

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

105

CR No.6631 of 2018 (O&M)

Date of decision:15.3.2019

Sunder Kumar Yadav

... Petitioner

versus

Mahindra and Mahindra Finance (India) Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Tarun Yadav, Advocate, for
Mr.Mukesh Yadav, Advocate,
for the petitioner
Mr.Nitin Thatai, Advocate,
for respondent no.1.
Mr.Amit Jhanji, Advocate,
as *Amicus Curiae*.

...

AMOL RATTAN SINGH, J. (Oral)

1. Though Mr.Mukesh Yadav, learned counsel for the petitioner, appeared on the previous date, he is not present today and Mr.Tarun Yadav, Advocate, appears for him.

2. Mr.Amit Jhanji, Advocate, having been requested vide an order dated 22.11.2018 to assist this Court as *Amicus Curiae* in the matter, where the petitioner has challenged the order of the learned Additional District Judge, Narnaul, dated 8.8.2018, accepting the application filed by respondent no.1 herein under Order 7 Rule 11 CPC, points to the judgments of the Supreme Court, firstly in Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 (Constitution Bench), as also in M/s Swastic Gases P. Limited vs. Indian Oil Corporation Limited, (2013) 9 SCC 32 and Indus Mobile Distribution Private Limited

vs. Datawind Innovations Private Limited and others (2017) 7 SCC 678.

The judgments prior to the last one are not being referred to in detail by this Court, the last judgment cited hereinabove having referred to the Constitution Bench judgment in Bharat Aluminium Companys' case (supra), and eventually having held as follows:-

“18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO judgment in no uncertain terms has referred to “place” as “juridical seat” for the purpose of [Section 2\(2\)](#) of the Act. It further made it clear that [Section 20\(1\)](#) and [20 \(2\)](#) where the word “place” is used, refers to “juridical seat”, whereas in [Section 20 \(3\)](#), the word “place” is equivalent to “venue”. This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

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 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.

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. v. Indian Oil Corporation Ltd.](#) This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.* 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. The appeals are disposed of accordingly.”

2. A perusal of the order impugned in the present petition shows that the learned Additional District Judge has held that as the Arbitral Award as was challenged in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, before that court (at Narnaul), was passed at

Mumbai, and therefore in terms of the judgment of the Supreme Court in, M/s Bhandari Udyog Limited vs. Industrial Facilitation Council and another, (2015) 14 SCC 515, it is only the courts at Mumbai as would have jurisdiction for any challenge to the Award; and consequently, the Court at Narnaul has no jurisdiction to entertain the same.

3. At the time when this petition had initially come up for hearing, this Court had expressed a *prima facie* opinion that with objections under Section 34 having to be filed at a place where the Award was announced, it could actually amount to a travesty of justice because large finance companies are often situated at very great distances from the residence of a person to whom money had been loaned by them, as in the present case, where the respondent company loaned a sum of about Rs.4,35,000/- to the petitioner for the purchase of a tractor, who resides at a village in district Mohindergarh in Haryana, and therefore it would be virtually impossible for the loanee to defend himself before an Arbitrator in Mumbai or even file objections at a court there. Yet, the ratio of the judgments aforesaid being to the effect that once jurisdiction has been specifically provided for at a particular place in the loan agreement itself, jurisdiction of all other courts, including at places where the cause of action may have partly or wholly arisen, would be barred, there would be no ground for this Court to interfere with the impugned order, with it of course also to be observed that even though the fine print in any agreement is very rarely read by even fully educated persons when they obtain a loan from a bank/finance company, and in the present case since the petitioner is stated to be a resident of a village, he possibly does not understand the English language very well, the

fact remains that he had entered into an agreement with the respondent company.

4. Consequently, finding no ground to interfere with the impugned order, this petition is dismissed, with this Court expressing its appreciation for the very able assistance rendered by Mr.Amit Jhanji.

15.3.2019
pk/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No