

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.79 of 2022

=====

Naushad Khan Son of Nazbul Hoda Khan, Village - Ismailpur P.S. Gurua
Gaya - 824205.

... .. Petitioner/s

Versus

The Branch Manager Tata Motor Finance Solutions Limited Tata Motor
Finance Limited 2nd Floor, Bala Jee Gharana Limited 82/104, A.P. Colony,
P.S. Rampur Gaya, Bihar - 823001.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Senior Advocate
Mr. Kumar Ravish, Advocate

For the Respondent/s : Mr. P. N. Shahi, Senior Advocate
Mr. Dayanand Singh, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

CAV JUDGMENT

Date : 26-04-2023

The above Request Case arises from a loan-cum-hypothecation-cum-guarantee agreement produced along with the memorandum as Annexure-P1. The petitioner entered into the aforesaid agreement with the respondent, in which Clause 21 is the arbitration clause, for purchase of heavy vehicles with finance availed from the respondent through its Gaya Branch in the year 2017. The petitioner alleges that disputes have arisen insofar as the working of the agreement, which requires to be referred for arbitration.

2. Shri Mrigank Mauli, learned Senior Advocate, instructed by Shri Kumar Ravish appeared for the petitioner and



Shri P.N.Shahi, learned Senior Advocate, instructed by Shri Dayanand Singh appeared for the respondent.

3. On behalf of the petitioner, it was submitted that the objections raised regarding the requirement of approaching the High Court at Bombay for reason of the respondent having approached that Court, in its original jurisdiction, does not disable the petitioner from approaching this Court, since the agreement was executed in Gaya within the jurisdiction of this Court and the vehicles were also delivered within the State of Bihar. The decision rendered in **State of West Bengal vs. Associated Contractors, (2015) 1 SCC 32** is relied on to contend that Section 42 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') would not be applicable insofar as applications made before judicial authorities under Section 8, applications filed before the Chief Justice or his delegate under Section 11, applications filed before Principal Civil Court or to High Court having no jurisdiction and applications filed in the Court that has no subject matter of jurisdiction. Insofar as the objection regarding the exclusivity of the venue of arbitration, the Clause, as referred to from the agreement, being Clause 22 does not confer any exclusive jurisdiction. Reliance is also placed on the



decision in **Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee, 2022 SCC Online SC 568.**

4. For the respondents reliance is placed on **Indus Mobile Distribution Pvt. Ltd v. Datawind Innovations Private Limited; 2017(7)SCC 678**, to argue that seat of arbitration could be anywhere as desired by the parties to the agreement. It is asserted by the learned counsel that there is an application under Section 9 filed before the High Court of Mumbai and in that circumstance also under Section 42, the petitioner has to approach the High Court of Mumbai under Section 11 and not this Court. This is without prejudice to the contention that the arbitration agreement specifically contains a clause with exclusive jurisdiction conferred on the Courts in Mumbai. Further, it is pointed out that the petitioner has already approached the Consumer Forum for redressal of the very same grievances attempted to be raised before the arbitrator and in such circumstance by the doctrine of election, the petitioner is estopped from requesting for appointment of an arbitrator by this Court.

5. The learned Senior Counsel for the petitioner, to resist the contention regarding doctrine of election, places reliance on **Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor,**



AIR 2022 SC 1824.

6. In **Experion Developers Pvt. Ltd.** (supra), the question considered was whether, the consumer having elected to proceed under the Consumer Protection Act, the provisions of the RERA Act could be availed of. The decision in **Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783** was also considered in that case. We need only refer to paragraph 24 of the said decision:-

“24. Before we consider whether the provisions of the RERA Act have made any change in the legal position stated in the preceding paragraph, we may note that an allottee placed in circumstances similar to that of the complainants, could have initiated the following proceedings before the RERA Act came into force:

(A) If he satisfied the requirements of being a “consumer” under the CP Act, he could have initiated proceedings under the CP Act in addition to normal civil remedies.

(B) However, if he did not fulfil the requirements of being a “consumer”, he could initiate and avail only normal civil remedies.

(C) If the agreement with the developer or the builder provided for arbitration:

(i) in cases covered under Clause (B) hereinabove, he could initiate or could be called upon to invoke the remedies in arbitration.

(ii) in cases covered under Clause (A) hereinabove, in accordance with law laid down in *Emaar MGF Land Ltd. v. Aftab Singh* [*Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 SCC 751 : (2018) 5 SCC (Civ) 652], he could still choose to proceed under the CP Act.”

7. The petitioner herein definitely is a consumer under the



Consumer Protection Act, having availed of finance from the respondent to purchase vehicles and in that case he could maintain proceedings under the Consumer Protection Act and at the same time also seek for arbitration, based on the arbitration clause in the agreement. That the arbitration clause exists is undisputed and going by the binding declaration, doctrine of election cannot be put against the petitioner and a request for arbitration would be maintainable, despite the petitioner having approached the Consumer Forum for compensation regarding the deficiency in services.

8. Insofar as the contention under Section 42, the answer is available from the decision of **Associated Contractors** (supra). Section 42 was held to be a *non-obstante clause* which does away with anything inconsistent with the section either in Part I of the Arbitration Act or any other law for the time being in force. The expression “with respect to an arbitration agreement” widens the scope of Section 42 to include all matters which directly or indirectly pertain to an arbitration agreement, making Section 42 applicable to all applications made before or during the arbitration proceedings or after an award is pronounced under part I of the 1996 Act. However, the essential ingredient of the section is that an application under



Part I must be in a Court. The three-judge Bench looked at the definition of 'Court' in Section 2(1) (e) of the 1996 Act, fixing the 'Court' to be the Principal Civil Court of original jurisdiction in a district or the High Court in exercise of its ordinary original civil jurisdiction. Section 2(1) (e) specifically indicates that a Court would not include any Civil Court of a grade inferior to such Principal Civil Court or Small Causes Court. The definition is exhaustive by the employment of the expression "means and includes". Though a High Court exercising original civil jurisdiction over a district will have preference to the Principal Court of original jurisdiction in that district, it leaves no room for doubt that it is the superior most Court exercising original jurisdiction which is chosen to adjudicate the disputes arising out of arbitration agreement. However, Section 42 only applies to an application made under Part I if they are made to a 'Court' as defined. Applications made under Section 8 are made to judicial authorities and applications under Section 11 are made to the Chief Justice or his designate, both of whom are not 'Court' as defined, thus making such applications to be outside the purview of Section 42. On the binding precedent it has to be held that the application made under Section 9 before the High Court of



Mumbai, which has original Civil Jurisdiction, does not preclude the present application before the Chief Justice of this Court under Section 11; if the cause of action arises within the jurisdiction of this Court or the arbitration agreement provides for such place, as the place of arbitration on consent of the parties.

9. There is considerable difference in judicial opinion regarding the concept of 'seat' and 'venue' of arbitration; which need not be gone into to resolve the dispute of jurisdiction raised here. In **Indus Mobile Distribution Private Limited** (supra), respondent no.1 who had registered office at Amritsar, Punjab was supplying goods to the appellant at Chennai from New Delhi. As per the agreement entered into between the parties and the "Dispute resolution mechanism", it was agreed as per the specific clause of the agreement that all disputes and differences of any kind arising out of or in connection with the agreement shall be subject to the exclusive jurisdiction of Courts at Mumbai. The High Court of Mumbai dismissed an application under Section 9 and also under Section 11 finding that no part of the cause of action arose in Mumbai and only the Courts of three territories, namely Delhi and Chennai; from and to where goods were supplied, and Amritsar; where the



registered office of the appellant company was located, could have jurisdiction. The Hon'ble Supreme Court held that as per the arbitration agreement between the parties, the arbitration was agreed to be at Mumbai and the jurisdiction was to exclusively vest in the Mumbai Courts. Despite the fact that no cause of action arose in Mumbai, it was held that under the law of arbitration, unlike the Code of Civil Procedure, a reference to 'seat' is a concept by which a neutral venue can be chosen by a party to an arbitration clause. If such a neutral venue was agreed to as the seat of arbitration, then the Courts having jurisdiction over that seat/venue will have the exclusive jurisdiction for the purpose of regulating arbitral proceedings arising out of the agreement between the parties.

10. **Ravi Ranjan Developers Pvt. Ltd.** (supra), a later co-ordinate Bench decision of the Hon'ble Supreme Court, however, took a different path from **Indus Mobile Distribution Private Limited** (supra) on the trite proposition that a judgment is a precedent for the issue of law that is raised and decided; which has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Therein, the parties only agreed that the sittings of the arbitral tribunal would be in Kolkata and from the specific words



employed it was found that it was not the intention of the parties that Kolkata should be the seat of arbitration. It was held that on facts that Kolkata was only intended to be a venue of arbitration sittings and the respondent himself approached the District Court of Muzaffarpur and not a Court in Kolkata for interim protection under Section 9 of the Act of 1996. It was held that the respondent having himself invoked the jurisdiction of the Court at Muzaffarpur is estopped from contending that the parties had agreed to confer exclusive jurisdiction to the Calcutta High Court, to the exclusion of other courts.

11. In the present case, we have to look at the specific clause conferring jurisdiction which is at clause 22 of the agreement produced as Annexure-P/1, which is extracted hereunder:-

“22. Jurisdiction

Subject to the provisions of Clause 21 above, all legal actions and/or proceedings arising out of/in connection with this Agreement and the Assets shall be brought in/before competent courts/tribunals in Mumbai provided that the lender may however in its absolute discretion initiate/commence any legal action or proceedings arising out of/in connection with any of the above in any other competent court/tribunal in any place as the Lender may deem fit and the Borrower shall not object to such jurisdiction.”

12. Going by the words employed, definitely the facts are



identical to **Indus Mobile Distribution Private Limited** (supra) and the intention of the parties itself was to confer exclusive jurisdiction on the Courts/Tribunal in Mumbai with respect to all legal actions and also subject to the provisions of Clause 21, which is the arbitration clause.

13. The learned Senior Counsel for the petitioner, however, argued that the proviso conferring jurisdiction on the lender to approach any other competent Court or Tribunal in any place, in fact, takes out the exclusivity of jurisdiction conferred on the Mumbai Courts.

14. As has been held in **Indus Mobile Distribution Private Limited** (supra), it is the consent of the parties that assumes significance insofar as deciding the seat of arbitration; which as per the above clause has been chosen to be Mumbai. True, the lender, one of the parties, the respondent herein has been given a choice to avail of the remedies before any other competent court or tribunal, which does not inure to the benefit of the lender, the requester herein. In fact, if the lender had approached any other jurisdiction, other than Mumbai, or the places where the cause of action arose other than Mumbai, definitely the lender, the petitioner herein could have objected to the same on the ground that it causes undue prejudice to him



and it was never intended to leave open the jurisdiction; with the discretion conferred upon only one of the parties to approach any court within the country. However, insofar as the claim of the respondent being that the petitioner having agreed exclusively to the jurisdiction of the Courts at Mumbai, even insofar as the resolution of disputes through arbitration is concerned, the petitioner is estopped from invoking the jurisdiction at any other place. I am inclined to agree with the contention of the respondent and it is found that there is exclusive jurisdiction conferred on the Courts at Mumbai, as per the agreement, which also has been decided on consent to be the seat of arbitration. The petitioner hence would have to file an application under Section 11 of the Act before the High Court at Mumbai and not before this Court, under the specific arbitration clause and conferment of jurisdiction as is evident from the agreement at Annexure-P/1.

15. In this context, it may be noticed that **Ravi Ranjan Developers Pvt. Ltd.** (supra) was a case in which there was no cause of action arising at Kolkata whereas in the present case, the respondent has its registered office at Mumbai.

16. The Request Case is rejected, without prejudice to the right of the petitioner to approach the jurisdictional Court as



evident from the consensus arrived at between the parties to the agreement, from the agreement itself.

(K. Vinod Chandran, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	12.04.2023
Uploading Date	26.04.2023
Transmission Date	

