

ODC-11

AP/281/2021
IA No. GA/1/2021

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

M/S. CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED
Versus
TANMOY BARMAN AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 17th August, 2021.

[Via Video Conference]

Appearance:

Ms. Tutul Das Singh, Adv.
Mr. Amar Singh, Adv.
Mr. Ranjit Singh, Adv.
Ms. Pooja Sett, Adv.

Ms. Rita Mukherjee, Adv.
Mr. A. Das, Adv.
Mr. R. K. Jha, Adv.

The Court : This is an application for recalling of the order passed by this Court on 23rd July, 2021. The basis of the application, as would appear from the submissions of learned counsel appearing for the respondents, is that Chennai has been designated as the place in the agreement and that the arbitration agreement between the parties contains an exclusive jurisdiction clause.

Learned counsel appearing for the petitioner, who obtained the order of injunction dated 23rd July, 2021, resists the prayer on the basis that the arbitration commenced in Kolkata and the jurisdiction clause was given a go-by.

Upon hearing learned counsel and perusing the relevant clauses in the agreement, it is important to state that Clause 29 of the Agreement contains the following line: “The venue of arbitration proceedings shall be at Chennai at the Registered Office of the Company ... or such other place/location/city which the Company at its discretion may decide from time to time.” The Company in this case is the petitioner whose registered office is admittedly in Chennai. Clause 30 of the Agreement – Jurisdiction – further clarifies the previous clause by stating that “This Agreement has been accepted and executed by the Company at Chennai and all covenants, terms and conditions hereof including payments shall be observed and performed at Chennai and Borrower and Guarantor specifically agree, subject to the arbitration clause contained herein, that Courts in Chennai alone shall have exclusive jurisdiction over any matter arising out of or concerning this Agreement.”

The above Clauses leave no doubt that Courts in Chennai have exclusive jurisdiction to decide any and all disputes arising out of the agreement entered into between the parties. There is also nothing on record to indicate that the Company, being the petitioner herein, decided to depart from the venue - clause agreed by the parties under Clause 29.

In view of the above, this Court finds no reason to continue the order of injunction dated 23rd July, 2021, which is accordingly recalled.

GA/1/2021 is allowed and disposed of in terms of this order.

Since this Court has found that under Clauses 29 and 30, this Court does not have jurisdiction to entertain the matter and the order dated 23rd July, 2021 was passed in the said petition, AP/281/2021 is dismissed without any order as to costs.

The Receiver appointed by the order of 23rd July, 2021 is discharged.

(MOUSHUMI BHATTACHARYA, J.)

Bp.