

17.03.2026
Ct. No. 30
SL No. **38**
MKP

CO 1019 of 2024

Tata Motors Finance Ltd

Vs.

Akher Khan

Mr. Prabhat Kr. Srivastava

.....for the Petitioner

(Name not supplied)

.....for the Opposite Parties

1. The civil revision has been preferred challenging an award dated 23rd February, 2024 passed in Miscellaneous Appeal no.15 of 2023, wherein the ex parte interim order passed by the Learned Arbitrator was set aside along with the final award passed by the Arbitral Tribunal.

2. It is the case of the petitioner that the Learned Trial Court did not consider the fact that the seat of arbitration was contractually fixed at Mumbai and as such, the Trial Court did not have the jurisdiction to decide the appeal.

3. Further challenge of the petitioner herein, is that the learned trial Court has exceeded the scope of a proceeding under Section 37 of the Arbitration and Conciliation Act, 1996 by setting aside the final

Arbitral Award dated 23rd April 2023, which was not the subject matter of challenge before it.

4. The petitioner has further submitted that the seat of arbitration in the present case, as per the loan agreement is to be at Mumbai, Maharashtra alone.

5. It is further stated that the Learned Chief Judge, City Civil Court at Calcutta does not fall within the definition of “Court” under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 and, therefore, lacked inherent jurisdiction to entertain the Miscellaneous Appeal.

6. It is further stated that though the Misc. Appeal was filed only for setting aside the interim order passed under Section 17 of the Act, the Trial Court by setting aside the final arbitral award dated 23rd April, 2023 has acted without jurisdiction, as the Court could not have interfered with the proceedings under Section 37 of the Act.

7. The final argument of the petitioner is that the appeal before the Trial Court has become infructuous as the final arbitral award has already been passed during the pendency of the Misc. Appeal.

8. The opposite parties have not appeared in the present case, in spite of due service.

9. On hearing the Learned Counsel for the petitioner and on perusal of the materials on record,

it appears that the Trial Court being the Learned Chief Judge, City Civil Court, Calcutta, disposed of the Misc.Appeal on the finding that the Misc.Appeal had been preferred by the appellant being aggrieved by an ex parte interim order passed by the Arbitrator, **sitting in Mumbai** allegedly without serving any notices upon the appellant and that the Arbitrator had been appointed unilaterally by the petitioner, herein.

10. It appears that only the ex parte interim order had been challenged before the said Court.

11. The Learned Court considered the issue of territorial jurisdiction as raised by the petitioner, relying upon Clause 21 of the Loan Agreement and held as follows:-

*“From the agreement itself it appears that clause 21.1 **enables the respondent no.1 to appoint sole arbitrator where the borrower shall have no say.** This clause where the respondent no.1 has the sole authority to appoint arbitrator unilaterally is bad in law and therefore the arbitration proceeding and all orders passed by the arbitrator which includes the interim award that was stayed by this court in its earlier order dated 29.03.2023 and final award that was passed to frustrate the interim order passed by this court is rendered null and void.*

It is worth noting that the appellant has categorically taken the grounds of challenging the appointment of the arbitrator. The Ld. Counsel for the respondent could show no document before this court that notice was given to the appellant of appointment of the arbitrator.

In the given circumstance, this court having opined that the unilateral appointment of arbitrator is bad in law as has been decided by the Hon'ble Apex Court in its catena of decisions and followed by the Hon'ble High Courts declaring that even if there is a clause in the agreement wherein the Finance Company inserts a clause giving full authority to itself for appointing Arbitrator unilaterally the same shall be held illegal in view of the law led down by the Hon'ble Apex Court in this regard.

Hence, it is

Ordered

that the award passed by the arbitrator both interim and final are set aside being void ab initio."

12. From the said findings, it appears that the Learned Judge did not decide the issue of territorial jurisdiction as raised by the petitioner herein, that the Court did not have the jurisdiction considering,

Clause 21 of the Loan Agreement wherein, the seat of Arbitration was to be only at Mumbai, and all legal actions and proceedings in connection to the said agreement was to be only before the competent Court/tribunals in Mumbai.

13. The Learned Judge without coming to a decision on the said point of territorial jurisdiction/maintainability raised, set aside both the interim order and also the final award which was not under challenge in the Misc. Appeal.

14. Considering that the impugned order is beyond the prayer in the Misc. Appeal, which had been preferred challenging only ex parte interim order and the fact that prima facie the Court's at Mumbai have the jurisdiction to decide all cases and proceedings arising out of the said Loan Agreement, this Court finds that the learned Chief Judge, City Civil Court, Calcutta, did not have the jurisdiction to hear the Misc. Appeal, which was prima facie not maintainable, on the ground of territorial jurisdiction.

15. Accordingly, the impugned dated 23.02.2024 passed in Misc. Appeal no.15 of 2023 by the Learned Chief Judge, City Civil, Calcutta, being not in accordance with law **is set aside.**

16. The Civil Revision is accordingly **disposed of.**

17. Applications, if any, connected thereto stand disposed of consequently.

18. Interim order, if any, stands vacated.

19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]