

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2018

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.63 of 2016

1. V.Lawrance
2. Immaculate Judith ... Appellants

Vs

- 1 Religare Finvest Ltd.
Regd. Office at D-3, P3B
District Centre, Saket
New Delhi - 110 017
and at The Ovel, 5th Floor
Office No.10 and 12
Venkatanarayana Road
T.Nagar, Chennai.
- 2 Sanjay Aggarwal
Sole Arbitrator
G-12/1, Ground Floor
Sector-15, Rohini
New Delhi - 110 085. ... Respondents

PRAYER: Appeal under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the order passed in O.P.No.309 of 2015, dated 12.1.2016 by the learned Single Judge.

Original petition filed under section 34 of the Arbitration and conciliation Act 1996, to set aside the award dated 20.03.2015, passed by the 2nd respondent/Arbitral Tribunal in dispute between the petitioners and 1st Respondent made in Arbitration Dispute bearing Reg. No.Religare/HL/LOT-3/July-14/RB:2911/51 and Consequently direct the 1st Respondent to bear the cost of the proceedings.

For Appellants : Mr.N.Sivanthy
for M/s.Fox Mandal and
Associates

For Respondents : Mr.S.Rajkumar
for 1st respondent

JUDGMENT

(Delivered by Ms.Indira Banerjee, Chief Justice)

This appeal is against a judgment and order dated 12.1.2016 passed by the learned Single Bench holding, in effect, that this Court lacked territorial jurisdiction to entertain the original petition of the appellant under Section 34 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as "the 1996 Act", for setting aside of an arbitral award dated 20.3.2015.

2. It is not in dispute that the agreement between the parties hereto contained a jurisdiction clause, which is set out herein below for convenience:

"10.2. The Borrower further agree that all claims, differences and disputes, arising out of or in relation to dealings / transaction made in pursuant to this agreement, including any question of whether such dealings, transactions have been entered into or not, shall be subject to the exclusive jurisdiction of the Courts at Delhi only."

3. In the context of the contentions of the appellants in this appeal, it might be pertinent to refer to the arbitration clause in the agreement, being Clause 10.1, which provides as follows:

"10.1. Any and all disputes, claims, differences arising out of or in connection with this Agreement and the Schedule(s) of Terms/Repayment Schedule/s attached hereto or the performance of this Agreement shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the RFL and the award thereupon shall be binding upon the parties to this Agreement. The place of the arbitration shall be in Delhi or any other place as Arbitrator may decide, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof. The proceeding of Arbitration Tribunal shall be conducted in English language. Each party to bear cost of representing its case before the Arbitrator. Costs and charges of Arbitrator to be

shared equally unless otherwise provided in the award."

4. This appeal has been filed on the contention that the parties could not have, by agreement, conferred jurisdiction on a Court which inherently lacked jurisdiction. The proposition urged is established by various judgments of the Supreme Court and in particular, the judgment of the Supreme Court in ABC Laminart (P) Ltd. v. A.P. Agencies, reported in (1989) 2 SCC 163.

5. However, when two or more courts have jurisdiction, it is open to the parties to agree to have all disputes settled in courts within the jurisdiction of a particular place to the exclusion of the other courts, which might also have jurisdiction. In such a case, it is open for the parties to exclude all other Courts by agreement, as held by the Supreme Court in Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and others, reported in (2017) 7 SCC 678.

6. May be, as contended by the appellants, the loan was advanced in the State of Tamil Nadu; land lying in the State of Tamil Nadu was mortgaged pursuant to the loan agreement; the loan amount was advanced in Tamil Nadu and may be even utilized in Tamil Nadu. However, the parties, with their eyes open, agreed that the place of arbitration would be in Delhi or any other place as the arbitrator might decide. In this case, the arbitration was held in Delhi. The arbitral award was made in Delhi. It cannot, therefore, be said that courts in Delhi lacked jurisdiction. Reference may be made to the judgment of the Supreme Court in Bharat Aluminium Co. Ltd. and others v. Kaiser Aluminium Technical Services Inc. and others, reported in (2012) 9 SCC 552.

7. The jurisdiction clause, whereby the parties have subjected all disputes in relation to the agreement exclusively to Courts at Delhi only, is binding. The intention of the parties is patently clear from the language and tenor of the jurisdiction clause and in particular, the use of the words "exclusive" before jurisdiction and "only" after Delhi.

8. Section 42 of the 1996 Act provides as follows:

"Section 42. Jurisdiction.-

Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all

subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."

9. The expression "Court" obviously refers to a Court having jurisdiction. In *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and others*, supra, the Supreme Court referred to its earlier judgments in *Bharat Aluminium Company Ltd. (supra)*; *Reliance Industries Ltd. v. Union of India*, reported in (2014) 7 SCC 603; *Eitzen Bulk A/S v. Ashapura Minechem Limited and another*, reported in (2016) 11 SCC 508; *Swastik Gases Private Limited v. Indian Oil Corporation Limited*, (2013) 9 SCC 32; and *B.E.Simoese Von Staraburg Niedenthal and another v. Chhattisgarh Investment Limited*, reported in (2015) 12 SCC 225, and held that courts in Mumbai would have jurisdiction to entertain applications under the 1996 Act in view of Clause 19 of the Agreement in that case conferring exclusive jurisdiction in Mumbai Courts. In this case, only Courts in Delhi would have exclusive jurisdiction to entertain applications under the 1996 Act to the exclusion of all other Courts, including Madras High Court, in view of Clause 10.2 read with Clause 10.1 of the agreement.

10. We have perused the judgment and order of the learned Single Bench. We agree that the parties are bound by the jurisdiction clause. It is immaterial that any earlier application may have been filed in this Court, since this Court lacks jurisdiction to adjudicate disputes arising out of the agreement. There are no grounds for interference with the order under appeal. This Court cannot, therefore, entertain the appeal.

The appeal is dismissed. No costs. Consequently, C.M.P.Nos.4536 and 19652 of 2016 are closed.

Sd/-

Assistant Registrar (CS-iii)

//True Copy//

sasi

Sub Assistant Registrar

WEB COPY

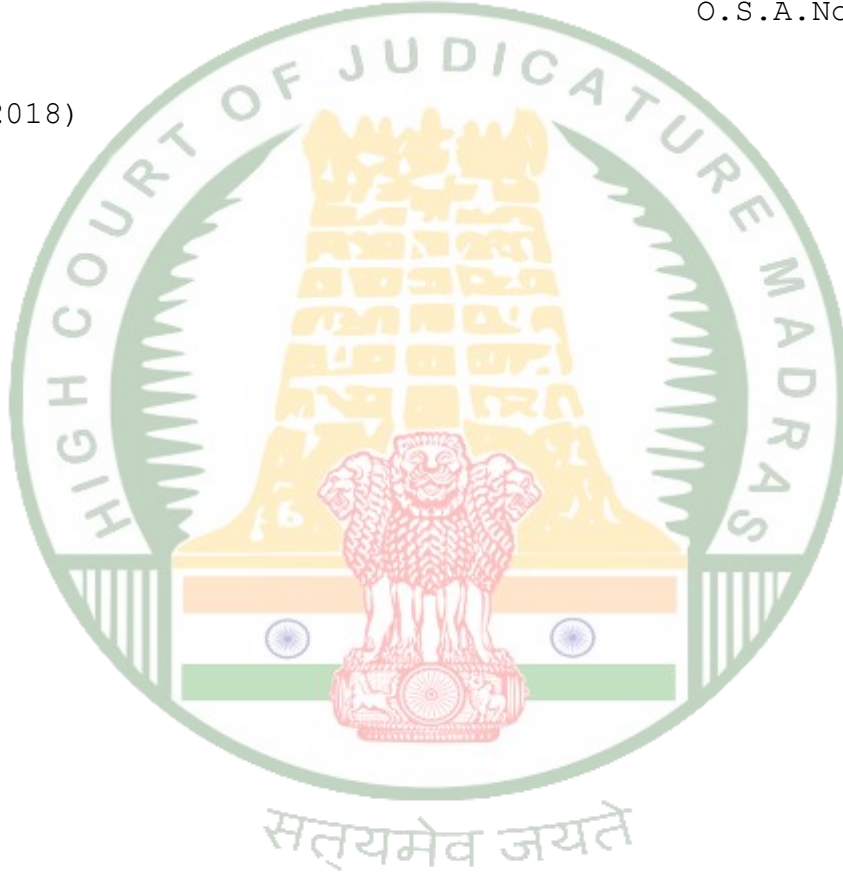
To:

The Sub Assistant Registrar
Original Side
High Court, Madras.

+1cc to Mr.FOX MANDAL AND ASSO. Advocate, S.R.No.21539
+1cc to Mr.S.NAMASIVAYAM Advocate, S.R.No.21599

O.S.A.No.63 of 2016

RSY(CO)
TR(11/06/2018)



WEB COPY