

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO.87 OF 2016

M/s. Laxmi Cotspin Ltd.,
Through its Director,
Sanjay s/o. Kachrulal Rathi,
Age : 49 years, Occ. Business,
Having its registered office
at Gat No.399,
Opp. Meenatai Thakare
Vridhasram, Jalna – 431 203

..Appellant

Vs.

1. M/s. C.A. Galiakotwala &
Co. Pvt. Ltd., having its
registered office at 66,
Maker Chamber-III,
Nariman Point,
Mumbai – 21
2. Pankaj S. Kotak,
Sole Arbitrator,
Age Major, Occ. Business,
r/o. As below address
of respondent no.3,
3. The Secretary,
Cotton Association of India,
Having its registered office
at Cotton Exchange Building,
2nd Floor, Opp. Cotton Green
Railway Station, Cotton Green,
Mumbai – 33

..Respondents

Mr. Girish K. Naik-Thigale, Advocate for appellant

Mr. Amit A. Yadkikar, Advocate for respondent no.1

CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 27, 2019
PRONOUNCED ON : SEPTEMBER 09, 2019

ORDER :-

The challenge in this Appeal is to the order dated 16.09.2016 passed by learned Principal District Judge, Jalna (Principal Civil Court of original jurisdiction), holding to have no territorial jurisdiction to entertain and try the application [CMA (Arbi) No.183 of 2012] filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act", for short). The proceedings, being C.M.A. (Arbi) No.183 of 2012, therefore, came to be returned to the petitioner (appellant herein) for presentation before the appropriate Court.

2. The appellant herein is a Jalna based company, trading in cotton. Respondent no.1 is a Mumbai based company, dealing in cotton. Respondent no.2 is Arbitrator, who passed the award dated 25.09.2012, impugned in the proceedings initiated under Section 34 of the Act.

3. Heard Mr.Naik-Thigale, learned Counsel for the appellant and Mr.Yadkikar, learned Counsel for respondent no.1.

4. Respondent no.1 – company claimed to have had placed an order of 600 bales of cotton with appellant no.1 – company. The purchase order was said to have been confirmed. The appellant – company, however, failed to deliver 600 bales of cotton to the respondent – company. It is said to have agreed between the appellant and respondent – companies, that the dealings between them would be governed by the bye-laws of the Cotton Association of India Ltd., since both the complies are members thereof. One of the bye-laws provides for settlement of dispute by arbitration. Rules 38-A(a) and 44-A of the bye-laws provide that any legal dispute arising out Arbitral Tribunal shall be entertained by the Court in Mumbai (on the Original Jurisdiction of the High Court of Bombay).

5. It is the case of the respondent – company that since the appellant – company committed breach of the contract of sale of cotton, an Arbitrator came to be appointed and arbitration proceedings took place in Mumbai. The appellant – company should have preferred an application under Section 34 of the Act to the High Court at Bombay and not to the Principal Civil Court of original jurisdiction, at Jalna.

6. Mr.Naik-Thigale, learned Counsel for the appellant – company, would submit that no contract for sale of goods has ever been entered into between the two companies. None of the Directors of the appellant – company ever entered into such a contract. Representative of the respondent – company had gatecrashed the appellant – company at Jalna and obtained signature of one of the employees of the appellant – company on some papers. The employee did not have authority to sign any document for and on behalf of the appellant – company.

Learned Counsel would submit that none of the bye-laws or rules of Cotton Association of India has been proved. The Arbitrator, who conducted the proceedings, did not disclose to have earlier acted as an Arbitrator for the respondent – company. Such disclosure was mandatory under the Act. Failure on his part to disclose his interest, rendered the Arbitral Award nugatory. Learned Counsel would further submit that the appellant – company is based at Jalna. The alleged transaction took place at Jalna. The Principal Civil Court of original jurisdiction at Jalna has, therefore, jurisdiction to entertain the application under Section 34 of the Act. In a proceedings under Section 34 of the Act, provision of Section 9-A of the Code of Civil Procedure did not have an application. The Court ought to have decided the proceedings on its own merits. Learned Counsel, therefore, urged for allowing the appeal.

7. Mr.Yadkikar, learned Counsel for respondent no.1 – company supported the impugned order.

8. Both the appellant and respondent companies are trading in cotton. Both the companies are members of Cotton Association of India Ltd. Whether, any contract of sale of goods was entered into between these companies, is the subject that may be gone into in a proceedings under Section 34 of the Act. Admittedly, the arbitration proceedings for the dispute between the two companies took place at Mumbai. The appellant – company submitted to the jurisdiction of the Arbitrator. The Arbitrator passed his award at Mumbai, on 25.09.2012. Section 2(1)(e) of the Act defines the Court, as under :-

"2(1)(e): Court means-

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise

of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) "

9. As per Section 7 of the Maharashtra Civil Court's Act, the District Court at the District, is the Principal Civil Court of original jurisdiction in a District. Earlier, some dispute was entertained by learned Additional District Judge, Jalna. Since the Court of Additional District Judge is inferior to the Principal Civil Court of original jurisdiction, the appeal preferred against the order passed by learned Additional District Judge, came to be allowed remanding the matter to learned Principal Civil Court of original jurisdiction at Jalna, with a direction of this Court to decide the application (Exh.21),

order on which is impugned in this appeal. The appellant – company, therefore, could not be heard to say that the Court should not have decided the issue of territorial jurisdiction as a preliminary issue.

10. In paragraph 9 of the Arbitration Petition (183 of 2012), the appellant – company has admitted that there are rules and regulations of Cotton Association of India. Since the appellant – company is a Member of the said association, it ought to have produced on record the rules and regulations other than those, on which the respondent – company relies, by which they are said to have been governed. Rules 38-A(A) and 44-A of the bye-laws provide that any legal dispute arising out of Arbitral Tribunal shall be entertained by the High Court of Bombay on its original side.

In the case of **Vachaspati Sharma Vs. India Cements – Capital and Finance Ltd., 2013(6) Mh.L.J. 342**, the Division Bench of this Court observed in paragraph 6, as under :-

"6. Before we consider the effect of Clause-34 of the agreement, it must be noted that as a principle of law, it has been held in the judgment of the Constitution Bench of the Supreme Court in *Bharat Aluminium Co. Vs. Kaiser Aluminium Technical Service, Inc.*, Civil Appeal No.7019 of 2005 decided on 6 September 2012 that under the Arbitration and Conciliation Act, 1996, the Legislature has intentionally conferred jurisdiction upon two courts namely the Court which would have jurisdiction where the cause of action is located and upon the Courts where the arbitration takes place. The Supreme court has held as follows:

... ... 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.

11. In the case of **Brahmani River Pellets Limited Vs. Kamachi Industries Limited, 2019 SCC OnLine SC 929**, in paragraph 17, the Hon'ble Apex Court referred the case of **Indus Mobile Distribution (P) Ltd. Vs. Datawind Innovations (P) Ltd., (2017)7 SCC 678**, in which the Hon'ble Apex Court in paragraphs 19 and 20 observed thus:-

"19. 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 Sections 16 to 21 of 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.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases (P) Ltd. Vs. Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32 This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.* (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.....”

In the case of *Brahmani (Supra)*, it has further been observed in paragraph 18, as under:-

" Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik, non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference."

12. Admittedly, the arbitration proceedings took place in Mumbai. The Court in Mumbai is, therefore, have jurisdiction. Even if it is assumed that the contract of sale of goods took place at Jalna, the aforesaid rule, which binds the parties to these proceedings, excludes the jurisdiction of a Court where the cause of action is located.

13. The communication between both the appellant and respondent companies specifically state to have

been governed or would be governed by the rules and bye-laws of the Cotton Association of India. Since the rules, by which both the appellant and respondent – companies are governed, provide for the jurisdiction to a Court in Mumbai i.e. High Court of Bombay on Original Side, necessarily, the jurisdiction of the Court of Principal Civil Court of original jurisdiction at Jalna gets excluded. No fault, therefore, could be found with the order impugned in this appeal. The appeal, therefore, fails.

14. In the result, the Appeal from Order is dismissed.

[R.G. AVACHAT, J.]

kbp