

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Arbitration Application No. 9 of 2011

M/s Agarwal Auto Traders. Applicant.

Versus

M/s John Deere India Pvt. Ltd. Respondent.

Mr. Sudhir Kumar, Advocate for the applicant.

Mr. Amar Gupta, Advocate, with Mr. Chetan Chopra and Mr. Siddhartha Sah,
Advocates for the respondent.

BARIN GHOSH, C.J. (Oral)

There is an agreement in writing between the parties dated 31st August, 2007. The agreement contains an arbitration clause. In terms thereof, disputes inter se the parties, arising out of the said agreement dated 31st August, 2007, are to be sorted out through arbitration as provided in the said arbitration clause. Applicant has filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator, in terms of the said arbitration clause.

2. Respondent has filed a counter affidavit and, thereby, has brought on record an addendum to the agreement dated 31st August, 2007. In the said addendum, it has been provided that the parties agree that the jurisdiction of the law courts shall be at Pune. It is the contention in the counter affidavit that, from the averments made in the application for appointment of arbitrator, it would be evidenced that part of the cause of action arose within Pune and, accordingly, in terms of the agreement inter se the parties, it was obligatory on the part of the applicant to approach the Hon'ble Chief Justice of Bombay High Court for obtaining an order under Section 11 of the Arbitration and Conciliation Act, 1996 and, accordingly, the applicant should be directed to do so.

3. Applicant has filed a rejoinder affidavit and, thereby, he has not denied the said addendum. Applicant, however, has contended that the said addendum, having not been stamped, the Court cannot take on evidence the said addendum and, accordingly, cannot act on the basis of the clauses contained therein. The learned counsel for the applicant has

drawn my attention to Serial No. 5 of Schedule I-B of The Indian Stamp Act, 1899, whereby and under, what would be proper stamp duty in respect of agreement or memorandum of an agreement has been provided. It has been provided there that an agreement or memorandum of an agreement, if not otherwise provided for, would require proper stamp duty of ₹ 100. It was contended that in view of Section 35 of the Indian Stamp Act, 1899, this Court cannot accept the said addendum as a piece of evidence and, accordingly, cannot acknowledge that the parties to the arbitration agreement have agreed that the court at Pune will have jurisdiction to deal with the matter. The learned counsel appearing on behalf of the respondent has drawn my attention to Section 4 of the Indian Stamp Act, 1899, whereby and under, it has been provided that where in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I-B for the conveyance, mortgage or settlement, and each of other instruments shall be chargeable with the duty of five rupees instead of the duty, if any, prescribed for it in that Schedule. The learned counsel also drew my attention to proviso (c) to Section 35, where also it has been provided that where a contract or agreement of any kind is effected by correspondence consisting of two or more letters, and any one of the letters bears proper stamp, the contract or agreement shall be deemed to be duly stamped. The learned counsel for the respondent submitted that, from the said provisions of the Indian Stamp Act, 1899, it would be crystal clear that the intention of the legislature was to collect appropriate stamp duty in respect of one transaction although the same have been reflected in more than one paper or instrument. It was contended that, since the parties, while executing the said addendum, acknowledged that the same is an addendum to the agreement dated 31st August, 2007; it must be deemed that the same was in continuation of the original agreement, and there is no dispute that the original agreement was appropriately stamped. In the circumstances, it was submitted by the learned counsel for the respondent that this Court would refuse to exercise jurisdiction under Section 11 of the Arbitration

and Conciliation Act, 1996, for the parties have agreed that, in relation to the disputes, the Pune Court shall have jurisdiction.

4. The learned counsel for the applicant submitted that Section 4 of the Indian Stamp Act, 1899 deals with sale, mortgage or settlement and not any other instrument prescribed in Schedule I-B of the Act. He submitted that proviso (c) to Section 35 deals with correspondence consisting of two or more letters and not two several agreements. It was contended that, in that circumstances, when there is an agreement inter se the parties that the parties have selected Pune court as the forum for redressal of disputes, the same, being an agreement or memorandum of an agreement, is required to be stamped before the same can be looked at.

5. According to me, agreement or memorandum of an agreement, referred to in Serial No. 5 of Schedule I-B of the Indian Stamp Act, 1899, are those agreements, whereby the parties have agreed to affect their material interests and, accordingly, for that purpose, they are required to have the agreement or memorandum of agreement stamped. When the parties agreed that they will choose a forum for redressal of their disputes, they do not agree to affect their interest in any material thing, and in relation to those agreements, there is no contemplation of payment of stamp duty. It is now well settled in law that a forum selection clause, contained even in a bill or an invoice, is enforceable as a binding contract between the parties. That being the situation, I uphold the contentions of the respondent and return the application for appointment of arbitrator with liberty to the applicant to approach the appropriate forum.

6. The Application is, accordingly, dismissed as withdrawn with liberty to approach the appropriate forum.

(Barin Ghosh, C.J.)
29.07.2011