

Tata Motors Finance Limited Vs Bhagwan Das Auto Finance Ltd. and Another

Court: Bombay High Court

Date of Decision: Dec. 14, 2009

Acts Referred: Arbitration Act, 1940 " Section 11, 9
Arbitration and Conciliation Act, 1996 " Section 11, 2, 21, 9
Civil Procedure Code, 1908 (CPC) " Section 20

Citation: (2011) 3 ALLMR 666

Hon'ble Judges: Anoop V. Mohta, J

Bench: Single Bench

Advocate: Chinmay S. Gupte, instructed by Mohit Gadkari and Co, for the Appellant; Sonali Shinde, instructed by Consulta Juris, for the Respondent

Judgement

Anoop V. Mohta, J.

The matters are on the final hearing board.

2. The petitioner has invoked Section 9 of the Arbitration and Conciliation Act, 1996 (for short Arbitration Act) thereby seeking interim protection

against respondent No. 1, who is also a Company registered under the provisions of the Company Act, having his Office at Kolkata and is also

doing business of finance with the due permission/license from the Competent Authority.

3. The basic objection raised is with regard to the jurisdiction of this Court in view of the fact that an Agreement between the parties took place at

Kolkata. The respondents' Office is also situated at Kolkata. The vehicles are also at Kolkata. Therefore, there arose no cause of action in

Mumbai.

4. The Arbitration Clause and Jurisdiction Clause 23 and 24 are reproduced herein as under:

23. ARBITRATION:

All disputes, differences and/or claims arising out of this Loan Agreement or as to the construction, meaning or effect hereof or as to the rights and

liabilities of the parties hereunder shall be settled by arbitration to be held in Mumbai in accordance with the Arbitration and Conciliation Act,

1996, or any statutory amendments thereof and shall be referred to a person to be appointed by the Lender. In the event of death, refusal, neglect,

inability or incapability of the person so appointed to act as an Arbitrator, the Lender may appoint a new arbitrator. The award of the arbitrator

shall be final and binding on all parties concerned.

24. JURISDICTION:

Subject to the provisions of Clause 23 above, any suit, petition, reference or other filing permitted or required to be made pursuant to the

Arbitration and Conciliation Act, 1996 in respect of the matters arising out of this Agreement including, without limitation, a petition for

appointment of an arbitrator or arbitrators u/s 11 of the Arbitration and Conciliation Act, 1996 shall be instituted only in competent courts at

Mumbai.

5. The above two Clauses provide that the parties have specifically agreed that the place of Arbitration, as well as, the Court at Mumbai shall have

jurisdiction with regard to any dispute or difference that may arise out of this Agreement. Clause 24 provides that even Petition u/s 11 of the

Arbitration Act should be filed/instituted in the Court at Mumbai. Having once agreed under the above two Clauses and even for the Petition u/s

11 of the Arbitration Act, there is no reason that the present application u/s 9 of the Arbitration Act is not maintainable at Mumbai.

6. I have already observed in the Judgment bearing Arbitration Petition No. 152 of 2009, Networth Stock Broking Ltd. v. 7th Madhava Rao

Nadella, dated November, 2009 as under:

9. This admitted clause of Arbitration and submission to the jurisdiction of Mumbai Court in a Commercial Transaction like this, in my view,

sufficient to pass interim protection/ measure as passed in other connected matters. I have already observed in number of cases by relying on

various Supreme Court as well as the Bombay High Court Judgments as under:

4. The Apex Court in Rajasthan State Electricity Board Vs. Universal Petro Chemicals Ltd., has reiterated in following words about agreed

territorial jurisdiction:

Paragraph No. 27:

The aforesaid legal proposition settled by this Court in respect of territorial jurisdiction and applicability of Section 20 of the Code to the

Arbitration Act is clear, unambiguous and explicit. The said position is binding on both the parties who were contesting the present proceeding.

Both the parties with their open eyes entered into the aforesaid purchase order and agreements thereon which categorically provide that all

disputes arising between the parties out of the agreements would be adjudicated upon and decided through the process of arbitration and that no

court other than the court at Jaipur shall have jurisdiction to entertain to try the same. In both the agreements in Clause 30 of the general conditions

of the contract it was specifically mentioned that the contract shall for all purposes be construed according to the laws of India and subject to

jurisdiction only at Jaipur in Rajasthan Courts only and in addition in one of the purchase order the expression used was that the court at Jaipur

only would have jurisdiction to entertain or try the same.

Paragraph No. 32:

We may also at this stage appropriately refer to the definition of the word "court" as appearing in Section 2(c) of the Act wherein the expression

"court" is defined to mean:

a civil court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject-matter of the

suit, but does not, except for the purpose of arbitration proceedings u/s 21 include a Small Cause Court..

Paragraph No. 35:

The parties have clearly stipulated and agreed that no other Court, but only the Court at Jaipur will have jurisdiction to try and decide the

proceedings arising out of the said agreements, and therefore, it is the civil court at Jaipur which would alone have jurisdiction to try and decide

such issue and that is the Court which is competent to entertain such proceedings. The said Court being competent to entertain such proceeding,

the said Court at Jaipur alone would have jurisdiction over the arbitration proceedings and all subsequent applications arising out of the reference.

The arbitration proceedings have to be made at Jaipur Court and in no other Court..

10. The Apex Court in Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Vs. Praveen Bhatia and Others, has reiterated by relying on Rajasthan SEB

(Supra) that the agreement between the parties with regard to the jurisdiction of the Court needs to be accepted.

11. There is admittedly no complete ousting clause of exclusion of jurisdiction of this Court. Nahar Industrial Enterprises Ltd. Vs. Hong Kong and

Shanghai Banking Corporation,

12. The legislative intent is that the parties are abide by the terms of the arbitration Clause. Indian Oil Corporation Ltd. and Others Vs. Raja

Transport (P) Ltd.,

13. In Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals Pvt. Ltd., the Apex Court observed are as under:

It is true that Section 9 of the Act speaks of the Court by way of an interim measure passing an order for protection, for the preservation, interim

custody or sale of any goods, which are the subject-matter of the arbitration agreement and such interim measure of protection as may appear to

the court to be just and convenient.... Moreover, when a party is given a right to approach an ordinary court of the country without providing a

special procedure or a special set of rules in that behalf, the ordinary rules followed by that court would govern the exercise of power conferred by

the Act. On that basis also, it is not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the

concept of just and convenient while passing interim measures u/s 9 of the Act.

There is no dispute that both the parties/institutions have executed such Agreement. Having once enjoyed the vehicles based upon this Agreement,

I am inclined to come to the conclusion that this Court has jurisdiction. The Arbitration Petition u/s 9 of the Arbitration Act at Mumbai is

maintainable.

7. Admittedly, Arbitration Clause has already invoked. The respondents have also raised such issue before the Arbitral Tribunal, Mumbai.

8. Admittedly, the respondents have enjoyed the possession of the vehicles based upon the Agreement dated 14th December, 2006. The

respondents had paid the same installments upto December, 2008. They stopped making payment thereafter. Therefore, arose the arbitral dispute

between the parties.

9. With regard to the authorization and verification of the present Arbitration Petitions, the submission is made that there is nothing on record to

show that Mr. Pramod Gode, Legal Manager, of e-Nxt Financials Ltd. (e-Nxt) has been specifically authorized by the Company to file the present

Petitions. There is a document dated 26th May, 2009, signed by one Mr. Rahul Sundaram, a Constituted Attorney, authorizing Mr. Pramod

Gode, Legal Manager, to file such petitions, including Petitions u/s 9 of the Arbitration Act. Thus, the objection which was raised in a situation like

this has been considered by the Apex Court in United Bank of India v. Naresh Kumar and Ors. AIR 1997 S.C. 3 that such a technical reason as a

plaint is not signed by competent person which does not go to the root of the matter and even if any, such defects are curable basically in a suit

filed by a bank for recovery of the amount from the borrower, as well as, the guarantors. Even otherwise, it is difficult to accept the case of the

respondents that the petition is filed without any authorization to the authorized signatory.

10. After considering the averments made in the Arbitration Petition and as there is no denial to the basic liability. On the contrary, there is a denial

at this stage by the respondents even the Agreement itself. This, in my view, is also an additional factor which goes in favour of the petitioner. The

contract of the parties also grants such interim protection. The fact remains that the respondents even enjoyed those vehicles based upon the

Agreement dated December, 2006. Admittedly, all these vehicles are under the control of the respondents. Therefore, I am inclined to confirm the

earlier Order dated 12th October, 2009.

11. With regard to the prayer of appointment of the Court Receiver I am granting liberty to the petitioner to take out appropriate application either

by filing a fresh Arbitration Petition and/or by applying before the Tribunal with detailed particulars. Respondent No. 1 is also a financial institution

and is doing business of finance. Such finances are always under the License and control of Reserve Bank of India. Therefore, at this stage, there is

no such averment made to grant appointment of Court Receiver, as prayed. Resultantly, in all the above Arbitration Petitions the respondents are

common/same. Therefore, the above Arbitration Petitions are allowed in terms of prayer Clause (d) only.

12. The learned Counsel for the respondents relied upon the Judgment of the Apex Court reported in Hanil Era Textiles Ltd. Vs. Puromatic Filters

(P) Ltd., and contended that this Court at Mumbai has no jurisdiction. On the contrary, this Judgment itself has observed by referring Clause 17 of

the Agreement whereby parties ought to have invoked the jurisdiction of the Court at Mumbai. The Hon"ble Apex Court has observed that Delhi

Court has no territorial jurisdiction to try the suit. Therefore, in my view, this Judgment is of no assistance to the respondents. On the contrary,

supports the petitioner"s case.

13. All the above Arbitration Petitions are, accordingly, partly allowed. Interim relief in terms of prayer Clause (d) only with liberty.

14. No Order as to costs.