dealing with the points to be satisfied by the Court while passing orders under Section 9 of the Act as an interim measure, the Supreme Court has held in *M/s. Sundaram Finance Ltd. v. M/s. NEPC India Ltd.*, AIR 1999 SC 565, that the Court must be satisfied that there is in existence a valid arbitration agreement and the applicant intends to make the dispute to arbitration and in such event, the Court has jurisdiction to pass orders under Section 9 of the Arbitration and Conciliation Act, 1996 as the facts and circumstances of the case warrant. The relevant passage of the said judgment is as follows:

"20. When a party applies under Section 9 of the 1996 Act it is implicit that it accepts that there is a final and binding arbitration agreement in existence. It is also implicit that a dispute must have arisen which is referable to the Arbitral Tribunal. Section 9 further contemplates arbitration proceedings taking place between the parties. Mr. Subramaniam, is therefore right in submitting that when an Application under Section 9 is filed before the commencement of the arbitral proceedings there has to be manifest intention on the part of the applicant to take recourse to the arbitral proceedings if, at the time when the Application under Section 9 is

filed, the proceedings have not commenced under Section 21 of the 1996 Act. In order to give full effect to the words "before or during arbitral proceedings" occurring in Section 9 it would not be necessary that a notice invoking the arbitration clause must be issued to the opposite party before an Application under Section 9 can be filed. The issuance of a notice may, in a given case, be sufficient to establish the manifest intention to have the dispute referred to Arbitral Tribunal but a situation may so demand that a party may choose to apply under Section 9 for an interim measure even before issuing a notice contemplated by Section 21 of the said Act. If an application is so made the Court will first have to be satisfied that there exists a valid arbitration agreement and the applicant intends to take the dispute to arbitration. Once it is so satisfied the Court will have the jurisdiction to pass orders under Section 9 giving such interim protection as the facts and circumstances warrant. While passing such an order and in order to ensure that effective steps are taken to commence the arbitral proceedings, the Court while exercising jurisdiction under Section 9 can pass conditional order to put the applicant to such terms as it may deem fit with a view to see that effective steps are taken by the applicant for commencing the arbitral proceedings. What is apparent, however, is that the Court is not

debarred from dealing with an Application under Section 9 merely because no notice has been issued under Section 21 of the 1996 Act."

The existence of Clause 18(a) of the agreement does not, in my view, take away the powers of this Court to pass orders as an interim measure in the interest of justice based on the facts and circumstances of the case."

32. As rightly pointed out by Mr. ARL. Sundaresan, learned Senior Counsel for the respondent, the Hon'ble Supreme Court in **Swastik Gases Pvt. Ltd., v. Indian Oil Corporation Ltd.**, reported in 2013 (9) SCC 32 = 2013 (5) CTC 527 = 2013 (5) LW 749, has elaborately considered a plethora of decisions. In **Swastik Gases Pvt. Ltd.**'s case (cited supra), the IBP Company Limited, now merged with the Indian Oil Corporation Limited, respondent therein, was engaged in the business of storage, distribution of petroleum products, manufacturing and marketing of various types of lubricating oils, grease, fluid and coolants. The company was interested to promote and augment its sales of lubricants and other products and was desirous of appointing consignment agents. M/s. Swastik Gases Private Limited, the appellant therein, was dealing in storage, distribution of petroleum products

including lubricating oils in Rajasthan and its registered office is situated at Jaipur. An agreement was entered into between the appellant and the respondent-company on 13.10.2002, whereby, the appellant therein was appointed as a consignment agent, for marketing lubricants, at Jaipur (Rajasthan). There was divergent stand of the parties in respect of the place of signing the agreement. Company's case was that the agreement has been signed at Kolkata, while the appellant's stand was that it was signed at Jaipur. Disputes arose between the parties as huge quantity of stock of lubricants could not be sold by the appellant therein. The appellant therein, requested the company to either liquidate the stock or take back the stock and make payment thereof to the appellant. The parties met several times, but the disputes could not be resolved amicably. After exchange of notices, the respondent-company was requested to name their arbitrator, within thirty days, failing which, it was stated that the appellant therein would have no option, but to proceed under Section 11 of the 1996 Act. The company did not nominate its arbitrator and therefore, the appellant therein filed an application under Section 11 of the

of arbitrator, in respect of the disputes arising out of the above agreement. The application has been opposed, on the ground that an agreement has been made, subject to the jurisdiction of the courts at Kolkata and therefore, Rajasthan High Court lacks territorial jurisdiction, in dealing with the application under Section 11. Clause 18 in the agreement referred to, dealt with jurisdiction and it reads that,

"The Agreement shall be subject to jurisdiction of the courts at Kolkata."

The Contention of the learned counsel for the appellant therein, summarised in the reported judgment, are as follows:

"12. The contention of the learned counsel for the appellant is that even though clause 18 confers jurisdiction to entertain disputes inter se parties at Kolkata, it does not specifically bar jurisdiction of courts at Jaipur where also part of the cause of action has arisen. It is the submission of the learned counsel that except execution of the agreement, which was done at Kolkata, though it was signed at Jaipur, all other necessary bundle of facts forming "cause of action" have arisen at Jaipur. This is for the reason

that:

(i) The regional office of the respondent's company is situate at Jaipur;

(ii) the agreement was signed at Jaipur;

(iii) the consignment agency functioned from Jaipur;

(iv) all stock of lubricants was delivered by the company to the appellant at Jaipur;

(v) all sales transactions took place at Jaipur;

(vi) the godown, showroom and office of the appellant were all situated in Jaipur;

(vii) various meetings were held between the parties at Jaipur;

(viii) the company agreed to lift the stock and make payment in lieu thereof at a meeting held at Jaipur and

(ix) the disputes arose at Jaipur.

The learned counsel for the appellant would submit that since part of the cause of action has arisen within the jurisdiction of the courts at Jaipur and clause 18 does not expressly oust the jurisdiction of other courts, Rajasthan High Court had territorial jurisdiction to try and entertain the petition under Section 11 of the 1996 Act. He vehemently contended that clause 18 of the agreement cannot be construed as an ouster clause because the words like,

'alone', 'only', 'exclusive' and 'exclusive jurisdiction' have not been used in the clause."

On the other hand, the respondent-Company therein submitted that by Clause 18 of the Agreement, the parties have intended to exclude the jurisdiction of all Courts, other than the Courts at Kolkata. After analysing all the earlier judgments of the Supreme Court, in particular, on the aspect of conferring jurisdiction, to a particular Court, the Apex Court held that in the light of Clause 18 of the Arbitration Agreement, conferring jurisdiction on the Court of Kolkata, the appellant therein can pursue his remedy under Section 11 of the Act, only at Kolkata. Hon'ble Justice Madan B.Lokur, while concurring with the judgment, has expressed his views, at Paragraphs 36 to 38 and 41 and they are extracted hereunder:

"36. While I agree with the conclusion arrived at by my learned Brother Justice Lodha, this judgment has been penned down to raise the question - is it really necessary for this Court to repeatedly affirm the legal position ad nauseam? I believe the law on the subject is well settled and it is to nobody's advantage if the same law is affirmed many times over.

37. The clause in the agreement that is sought to be interpreted reads as follows:-

"The agreement shall be subject to jurisdiction of the Courts at Kolkata."

38. In my opinion, the very existence of the exclusion of jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like 'only', 'exclusively', 'alone' and so on are not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement. Therefore, I agree with the conclusion that jurisdiction in the subject matter of the proceedings vested, by agreement, only in the Courts in Kolkata."

Though the other learned Judges of the Apex Court have culled out the decisions considered, His Lordship Justice Madan B. Lokur, while adverting to the above, more particularly, with reference to the usage of the word "alone", at Paragraph 41, of the judgment, detailed as follows:

41. There is really no difficulty in interpreting the exclusion clause in the first set of decisions. The clause in these decisions generally uses the word 'alone' and, therefore, it is quite obvious that the parties have, by agreement, excluded the jurisdiction of courts - other

than those mentioned in the agreement. These decisions, along with the relevant clause, are as follows:

1. Hakam Singh v. Gammon (India) Ltd., (1971) 1 SCC 286:

"Notwithstanding the place where the work under this contract is to be executed, it is mutually understood and agreed by and between the parties hereto that this Contract shall be deemed to have been entered into by the parties concerned in the city of Bombay and the court of law in the city of Bombay alone shall have jurisdiction to adjudicate thereon." (emphasis given)

It was held that only the courts in Bombay and not Varanasi had jurisdiction over the subject matter of dispute.

2. Globe Transport Corpn., v. Triveni Engg. Works, (1983) 4 SCC 707:

"The Court in Jaipur City alone shall have jurisdiction in respect of all claims and matters arising (sic) under the consignment or of the goods entrusted for transportation." (emphasis given)

It was held that only the courts in Jaipur and not Allahabad had jurisdiction over the subject matter of dispute.

3. Angile Insulations v. Davy Ashmore India Ltd., (1995) 4 SCC 153:

"This work order is issued subject to the jurisdiction of the High Court situated in Bangalore in the State of

Karnataka. Any legal proceeding will, therefore, fall within the jurisdiction of the above court only." (emphasis given)

It was held that only the courts in Karnataka and not Dhanbad had jurisdiction over the subject matter of dispute.

4. New Moga Transport Co. v. United India Insurance Co. Ltd. (2004) 4 SCC 677:

"The court at head office city [Udaipur] shall only be the jurisdiction in respect of all claims and matters arising under the consignment at the goods entrusted for transport." (emphasis given)

It was held that only the courts in Udaipur and not Barnala had jurisdiction over the subject matter of dispute.

5. Shree Subhalaxmi Fabrics (P) Ltd., v. Chand Mal Baradia, (2005) 10 SCC 704:

"Dispute under this contract shall be decided by the court of Bombay and no other courts." (emphasis given)

It was held that only the courts in Bombay and not Calcutta had jurisdiction over the subject matter of dispute.

6. Rajasthan State Electricity Board v. Universal Petrol Chemical Ltd., (2009) 3 SCC 107:

"contract shall for all purposes be construed according to the laws of India and subject to jurisdiction only at Jaipur in Rajasthan courts only." (emphasis given)

It was held that only the courts in Jaipur and not Calcutta had jurisdiction over the subject matter of dispute.

7. A.V.M.Sales Corporation v. Anuradha Chemicals Private Ltd., (2012) 2 SCC 315:-

"Any dispute arising out of this agreement will be subject to Calcutta jurisdiction only." (emphasis given)

It was held that only the courts in Calcutta and not Vijaywada had jurisdiction over the subject matter of dispute."

Setting out the second set of decisions, where the words, "only" "alone" or "exclusively", have not been used in the agreement, the decisions have been summarised. Ultimately, at Paragraph 62, the Hon'ble Judge, held that,

"For the reasons mentioned above, I agree with my learned Brother that in the jurisdiction clause of an agreement, the absence of words like "only" "alone" or "exclusively", or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute. In the present

case, only the Courts in Kolkata had jurisdiction to entertain the disputes between the parties."

Though Mr. Amar Deshpande, learned counsel for the finance company has relied on the case of A.B.C. Laminart Pvt. Ltd., the said case has been considered by the Hon'ble Supreme Court in Swastic Case, with reference to the intention of the partner, conferring exclusive jurisdiction on the Courts. Finance Company cannot take shelter under A.B.C Laminart Pvt. Ltd.'s case. Finance Company cannot be permitted to wriggle out of the terms and conditions of the agreement at their whims and fancies. Reading of the clauses extracted supra, makes it abundantly clear that in respect of all the disputes and difference,s that may arise between the parties, in respect of the covenants of the agreements, they should be resolved only at the place of arbitration mentioned in the agreements and when exclusive jurisdiction is conferred on the Courts at Pune and Delhi, respectively, this Court has no jurisdiction.

22. This Court is of the clear view that, merely because, the processing of the loan papers were done at Chennai, it cannot be contended that this Court has got jurisdiction to entertain an Application filed under Section 9 of the Arbitration and Conciliation Act, 1996.

<https://hcservices.eco.in.gov.in/hcservices/> In the light of the above discussion and decisions, Application Nos. 3975, 6960 and 6961 of 2015 are not

maintainable. Consequently, the orders of this Court, appointing Advocate Commissioners to seize and re-possess the subject machineries cannot be allowed to continue. Orders dated 22.06.2015 and 14.10.2015 appointing Advocate Commissioners made in Application Nos. 3975 and 6960 of 2015 are rescinded. Consequently, the applicant Finance Company is directed to hand over the machineries, within two weeks from the date of receipt of a copy of this order.

23. Accordingly, the Application Nos. 3975, 6960 and 6961 of 2015 are dismissed.

sd/.S.M.K.J

27.01.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/15.04.2016

सत्यमेव जयते

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.