

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

ARBITRATION APPLICATION NO.05 OF 2018

M/s Atul Cars, through its
Proprietor Vishal Vardhaman
Pande

Petitioner

Versus

Honda Motorcycle and Scooter
India Pvt.Ltd., through its
Chief Executive Officer and
President.

Respondents

Mr. P.S. Mehta, advocate for the applicant.
Mr. Subodh P. Shah, advocate for the Respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 07th July, 2021.

PC :

1 Heard Mr.Punit Mehta, learned Counsel for the
applicant and Mr.Subodh Shah, learned Counsel for the
Respondent.

2 There is no dispute, that there is an arbitration clause
in the agreement dated 24.12.2012, executed between the parties.
The agreement is regarding appointment of the applicant as a
dealer of the Respondent for a period of three years, which expired
on 23.10.2015. However, the dealership continued, when it was
terminated by a notice dated 07.01.2017. In pursuance to the said

termination, a notice invoking the arbitration clause was issued on 16.12.2017, whereby Mr.Sachin Ajmera was named as an arbitrator. This notice was replied by the non applicant on 18.12.2017 by naming Shri V.K.Dahiya, advocate as the arbitrator. Being disagreeable with the same, present application has been filed.

3 Mr.Shah, learned Counsel for the Respondent, invites my attention to the arbitration clause which reads as under:

“29.1 Each party shall in good faith perform this Agreement based on confidence placed by one party in the other and relied upon by such party. Any dispute, controversy or claim, arising out of or relating to this Agreement, or the breach, termination or validity thereof shall be settled by arbitration under the Arbitration and Conciliation Act, 1996, subject to any statutory modification thereto.

29.2 The Award of the Arbitrators shall be final and binding upon the parties and the Award shall include allocation of the cost of the arbitration proceedings.

29.3 The seat of arbitration shall be Gurgaon.

29.4 For all purposes in relation to this agreement, the Courts at Gurgaon alone shall have exclusive jurisdiction. No other Courts shall have

jurisdiction to deal with any dispute or any matter between the parties arising out of this Agreement.”

4 Learned Counsel Mr.Shah, appearing for the Respondent, contends that in view of the language of the arbitration clause and specifically clause 29.4, this Court would not have any jurisdiction to entertain the application under Section 11(6) of the Arbitration and Conciliation Act, 1996, and it is only the Court having jurisdiction over the seat of arbitration at Gurgaon, which has jurisdiction to hear and decide the application under Section 11(6). Learned Counsel relies upon **Swastik Gases Private Ltd. Vs. Indian Oil Corporation Limited**, (2013) 9 SCC 32; and **Brahmani River Pellets Limited Vs. Kamachi Industries Limited**, (2020) 5 SCC 462.

5 In the case of **Swastik Gases Pvt.Ltd.**, (*supra*), it has been held thus:

“31 In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, the Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11.

Having regard to Section 11 (12) (b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of Clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of Clause 18 of the agreement, the jurisdiction of the Chief Justice of the Rajasthan High Court has been excluded?

32 For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties – by having Clause 18 in the agreement - is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because the construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the

jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such Clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.”

6 In **Brahmani River pellets Ltd.** (*supra*), it has been held thus:

“18 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 the 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.

19 When the parties have agreed to have the “venue” of arbitration at Bhubaneswar, the

Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order is liable to be set aside."

(emphasis supplied)

7 In view of the fact that the arbitration clause is not disputed and considering what has been held in **Swastik Gases Pvt.Ltd.** and **Brahmani River pellets**, this Court will not have any jurisdiction to entertain and decide application under Section 11(6) of the Arbitration and Conciliation Act, 1996.

8 The application is, therefore, dismissed. Needless to say that the applicant shall be entitled to invoke the jurisdiction of the appropriate court in the matter of appointment of an arbitrator.

(AVINASH G. GHAROTE)
JUDGE

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