

OCD-4

ORDER SHEET
APOT/329/2024
WITH
AP-COM/360/2024
IA NO: GA-COM/1/2024,
GA-COM/2/2024

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE

TIWAM STAINLESS TUBES PRIVATE LIMITED AND ORS.
VS
M/S CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date: 25th November, 2024.

Appearance:
Mr. Sanjib Das, Adv.
Ms. Sunita Kabi, Adv.
. . .for the petitioner.

Mr. Ritoban Sarkar, Adv.
Ms. Shrayshee Das, Adv.
Mr. Rohon Kumar Thakur, Adv.
Mr. Tridibesh Dasgupta, Adv.
. . .for the respondents.

The Court: There is a delay of 113 days in preferring the appeal. Sufficient cause being shown, the delay is condoned.

The appeal is arising out of an order passed by the learned Single Judge on 17th May, 2024 in an application filed under Section 9 of the Arbitration and Conciliation Act, 1996, in which after noticing that there is an outstanding due in excess of Rs.3 crores to the Finance Company and there had been repeated

defaults by the appellants, the ad interim order in terms of prayers (c) and (d) of the Notice of Motion was confirmed. The learned Single Judge has recorded that it would be apparent from the conduct of the appellants that they only want to delay and procrastinate the proceeding with the ultimate motive of frustrating the award which may be passed against the respondent. The said order is challenged on the ground of jurisdiction. It is submitted that the agreement was entered into at Chennai. The loan was disbursed at Chennai and the breach, if any, had taken place at Chennai. Moreover, the attention of the Court is drawn to the jurisdiction Clause which says that the agreement has been accepted and executed by the company at Chennai and the Courts in Chennai alone shall have exclusive jurisdiction over any matter arising out of or concerning this agreement.

In view of the said Clause, the jurisdiction of all other Courts is excluded. However, it appears although not reflected from the order that the advocates on behalf of the appellants have addressed a letter to the then Arbitrator on 4th May, 2023 requesting him to shift the venue to Kolkata for arbitration as one of the respondents, namely, Pintu Tiwary is a handicapped person and is unable to walk, the Finance Company proceeded on the basis that since there is a consent to shift the venue from Chennai to Kolkata and an application under Section 9 of the Arbitration and Conciliation Act, 1996 would be maintainable in this Court. However, it is a fact that the Finance Company has filed an application under Section 11 of the Arbitration and Conciliation Act at Chennai meaning thereby the Finance Company has accepted the Chennai Court having the jurisdiction to

entertain the matter. It is elementary that parties by agreement cannot confer jurisdiction on a Court which has no connection with the lis. It appears from the agreement that the dispute relates to an agreement which has been executed and performed at Chennai and for reason thereof, the Court at Chennai was chosen with an exclusivity clause. By reason of Section 42 of the Arbitration and Conciliation Act, 1996, all other applications are required to be filed before the Chennai High Court. Merely because the Arbitrator holds sittings in Kolkata or any other place does not confer a Court within whose jurisdiction an arbitration sitting is held to decide the dispute. When the venue is equated with the sitting, it is that Court which can exclusively decide the disputes between the parties.

In view of the aforesaid facts, limited on the ground of jurisdiction, we set aside the order under appeal giving liberty to the respondent to approach the appropriate Court in the meantime.

It is made clear that we have not gone into the merits of the matter.

The appeal and the connected applications are disposed of.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)