

OCD-17

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

IA NO. GA-COM/1/2024
In AP-COM/822/2024

VERSATILE CONSTRUCTION
Vs
TATA MOTORS FINANCE LTD

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 30th September, 2024

Appearance:
Mr. Tapas Dutta, Adv.
...for the petitioner

Ms. Anna Malhotra, Adv.
Mr. Rishav Maity, Adv.
...for the respondent

The Court:- At the inception, an issue as to jurisdiction of this Court to take up the application under section 34 of the Arbitration and Conciliation Act, 1996 as well as the connected application, which is in the nature of one under Section 9 of the said Act, is raised by learned counsel for the respondent. Learned counsel hands over a copy of the purported agreement between the parties which, in Clause 21.1, clearly mentions “arbitration to be held in Mumbai in accordance with the 1996 Act or any statutory amendments thereof and shall be referred to a sole Arbitrator to be appointed by the lender”.

Again, Clause 22 thereof, which is the jurisdiction clause, vests power on competent Courts and tribunals in Mumbai in respect of legal actions and/or proceedings arising out of or in connection with the agreement.

It is argued that in view of the said provisions, the jurisdictional Court is in Mumbai and this Court does not have territorial jurisdiction.

Learned counsel for the petitioner controverts such arguments and cites a judgment reported at (2010) 1SCC 72 in *N. Radhakrishnan vs. M/s. Mastero Engineers*.

It is argued that in the said case, the Supreme Court held that even assuming that a dispute subsists and an Arbitrator is appointed, still the appellant cannot absolve himself from the mandatory requirement of filing an original copy of the deed. It was held that a xerox copy of the partnership deed had been filed and not the original copy. Since the original deed was not filed within the requirement of Section 8(2) of the 1996 Act, it was held that the mandatory requirement of the Act had not been complied with.

In the said matter, the Court also noted previous judgments of the Supreme Court, which laid down that where serious allegations of fraud are made against the party and the party who is charged with fraud desires that the matter should be tried in open Court, that would be a sufficient cause for the Court not to order an arbitration agreement to be filed and not to make the reference.

Learned counsel also submits that the complete copy of the purported loan agreement has not been handed over to him, which is now handed over by learned counsel for the respondent to her counterpart appearing for the petitioner.

Learned counsel for the petitioner, with leave of Court, files a supplementary affidavit where it has been alleged that the copy of the purported loan agreement relied on by the respondent is a fraudulent document and the same does not contain any signature of the petitioner.

Thus, it is submitted that the said purported agreement, which is a disputed document, cannot form the premise of this Court deciding the issue of jurisdiction. It is submitted that otherwise, this Court has full territorial jurisdiction since the office of the respondent is situated within the territorial limits of this Court and the agreement was signed in Durgapur.

At the outset, it cannot but be observed that the judgment cited by the petitioner is entirely off the topic. In the said case, the Supreme Court was deciding on an issue pertaining to whether an application under Section 8(2) of the 1996 Act would be entertained. In such context, it was held that the original document had to be produced and if the agreement itself was vitiated by fraud, there may not be any reference to arbitration at all.

As opposed to the said factual matrix, in the present case, the petitioner has already suffered an award, whatever might be the contentions of the petitioner in respect to the said award. Although the award was passed ex parte, an ex parte award is equally binding as a contested one.

Hence, the Court now is to take a re-look at the arbitral process at a stage when the respondent already has accrued rights in its favour by virtue of the award.

The present question pertains to a completely different aspect than the cited report, which was in respect of Section 8 of the 1996 Act, as to whether this Court has jurisdiction under Section 34 and/or Section 9 to take up the dispute.

Section 2(1)(e) of the 1996 Act clearly defines “Court” as the principal Court of original civil jurisdiction in the area concerned.

It has been held time and again by the Supreme Court and various High Courts that once the seat of arbitration is decided by the parties, the provisions of Sections 16-20 of the Code of Civil Procedure shall not be a determinant as to the jurisdiction of the arbitral Court.

In the present case, although the petitioner disputes the veracity and authenticity of the purported loan agreement between the parties, it cannot be denied that the said agreement, a copy of which has been submitted by the respondent/award holder and has been made a part of the record in this Court, was the premise of the award which was passed against the petitioner.

At this stage, while deciding the question of jurisdiction, the Court is only to look into the clauses of the said purported document and cannot go elsewhere. As per Clause 21.1 of the said document, Mumbai is clearly enumerated to be the seat of arbitration. The expression used is “arbitration to be held in Mumbai”. However, in the absence of any contra indication throughout the document as to any other place being designated as the seat of arbitration, Mumbai cannot be construed merely to be a venue but has to be taken to be the intended seat of arbitration, going by the provisions of the purported agreement.

Although Clause 22 of the agreement is not germane, since the parties cannot confer jurisdiction on a Court otherwise having no jurisdiction and as the seat has already been decided as per the purported agreement, the Court ought not to look into any further provisions of the agreement between the parties.

Be that as it may, going by the purported agreement on which the respondents or award-holder relied on to obtain the award from the arbitral tribunal, this Court does not have territorial jurisdiction to take up the matter.

In fact, it is doubtful even whether the Bombay High Court has jurisdiction as the principal court of original civil jurisdiction, since it may very well be that one of the District Courts of Mumbai qualifies as the jurisdictional Court within the contemplation of Section 2(1)(e) of the 1996 Act.

Be that as it may, it is not for the Court to delve into the merits of the other allegations made by the petitioner. Undoubtedly, the petitioner may have an arguable case on merits regarding the allegation of fraud, however, till date the said allegation does not form a part of the Section 34 application or the interlocutory application.

The petitioner pleads that the alleged fraud came to the notice of the petitioner only upon getting a copy of the purported loan agreement from the learned advocate for the respondent. Be that as it may, such challenge can be taken only in an otherwise maintainable Section 34 application.

The limited gateway for this Court to enter into the dispute, even pertaining to fraud, is territorial jurisdiction as contemplated in Section 34, read with the definition of 'Court' in Section 2(1)(e) of the 1996 Act.

In view of the petitioner not having not been able to cross the said threshold hurdle, I am of the opinion that this Court cannot entertain the issues, including the issues of fraud, in the present proceeding.

Accordingly, the present application and the application under section 34 of the 1996 Act from which the same arises are not maintainable before this Court due to lack of territorial jurisdiction. Hence, no useful purpose would be served in keeping the main application under section 34 pending unnecessarily before this Court, compelling the parties to litigate before a forum which does not have territorial jurisdiction.

Accordingly, GA-Com/1/2024 is dismissed as not maintainable on the ground of territorial jurisdiction. Similarly, AP-Com/822/2024 is also dismissed as not maintainable on the ground of territorial jurisdiction. However, it is made clear that nothing in this order shall preclude the petitioner from taking up an appropriate challenge before the Court having jurisdiction to hear such issues.

It is, however, made clear that this Court has not entered into the merits of the allegations and counter-allegations of the parties at all.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)