

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 77 of 2017**

1. Laxman Mankhija, S/o Motiram Makhija, aged about 45 years, R/o Ward No. 35, Santoshi Mandir, Torwa, Tahsil & District Bilaspur (C.G.)
2. Anil Kumar Jaiswal, S/o Vedprakash Jaiswal, aged about 30 years, R/o Ward No. 20, Main Road, Pali, District Korba (C.G.)

----Appellants**Versus**

India Bulls Housing Finance Limited, Registered Office : M-62 & 63, First Floor,
Connaught Place, New Delhi - 110001

---- Respondent

For Appellants	: Shri Sunil Otwani, Advocate
For Respondent	: Shri Harsh Wardhan and Shri Shreyyankar Nandy, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****29/06/2018**

(1) An arbitral award was passed by the Arbitrator at Delhi on 29.12.2013. Thereafter, the petitioner filed an application under Section 34(2) of the Arbitration and Conciliation Act, 1996 (for short "Act, 1996") before the Principal Civil Court at Bilaspur for setting aside the arbitral award, in which, present respondent appeared and raised an objection that the Delhi Court will have jurisdiction to entertain the application and the Principal Civil Court at Bilaspur is not having the jurisdiction to consider and decide the same.

(2) The District Judge, Bilaspur has allowed the application under Order 7 Rule 11 of the Civil Procedure Code, 1908 filed by the respondent and rejected the application under Section 34(2) of the Act, 1996 filed by the appellants, against which instant arbitration appeal has been filed questioning the same.

(3) I have heard learned counsel appearing for the parties and perused the material available on record with utmost circumspection.

(4) As per clause-9 of the Vehicle Loan-cum-Hypothetical Agreement entered into between the parties, it is agreed that any legal action or proceedings arising out of this Agreement shall be brought in the courts at Delhi.

(5) In the matter of **Swastik Gasas Private Limited Vs. Indian Oil Corporation Limited**¹, the Supreme Court has held as under :-

“For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the Courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have not been used but this, our view, is not decisive and does not make any material difference. The intention of the parties – by having Clause 18 in the agreement – is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction which means that the Courts at Kolkata alone shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of

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the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.”

(6) The same view has been followed and reiterated by the Supreme Court in the matter of **B.E. Simoese Von Staraburg Niedenthal and another Vs. Chhattisgarh Investment Limited**².

(7) In view of the principles of law laid down by the Supreme Court in the matters of **Swastik Gasas Private Limited (supra) & B.E. Simoese Von Staraburg Niedenthal and another (supra)**, I am of the view that the learned District Judge is absolutely justified in allowing the application under Order 7 Rule 11 of the Code of Civil Procedure and thereafter rejecting the application filed under Section 34(2) of the Act, 1996. Thus, I do not find any illegality in the impugned order warranting interference by this Court in the instant arbitration appeal.

(10) Accordingly, the arbitration appeal is liable to be and is hereby dismissed. However, the appellants are at liberty to file an application before the appropriate court having the jurisdiction over the matter.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

