
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION APPLICATION NO. 121 OF 2024

Tata Motors Finance Solution Ltd ...Applicant

Versus

Parbez Hamid ...Respondent

Mr. Gaurav Jangle *for the Applicant.*

Ms. Shabnam *for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 12, 2025

Oral Judgement:

1. At the threshold, Learned Counsel for the Applicant submits that the Applicant-Tata Motors Finance Solutions Limited has merged into Tata Capital Limited pursuant to an order dated May 1, 2025 passed by the National Company Law Tribunal (“**NCLT**”). The revised certificate of incorporation is yet to be received. Since the order has already been passed by the NCLT, liberty to effect the change in front of the Associate. Re-verification is dispensed with.

2. This Application under Section 11 of the Arbitration and Conciliation Act, 1996 (*“the Act”*), has been made in connection with disputes and differences between the parties arising out of loan agreements dated June 30, 2018 and February 15, 2021 read with a fast track loan agreement dated March 25, 2021. It is common ground that the arbitration agreement is contained in clause 21 and 10 respectively in the aforesaid three agreements and the existence of the arbitration agreement is the sole issue that would arise for consideration by the Section 11 Court. In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

3. However, there is a twist in the factual matrix of this case. The “Court” under Section 2(1)(e) of the Act before which a Petition under Section 9 has been filed is the City Civil Court, located in Kolkata. That Court being a district Court, evidently, would not have jurisdiction under Section 11 of the Act since the jurisdiction under Section 11 is solely vested in a High Court. In reliance upon the jurisdictional clause conferring jurisdiction on courts in Mumbai, this Application under Section 11 has been moved.

4. However, the entire scheme of the Act has to be borne in mind. While it is true that this Court may have jurisdiction, the interplay of Section 11 of the Act with Section 42 of the Act, arises for consideration. It would be appropriate to extract Section 42, which reads thus:

Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all sequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

[Emphasis Supplied]

5. Section 42 is a *non-obstante* provision and fastens the jurisdiction of all future applications on the court first moved under the Act. In other words, once an application in connection with any arbitration agreement has been made in a given court with jurisdiction, all future applications would necessarily have to be made in that Court alone and in no other Court. This emphatic provision stipulates a specific legislative objective that is writ large on its face. The evident objective behind Section 42 of the Act is to require parties to an arbitration agreement access the court that is seized of an application under the Act. The legislative intervention in Section 42 is obviously founded on

the principle of *forum conveniens* and aimed at avoiding multiple forums being seized of matters relating to the same arbitration agreement. It is meant to streamline the jurisdiction of multiple courts and to focus the jurisdiction in a single forum for all matters under the agreement that is subject matter of the arbitration.

6. Indeed, a district court has no jurisdiction under Section 11 of the Act, which confers jurisdiction only in a High Court. Therefore, when the City Civil Court at Kolkata has already been moved and is the court first moved under the Act, one would need to examine which High Court would have jurisdiction for purposes of a Section 11 Application. While one view could be that since the City Civil Court at Kolkata has no jurisdiction under Section 11 and therefore, this Court may exercise that jurisdiction in reliance upon the jurisdiction clause in the arbitration agreement, in view of Section 42 of the Act, another view that is more harmonious and is more persuasive as furthering the legislative intent behind Section 42 is that the Calcutta High Court, which has territorial jurisdiction over City Civil Court at Kolkata would be the appropriate Section 11 Court. By this approach, it would be possible to solve for the evident lack of jurisdiction under Section 11 of the Act in the City Civil Court at Kolkata and yet further to the hilt the legislative stipulation in

Section 42 of the Act. This would also ensure the principle of *forum conveniens* is well addressed and even if the parties have to use two different forums, they are forums that are deeply interconnected by the Calcutta High Court being the High Court exercising superintendence and jurisdiction over the City Civil Court at Kolkata.

7. Dealing with a somewhat similar issue, where the district court at Muzzafarpur, Bihar had been approached under Section 9 of the Act, but the Calcutta High Court was approached under Section 11, the Supreme Court, in the case of ***Ravi Ranjan***¹ declared the following:

26. Of course, under Section 11(6), an application for appointment of an Arbitrator necessarily has to be moved in the High Court, irrespective of whether the High Court has the jurisdiction to decide a suit in respect of the subject matter of arbitration and irrespective of whether the High Court at all has original jurisdiction to entertain and decide suits. As such, the definition of Court in Section 2(1)(e) of the A&C Act would not be applicable in the case of a High Court exercising jurisdiction under Section 11(6) of the A&C Act to appoint an Arbitrator/Arbitral Tribunal.

27. At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal

¹ *Ravi Ranjan Developers Pvt. Ltd. Vs. Aditya Kumar Chatterjee – 2022 SCC OnLine SC 568*

cannot be moved in any High Court in India, irrespective of its territorial jurisdiction. Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act.

28. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent.

[Emphasis Supplied]

8. A plain reading of the foregoing would show that where the “Court” under Section 2(1)(e) of the Act is not a High Court (the district court), the High Court which exercises superintendence or supervisory jurisdiction over that Court would be the High Court for purposes of Section 11 of the Act. In terms of Paragraph 27 of Ravi Ranjan, the Calcutta High Court which exercises superintendence and supervisory jurisdiction over the City Civil Court at Kolkata (the court under Section 2(1)(e) of the Act) would be the relevant High Court.

9. In view of the explicit finding in Paragraph 27 of *Ravi Ranjan*, and taking into account the spirit and purpose behind Section 42 of the Act, the Applicant would necessarily need to approach the Calcutta High Court, which is the High Court exercising jurisdiction under Article 227 over the City Civil Court at Kolkata.

10. Learned Counsel on behalf of the Applicant would seek to rely on the observation in Paragraph 32 of *Ravi Ranjan*, which reads thus:

32. However, Section 42 cannot possibly have any application to an application under Section 11(6), which necessarily has to be made before a High Court, unless the earlier application was also made in a High Court. In the instant case, the earlier application under Section 9 was made in the District Court at Muzaffarpur and not in the High Court of Judicature at Patna. An application under Section 11(6) of the A&C Act for appointment of Arbitrator, could not have been made in the District Court of Muzaffarpur. Therefore, Section 42 is not attracted.

[Emphasis Supplied]

11. In my view, this observation has to be read in context of the wider analysis in *Ravi Ranjan*. All that Paragraph 32 states is that Section 42 would not lead to jurisdiction under Section 11(6) standing conferred on the “Court” under Section 2(1)(e). Put differently, that paragraph makes

it clear that by virtue of Section 42 (indeed a *non-obstante* provision), it cannot be argued that district courts would have jurisdiction to appoint arbitrators under Section 11. That would not mean that the High Court without jurisdiction over the district court already moved, situated in a different state, can exercise jurisdiction under Section 11 in relation to an arbitration agreement under which an application has already been moved in a court different from that High Court.

12. It is sought to be argued that regardless of the City Civil Court at Kolkata having been moved, this Court too has jurisdiction in view of the agreement between the parties. Seen from that prism, there would be two High Courts with jurisdiction under Section 11 of the Act. That is why, in my opinion, the principles underlying Section 42 ought to be applied in doing justice to its legislative objective by holding that the High Court exercising supervisory jurisdiction over the City Civil Court at Kolkata would be the appropriate High Court to exercise the Section 11 jurisdiction. This is precisely what weighed with the Supreme Court in ***Ravi Ranjan***. The statement that Section 42 has no application is essentially a declaration that Section 42 would not apply to confer the jurisdiction under Section 11 on the district court that was first moved.

13. On facts, in ***Ravi Ranjan***, the Supreme Court held that the Calcutta High Court that was moved under Section 11 was wrong in exercising jurisdiction, when the Muzzafarpur district court was moved under Section 9. Therefore, it is quite reasonable and logical to interpret Paragraph 32 in the context of the issue framed in that judgement and the findings rendered on that issue.

14. Therefore, in my opinion, with a harmonious interpretation of Section 42, Section 11 and Section 2(1)(e) of the Act, and taking into account the ruling in Paragraph 27 in ***Ravi Ranjan*** and the final outcome in that case, this Application deserves to be disposed of without exercising jurisdiction under Section 11, and granting liberty to the Applicant to approach the Calcutta High Court with an application under Section 11 of the Act.

15. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. The issue dealt with in this judgement is purely a ruling on reconciliation of competing jurisdictions and the reconciliation of the same in the context of jurisdictional facts of this case.

16. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]