

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

Present :-

The Hon'ble Justice Moushumi Bhattacharya

AP 289 of 2023

with

AP 368 of 2023

M/s. Binoy Trading Co. and Another

vs.

Tata Motors Finance Limited

For the Petitioner	:	Mr. Shyamal Chakraborty, Adv.
		Mr. Debajyoti Mondal, Adv.
		Ms. Anjana Das, Adv.

For the Respondent	:	Mr. Rohit Banerjee, Adv.
		Mr. Saubhik Chowdhury, Adv.
		Ms. Tapasika Bose, Adv.

Last Heard on	:	02.08.2023
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Delivered on	:	07.08.2023
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Moushumi Bhattacharya, J.

1. The petitioner/award-debtor has filed the present applications under section 34 of The Arbitration and Conciliation Act, 1996 for setting aside of two awards dated 4.8.2022 and 1.11.2022 passed by the learned sole arbitrator in arbitrations where the petitioner was the respondent. Both the applications involve identical facts. Learned counsel for the respondent in both the applications have argued on the point of maintainability. Hence the applications are being disposed of together.

2. The respondent/award-holder has taken a preliminary point of maintainability of the present applications on sections 2(1)(e) and 42 of the Act of 1996. The respondent says that the present applications should be filed before the Ld. City Civil Court since the petitioner has already filed a miscellaneous application in that Court. Learned counsel appearing for the respondent also takes the point of pecuniary jurisdiction of the High Court and the City Civil Court as determined by a Notification dated 20.3.2020 issued by the Judicial Department of the Government of West Bengal.

3. The brief facts of the case is that the petitioner has suffered an award dated 1.11.2022 for a principal sum of Rs. 82,91,536.50/-. The respondent filed a post-award application for interim relief under section 9 of the Act before the Ld. City Civil Court on 29.12.2022. An ad-interim order was passed on the same day inter alia authorising the Receiver to take necessary steps with regard to the petitioner's vehicle and that the vehicle would remain in the

custody of the Receiver. The petitioner filed an application thereafter on 4.4.2023 connected with the Misc. Case (No. 7612 of 2022) of the respondent praying for dismissal of the Misc. Case and for a direction on the Receiver to handover the vehicle to the petitioner. The present applications were filed for setting aside of the award on 28.4.2023.

4. Since the respondent / award-holder has raised an objection with regard to the maintainability of the present applications, that question will be decided first.

5. Section 2(1)(e) of the Act defines “Court” for the purposes of domestic arbitration, as the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

6. Section 42 begins with a non-obstante clause and stipulates that any application made in respect to an arbitration agreement under Part-I of the 1996 Act would confer that Court alone with jurisdiction over arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

7. The object of section 42 is to prevent conflict and multiplicity of decisions of different Courts. The section aims to provide uniformity by bringing the

parties to the Court where the first application was made under an arbitration agreement and ensuring that all subsequent applications are made only in that Court.

8. The undisputed facts indicate that the petitioner approached the Ld. City Civil Court in the Misc. Case filed by the respondent and prayed for appropriate orders with regard to release of the petitioners' vehicle. The petitioner has also made specific averments in the application stating that the City Civil Court is empowered to forthwith try and entertain the application and pass necessary orders. The petitioner, at such point of time, did not take any stand of the City Civil Court not being competent or empowered to try and entertain the application.

9. Learned counsel for the petitioner has relied on a Division Bench decision passed in *Shri Sushanta Malik vs. Srei Equipment Finance Limited* reported in *AIR 2015 Cal 335* to urge that the Ld. City Civil Court does not have pecuniary jurisdiction to entertain the section 34 application since it is not a principal Civil Court of Original Jurisdiction and that the present applications can therefore only be filed before the Calcutta High court.

10. The decision of the Division Bench in *Sushanta Malik* was however delivered on 8.9.2015 whereas the Commercial Courts Act, 2015 was published in the Gazette of India dated 31.12.2015 and was deemed to have come into force on 23.10.2015.

11. Section 2(1)(b) of The Commercial Courts Act, 2015 defines “Commercial Courts” as the Commercial Court constituted under section 3(1) of the said Act. Section 3 empowers the State Government in consultation with the concerned High Court to constitute Commercial Courts by notification as may be necessary for the purpose of exercising jurisdiction and powers conferred on the Courts. Section 3(1-A) empowers the State Government to also specify the pecuniary value while section 3(2) empowers the State Government to specify the local limits of the area to which the jurisdiction of a Commercial Court shall extend.

12. Section 10(3) of the 2015 Act empowers all Commercial Courts exercising territorial jurisdiction to receive petitions where the subject matter of arbitration constitute a commercial dispute of a specified value. Section 12(2) provides for basis of determination of a specified value for cases where the subject matter of arbitration is a commercial dispute. Section 21 of the Act declares that the Act shall have overriding effect on any other law for the time being in force.

13. By a Notification published on 20.3.2020 in the Kolkata Gazette Extraordinary, by the Judicial Department, Government of West Bengal, the pecuniary jurisdiction of the City Civil Court and the Calcutta High Court was notified in exercise of the power conferred under section 3(1-A) of the 2015 Act. The pecuniary jurisdiction was specified in terms of the value of the commercial disputes and provided that in case of Commercial Courts within

the territorial jurisdiction of the City Civil Court at Calcutta of an amount exceeding Rs. 10 lacs but not exceeding Rs. 1 crore would concurrently be with the City Civil Court and the Commercial Division with the High Court, Calcutta. The other parts of the Notification have not been mentioned as they are not relevant to the present matter.

14. Admittedly, the value of the arbitration petition is somewhere between Rs. 10 lacs – 85 lacs. The ambiguity is on account of the petitioner saying that the subject matter of the award is in excess of Rs. 10 lacs while the respondent says that the value of the arbitration petition is in excess of Rs. 85 lacs. Whatever be the case, the Notification, which has fixed the pecuniary jurisdiction of the learned City Civil Court and the Calcutta High Court, makes it clear that both the City Civil Court and the High Court will have concurrent pecuniary jurisdiction to entertain the present arbitration petition.

15. Section 42 of the 1996 Act will however settle the jurisdiction in favour of the City Civil Court since the respondent first approached with an application for interim relief and the petitioner subjected itself to the jurisdiction of the City Civil Court also by making a separate application for interim relief in the form of release of the petitioner's vehicle. As stated above, section 42 mandates that when any application with regard to an arbitration agreement has been made under Part I in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent application arising out of that

agreement and further that no other Court shall have jurisdiction in such cases.

16. It is undisputed that the section 9 application arose out of the arbitration agreement between the parties and was a post-award application made by the respondent. The present application under section 34 for setting aside of the award must also therefore be filed before the City Civil Court also by reason of the fact that the City Civil Court has pecuniary jurisdiction to entertain the application under section 34 of the 1996 Act.

17. The Division Bench of this Court in *Sushanta Malik* held that the Original Side of this Court alone will have jurisdiction to entertain an application under the 1996 Act where the value of the subject matter of the dispute in arbitration exceeds Rs. 10 lacs. As stated above, this decision was pronounced before The Commercial Courts Act, 2015 was notified on 31.12.2015. Therefore, the decision of this Court has to abide by the 2015 Act read with the Notification dated 20th March, 2020 which has since been the guiding document for determining the Court competent to entertain a commercial dispute in accordance with the pecuniary limits fixed under the Notification.

18. This Court therefore is constrained to hold that the learned City Civil Court is the competent Court to entertain the present application. The above discussion reflects the reasons for this view.

19. AP 289 of 2023 and AP 368 of 2023 are accordingly dismissed as not being maintainable.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)