
(2012) 10 BOM CK 0186

In the Bombay High Court

Case No : Arbitration Petition (L) No. 1280 of 2012

Gayatri Prasad V. Dwivedi

APPELLANT

Vs

Mahindra and Mahindra Financial Services Ltd.

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 28, 34, 42, 9

Citation : (2013) 1 BomCR 731

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : M.C. Shah instructed by Deepak Pandey, for the Appellant;

Judgement

R.D. Dhanuka, J.—This petition has been filed for quashing and setting aside the arbitration award dated 17th March, 2012 passed by the learned arbitrator. It is not in dispute that petitioner had approached the respondent at its branch situated at Baruhana Chauraha, Dist. Mirzapur for availing loan facility for purchasing the vehicle.

2. An agreement is entered into between the parties on 30th July, 2005 at Delhi. The said agreement provided for an arbitration clause. Clauses 29 and 30 of the agreement read thus :

(29) Arbitration :

All disputes, differences and/or claim arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect hereof or as to the right and list-titles of the parties hereunder shall be settled by arbitration to be held in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole arbitrator to be nominated by the Lender. In the event of death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator. The arbitrator shall not be required to give any reasons for the award and the award of the arbitrator shall

be final and binding on all parties concerned. The arbitration proceeding shall be held in Mumbai.

(30) Jurisdiction :

It is agreed by and between the parties hereto that the Courts at Mumbai alone shall have exclusive jurisdiction in respect of any matter, claims or dispute arising out of or in any way relating to these presents or to anything to be done under and pursuant to these presents or of any clause or provision thereof, notwithstanding that the whole or substantial part of the cause of action may not have arisen in Mumbai.

3. The learned Arbitrator has heard and declared the award at Mumbai. It is not in dispute that the respondent had filed an application u/s 9 of the Arbitration and Conciliation Act, 1996 (Suit No. 193 of 2011) before the District Court, Delhi. The petitioner had opposed that application filed before the District Court, Delhi. By an order dated 28th April, 2011, the said proceedings were allowed to be withdrawn. In para 11 of this petition it is averred it is averred by the petitioner that the respondent appointed one Mr. Sanjay Aggarwal as sole arbitrator and the place of arbitration was fixed at Mumbai without there being any cause of action taken place at Mumbai.

4. In para 15 of the Petition, it is averred that this Court has got the territorial as well as pecuniary jurisdiction to try and decide the present Petition in as much as the impugned Award has been passed by the learned arbitrator at Mumbai and even the respondent's registered office is in Mumbai whereas no cause of action has taken place in Mumbai and whatever cause of action has taken place is either in Mirzapur or at Delhi.

5. The learned Counsel for the petitioner referring to Clause-30 of the agreement submits that though no part of cause of action has arisen at Mumbai, in view of Clause 30, Court at Mumbai shall alone have exclusive jurisdiction.

6. Section 42 of the Arbitration And Conciliation Act, 1996 reads thus :

42. Jurisdiction :-

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 subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

7. It is common ground that application u/s 9 was filed by the respondent before the District Judge at Delhi. The loan was advanced by the respondent to the petitioner not at Bombay. Agreement was executed at Delhi. In view of Section 42, since the petition u/s 9 was filed admittedly before the District Judge, Delhi and agreement was executed at Delhi, that Court alone shall have jurisdiction

over the arbitral proceedings and all subsequent applications arising out of that agreement. Section 42 provides that the arbitral proceedings shall be made in that Court and in no other Court.

8. In my view, therefore, this Court has no jurisdiction to entertain this Petition filed u/s 34 of the Arbitration and Conciliation Act, 1996. In so far as reference to Clause 30 of the agreement is concerned, in view of the fact that no part of cause of action has arisen in Mumbai in view of Section 28 of the Contract Act, parties cannot confer the jurisdiction on the Court which does not have jurisdiction.. Since this Court has no jurisdiction to entertain this Petition, the Petition is returned to the petitioner to enable him to file the same before the competent Court. There shall be no order as to cost.