

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1299 of 2018

M/S. Tata Motors Limited
1st Floor,
Square Tech House,
Plot No.B-63/65,
Road No.21/34,
JB Saant Marg,
Wagle Estate,
Thane (West) - 400 604.

...Appellant/1st Respondent

vs.

1. T. Chinthani Kumar

2. T. Senthil Kumar

3. Nithin Chawhan

...Respondents 1 & 2/Petitioners 1 & 2

...3rd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 37 of Arbitration and Conciliation Act, 1996, to set aside the order dated 21.02.2017 passed in Arbitration Original Petition No.256 of 2011 on the file of Principal District Judge, Coimbatore, with cost.

For Appellant : Ms. M. Nagalakshmi

For Respondents: Mr. C. Veeraraghavan for

R1 & R2

Not ready in notice reg R3.

JUDGMENT

(This case was heard through Video Conferencing)

The Appellant has filed this appeal under Section 37 of the Arbitration and Conciliation Act, 1996, challenging the order dated 21.02.2017 passed by the learned Principal District Judge, Coimbatore in Arbitration OP No. 256 of 2011 under Section 34 of the Arbitration and Conciliation Act, 1996, under which the Arbitral Award dated 31.03.2011 passed in favour of the Appellant was set aside only on the following grounds :

a. the loan agreement entered into between the Appellant and the respondents was not produced by the appellant before the learned Principal District Judge, Coimbatore.

b. Without examining the loan agreement, it is not possible for the Court to decide whether the Court has

got Jurisdiction to decide an application under Section 34 of the Arbitration and Conciliation Act, 1996.

2. It was the contention of the appellant before the learned Principal District Judge, Coimbatore, that the said Court didn't have jurisdiction to decide an application under Section 34 of the Arbitration and Conciliation Act, 1996, since the seat of the Arbitration under the loan agreement is at Mumbai.

3. Before this Court, the learned counsel for the appellant has filed Additional Typed set of papers and the appellant has produced the Loan cum Hypothecation agreement dated 27.08.2003 between the parties which is the subject matter of this appeal. The said loan agreement entered into between the parties has also not been disputed by the learned counsel for the respondents before this Court.

4. Under the said agreement, the Arbitration clause is found in Clause 34 which reads as follows :

34. All disputes, differences and / or claims arising out of this Loan Agreement or as to the construction, meaning or effect hereof or as to the rights and liabilities of the parties hereunder shall be settled by Arbitration to be held in Mumbai, in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof, and shall be referred to a person to be nominated by TELCO. In the event of death, refusal, neglect, inability, or incapability of the person so appointed to act as an Arbitrator, TELCO may appoint a new Arbitrator. The Award of the Arbitrator shall be final and binding on all parties concerned.

5. As seen from the aforementioned clause, the Venue of the Arbitration is at Mumbai. The law with regard to the jurisdiction as regards an application under Section 34 of the Arbitration and Conciliation Act, 1996 is now well settled by the following decisions of the Hon'ble Supreme Court :

a. Indus Mobile Distribution Pvt Ltd Vs Datawind Innovations Pvt Ltd and Others, reported in CDJ 2017 SC 442.

b. Brahmani River Pellets Limited Vs Kamachi Industries Ltd, reported in CDJ 2019 SC 817

wherein, it has been categorically held that the Court for the purpose of Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 is the Principal Court which has got jurisdiction over the seat of the Arbitration.

6. In the case on hand, admittedly, as seen from the Arbitration Clause, the seat of the Arbitration is at Mumbai and therefore only the Mumbai Courts has got Jurisdiction to decide an application under Section 34 of the Arbitration and Conciliation Act, 1996.

7. In the case on hand, the application has been filed by the respondents 1 and 2 before the Principal District Court, Coimbatore under Section 34 of the Arbitration and Conciliation Act, 1996, which is not maintainable as the seat of the Arbitration is at Mumbai and only Mumbai Courts have got the jurisdiction to entertain an application under Section 34 of the Arbitration and Conciliation Act, 1996.

8. In view of the settled law, the impugned order dated 21.02.2017 passed by the learned Principal District Judge, Coimbatore in Arbitration OP No.256 of 2011 is set aside as the same is not maintainable on account of lack of jurisdiction and this Civil Miscellaneous Appeal is allowed.

9. It is made clear that the period during which, the respondents have filed the Section 34 application before the learned Principal District Judge, Coimbatore till the date of receipt of a copy of this order shall be excluded for the purpose of Section 14 of the Limitation Act as and when the respondents approach the Mumbai Courts to challenge the Arbitral award dated 31.03.2011 passed against them by the Arbitral Tribunal.

s/d-
Assistant Registrar(CS IV)

True Copy

Sub-Assistant Registrar

ab/vsi2

To :

The Principal District Judge,
The Principal District Court
(Arbitration and Conciliation Act)
Coimbatore.

+1 CC to Mr.M. Arunachalam, Advocate sr 44838.

+1 CC to Mr.C. Veeraraghavan, Advocate sr 44984.

C.M.A.No.1299 of 2018

SRA(CO)
SP(14/09/2021)