

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 14TH DAY OF MARCH 2018

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A. Nos.228 & 229 of 2018

and

A. Nos.1701 & 1702 of 2018

and

O.A. Nos.186 & 187 of 2018

A. No.228 of 2018:-

In the matter of Arbitration &
Conciliation Act, 1996

and

In the matter of Disputes between M/s.
India Infoline Finance Limited and
Thangam Travels (Agreement No.100011-
9702 dated 18.01.2017)

M/s. India Infoline Finance Limited,
No.1, Masilamani Street
Pondy Bazzar, T.Nagar,
Chennai 600 017

Rep.by its Authorized representative
B.Kavitha

.... Applicant

-Versus-

1. Thangam Travels

77A, 2nd Floor, Bye pass Road,
Chandra Gandhi Nagar,
Arasaradi H.O.Madurai
Near ICICI Bank Branch
Tamil Nadu 625016

2. Selvi Anandan,

No.289, Vivegananthar,
1st Cross Street
Nataraj Nagar Madurai
South Arasardi Madurai Opp to Fenner
Gas Godowin Backside
Tamil Nadu 625016

... Respondents

Application praying that this Hon'ble Court be pleased to
appoint Mr. Abdulsalam working as a Manager in the applicant company
as a receiver to seize and deliver the vehicle mentioned in the
schedule hereunder, available at the Respondent premises or where

ever found and permit the receiver to obtain police aid and to break open the premises.

A. No.229 of 2018:-

In the matter of Arbitration & Conciliation Act, 1996

and

In the matter of Disputes between M/s. India Infoline Finance Limited and Thangam Travels (Agreement No.100011-9462 dated 18.01.2017)

M/s. India Infoline Finance Limited,
No.1, Masilamani Street
Pondy Bazzar, T.Nagar,
Chennai 600 017

Rep.by its Authorized representative

B.Kavitha

... Applicant

-Versus-

1. Thangam Travels
77A, 2nd Floor, Bye pass Road,
Chandra Gandhi Nagar,
Arasaradi H.O.Madurai
Near ICICI Bank Branch
Tamil Nadu 625016

2. Selvi Anandan,
No.289, Vivegananthar,
1st Cross Street
Nataraj Nagar Madurai
South Arasardi Madurai Opp to Fenner
Gas Godowin Backside
Tamil Nadu 625016

सत्यमेव जयते... Respondents

Application praying that this Hon'ble Court be pleased to appoint Mr.Abdulsalam working as a Manager in the applicant company as a receiver to seize and deliver the vehicle mentioned in the schedule hereunder, available at the Respondent premises or where ever found and permit the receiver to obtain police aid and to break open the premises.

A. Nos.1701 & 1702 of 2018 & O.A. Nos.186 & 187 of 2018:-

1. Mr.Anandan,
Proprietor of M/s.Thangam Travels,
No.77A, 2nd Floor, Bye pass Road,
Chandra Gandhi Nagar,
Arasaradi H.O.Madurai
Near ICICI Bank Branch
Tamil Nadu 625016

2. Mrs.Selvi Anandan,
No.289, Vivegananthar,
1st Cross Street
Nataraj Nagar Madurai
South Arasardi Madurai Opp to Fenner
Gas Godowin Backside
Tamil Nadu 625016

... Applicants

-Versus-

M/s.India Infoline Finance Limited,
No.1, Masilamani Street
Pondy Bazzar, T.Nagar,
Chennai 600 017
Rep. by its Authorized representative
Ms.B.Kavitha

... Respondent

A. No.1701 of 2018:-

Application praying that this Hon'ble Court be pleased to pass an order direct the respondent to redeliver the vehicle being 1 No.Ashok Leyland Bus bearing Chassis No.MB1PBEFD6GEAV5450, fitted with Engine No.GAEZ413542 and Registration No.PY 01 CP 6121, to the applicants.

A. No.1702 of 2018:-

Application praying that this Hon'ble Court be pleased to pass an order direct the respondent to redeliver the vehicle being 1 No.Ashok Leyland Bus bearing Chassis No.MB1PBEFD4GAYF7043, fitted with Engine No.GAHZ418945 and Registration No.PY 01 CP 6122, to the applicants.

O.A. No.186 of 2018:-

Original Application praying that this Hon'ble Court be pleased to pass an order of ad interim injunction restraining and prohibiting the respondent, its men, agents of any persons claiming under them from alienating; encumbering or transferring the vehicle being 1 No.Ashok Leyland Bus bearing Chassis No.MB1PBEFD6GEAV5450, fitted with Engine No.GAEZ413542 and Registration No.PY 01 CP 6121, pending disposal of the application for redelivery of the vehicle.

O.A. No.187 of 2018:-

Original Application praying that this Hon'ble Court be pleased to pass an order of ad interim injunction restraining and prohibiting the respondent, its men, agents of any persons claiming under them from alienating; encumbering or transferring the vehicle

being 1 No.Ashok Leyland Bus bearing Chassis No.MB1PBEFD4GAYF7043, fitted with Engine No.GAHZ418945 and Registration No.PY 01 CP 6122, pending disposal of the application for redelivery of the vehicle.

These applications coming on this day before this court for hearing, the court made the following order:-

A.Nos.228 and 229 of 2018 have been filed praying for appointment of Receiver to seize and deliver the schedule vehicles being two buses, pursuant to defaults in the payment of instalments by the borrowers, who were sanctioned two loans by the applicant company.

2. The applications were listed for hearing on 11.01.2018 when this Court appointed a Receiver and directed the applicant to initiate arbitration forthwith.

3. Pursuant to order dated 11.01.2018, the vehicles have been seized by the Receiver and re-possessed by the applicant and the vehicles are thus in the custody of the company.

4. Subsequently, A.Nos.1701 and 1702 of 2018 have been filed by the borrowers seeking re-delivery of the schedule vehicles and O.A.Nos.186 and 187 of 2018 filed seeking an order of interim injunction restraining the respondent/applicant company from alienating, encumbering or transferring the schedule vehicles.

5. Heard the detailed submissions of Mr.Umashankar, learned counsel for the applicant/borrower ('borrower') and Mr.Ismail, learned counsel for the applicant/respondent company.

6. The main objection raised by the borrower relates to the maintainability of the applications filed for appointment of Receiver. According to Mr.Umashankar, since the arbitration clause has not been invoked at the time of filing of application, the seat of arbitration is yet to be determined. The only other recourse to determine the proper Court to entertain these applications would be by virtue of the provisions of the Civil Procedure Code 1908 ('CPC').

7. In the present case, the borrowers are based in Madurai. The address of the company as per agreement is Perungudi, which falls outside the limits of the Original Side of this Court. Thus, no part of the cause of action arises in Chennai.

8. Per contra, Mr.Ismail would draw attention to the clause for arbitration contained in the agreement emphasising that it was the lender that had the absolute discretion to appoint an Arbitrator. The venue of arbitration, according to the clause, was also Chennai. Further, he would argue that the vehicles have been purchased for a commercial purpose and as such no technical plea should be entertained in the light of the admitted defaults committed by the borrower. According to him, since the respondent has, admittedly, enjoyed the sanctioned loan, the agreement, in entirety, is valid. He would emphasize that the objection raised now results in ~~accepting and~~eschewing different portions of the same agreement which is impermissible in law.

9. Mr.Ismail would also confirm the position that the clause for arbitration has been invoked simultaneous with the appointment of Receiver on 11.01.2018 and a reference letter has been sent commencing the proceedings for arbitration.

10. As far as the defaults are concerned, evidently and as fairly admitted by Mr.Umashankar, the borrower has defaulted in the payment of the instalments. He however raises a technical objection pointing out that the agreements filed are itself invalid, since the amount of loan as mentioned per agreement is a sum of Rs.39,60,000/-, whereas, the statement of account reveals that the loan per agreement is only a sum of Rs.19,60,000/-. This error in reporting, according to him, vitiates the entire agreement and consequently the transaction itself.

11. Mr.Umashankar cites the judgments of the Supreme Court in the case of *Bharat Aluminium Co. V. Kaiser Aluminium Technical service Inc. (BALCO)* (2012 (5) CTC 615) and *Patel Roadways, Limited, Bombay V. Prasad Trading Company* ((1991) 4 SCC 270) and Mr.Ismail relies on the judgment of the Supreme Court in *Indus Mobile Distribution Private Limited V. Datawind Innovations Private Limited and others* (CDJ 2017 SC 442) and *BE Simoes Von Starburg Niedenthal and another V. Chhattisgarh Investment Limited* ((2015) 12 SCC 225).

12. Having heard learned counsel, I first decide upon the aspect of maintainability.

13. The agreement between the parties undoubtedly contains a clause for arbitration and clause 28 is extracted below:

'28. Arbitration & Governing Law:

In the event of any dispute or differences arising under this Agreement including any dispute as to any amount outstanding, the real meaning or purport hereof ("Dispute"), such Dispute shall be finally resolved by arbitration. Such arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any amendment or reenactment thereof by a single arbitrator to be appointed by the Lender. The venue of arbitration shall be decided by the Lender in its sole discretion. The arbitration shall be conducted in English language. Any proceedings to be initiated in any court of law in pursuance of this arbitration shall be instituted and held in the court as decided by the Lender in its sole discretion. This Agreement shall be governed by the laws of India.'

14. The clause only confers jurisdiction on Indian Courts and not on any Court within India specifically. The determination of the appropriate Court to entertain an application under Section 9 would thus have to be considered in the light of the facts and circumstances that obtain as on the date of filing of the application.

15. The proper Court to entertain an application under the Act

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is defined under section 2(1)(e) of the Arbitration and Conciliation Act, 1996 (in short 'Act'). The Constitution Bench of the Supreme

Court in the case of *BALCO* (supra), has, in interpreting section 2(1) (e) held that there are two appropriate Courts to entertain applications under the Act, one determined by the seat of arbitration, which could well be a neutral Court unconnected to the location of the parties and the second, a court aligned with the arising of the cause of action and in line with the principles laid down under the Civil Procedure Code. Both the aforesaid jurisdictions would be appropriate jurisdictions.

16. The relevant portion of the Supreme judgments in *BALCO* (supra) to the aforesaid effect is at paragraph 96, extracted below:

'96. We are of the opinion, the term "subject matter of the arbitration" cannot be confused with "subject matter of the suit". The term "subject matter" in [Section 2\(1\) \(e\)](#) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in [Section 2\(1\) \(e\)](#) has to be construed keeping in view the provisions in [Section 20](#) which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render [Section 20](#) nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts

where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under [Section 17](#) of the Arbitration Act, 1996, the appeal against such an interim order under [Section 37](#) must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located.'

17. This has further been reiterated in a recent judgment of the Supreme Court in the case of *Indus Mobile* (supra), wherein at paragraphs 20 and 21, the Bench states thus:

'20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which

applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may

not in the classical sense have jurisdiction - that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

21. It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases Private Limited v. Indian Oil Corporation Limited*, (2013) 9 SCC 32. This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited*, (2015) 12 SCC 225. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly.'

18. In the present case, however, the jurisdiction having a nexus to the seat of arbitration is yet to be determined, since, as on the date of filing of applications, the company is yet to invoke the arbitration clause. The clause itself is widely worded and permits the company to fix the seat of arbitration anywhere within the territory of India. The fixation of seat would occur immediately

upon the initiation of proceedings. Admittedly, the notice invoking arbitration clause has been issued only on 11.01.2018 whereas the applications have been filed on 08.01.2018 when the seat was yet to be determined.

19. One question that arises is whether the subsequent invocation of arbitration agreement could be telescoped backwards to the date of filing of applications such that one could state that the seat determined only thereafter had been fixed even as on the date of filing of application. To decide this question, it is relevant to note the provisions of Order 7 Rule 10 of the CPC dealing with Plaint and Return of Plaint, particularly sub-rule (1) that states thus:

'10. Return of plaint. - (1) Subject to the provisions of rule 10-A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation - For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.

(2) Procedure on returning plaint - On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. '

(emphasis by underlining supplied)

determined as on the date of institution of suit and any subsequent act thereto cannot be pressed into service to alter this fact. No subsequent act by a plaintiff could thus confer jurisdiction upon a Court, which it did not possess originally at the time when such suit/application was entertained.

21. I, thus, hold the letter of reference sent on 11.01.2018 fixing the venue for arbitration as Chennai would not have the effect of rendering the present applications maintainable. Consequently, the maintainability or otherwise of these applications are to be determined in the manner as set out in section 2(1)(e) of the Act, i.e., whether this Court would have been the appropriate Court, assuming that the litigation instituted had been a Civil Suit.

22. I thus propose to examine the question in the context of section 20 of the CPC, which sets out three situations to determine the jurisdiction of a Suit. Section 20 states thus:

' 20. Other suits to be instituted where defendants reside or cause of action arises - Subject to the limitations 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'

23. In the present case the borrower is admittedly based at Madurai and also carries on business in Madurai. The agreement was executed, according to Mr.Umashankar, in Madurai. Though the applicant company states that the agreement was executed in Chennai, the contents of the agreements do not support this statement. The last page of the agreement contains three fields. The first is for the signature of the authorised representative of the company, the second for the place of execution of the agreement and the third, the date of execution of the agreement. All three are blank.

24. Mr.Ismail draws attention to the sentence after the terms and conditions to the effect that *'In witness whereof the borrower and IIFL have executed this agreement on this 18 day of Jan Two thousand and Seventeen'*. As such the date of the agreement is stated. The signatures of the borrower and co-borrower follow thereafter. The columns relating to sole proprietary Firm/Limited Company/Society, which are irrelevant to the present transaction have been left blank. However, it is an admitted position that the fields set out at the conclusion of the Agreement providing for the signatures of the company as well as the place and date of execution of the agreement are, admittedly blank in both the company's copy of the agreement as well as the borrowers' copy of the agreement.

25. Furthermore, the address of the company as set out in page 1 of the agreement is IIFL Tower, 143 MGR Road, Perungudi, which falls outside the limits of the Original Side of this Court in terms of the Madras High Court (Jurisdiction Limits) Act (IV of 1927).

26. As regards the specific argument of Mr. Ismail that the loan agreement cannot be interpreted selectively by the borrower and having admittedly received the loan and enjoyed the fruits of it, he is bound by the Arbitration clause, I find the same misconceived. The argument by Mr. Umashankar is not, as I understand, that the arbitration clause is invalid. The argument is only in relation to the maintainability of the application invoking the clause, in this Court. The quarrel raised is qua jurisdiction of this Court. This argument of Mr. Ismail is thus rejected.

27. For all the aforesaid reasons and on the basis of the discussion above, I hold that the application is not maintainable in this Court.

28. As far as the merits of the case are concerned, no doubt the loan agreements contain an apparent error to the effect that each of the two agreements refers to a loan of Rs.39,60,000/- whereas the correct position is that each loan is only for an amount of Rs.19,80,000/- as admitted by both parties. Nothing turns, in my opinion, on this fact. It only reiterates the abject carelessness in the execution of documents by both the parties.

29. In fine, order dated 11.01.2018 directing the seizure of vehicles that has been acted upon by the company is liable to be set aside and A.Nos.228 and 229 are thus dismissed.

30. Application Nos.1701 and 1702 of 2018 filed by the borrowers seeking re-delivery of the vehicles are allowed. The company is directed to re-deliver the schedule vehicles forthwith and in any event, within a period of two(2) weeks from the date of receipt of a copy of the order.

31. Connected O.A.Nos.186 and 187 of 2018 are closed in the above terms. No costs.

32. Upon pronouncement of this order, a request is made by Mr.Umashankar that the period for re-delivery be reduced to one week as against two weeks, as the borrower is dependent on the vehicles to eke out his livelihood. The request is opposed by Mr.Ismail.

33. Taking into account the balance of convenience, I direct the company to re-deliver the schedule vehicles within a period of one week from date of issuance of a copy of this order.

Sd/-A.S.M.J
14.03.2018

//Certified to be a true copy//

Dated this the day of 2019
JJ 10/01/19

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