

**HIGH COURT OF MADHYA PRADESH BENCH: INDORE**  
**(SINGLE BENCH: HON.MR.JUSTICE PRAKASH**  
**SHRIVASTAVA**

**Arbitration Appeal No.5/2012**

Sundaram Finance Limited

**Appellant**

Vs.

Mahindersingh & another

**Respondents**

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Shri S.R. Saraf, learned counsel for the appellant.

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Shri Shailendra Shrivastava, learned counsel for the respondents.

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**Whether approved for reporting :**

**O R D E R**

**(Passed on 28<sup>th</sup> Day of February, 2014)**

1/ This order will also govern disposal of arbitration appeal No. 6/2012, arbitration appeal No. 7/2012 and arbitration appeal No. 8/2012 since all these appeals are between same parties and similar orders passed by the trial court are under challenge in these appeals.

2/ For convenience, the facts have been noted from arbitration appeal No.5/2012.

3/ This appeal has been filed by the appellant

challenging the order of the trial court dated 19/10/2011 by which appellant's application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short the Act) has been rejected on the ground that the trial court Indore has no jurisdiction and Chennai court has the jurisdiction.

4/ In brief, the case of appellant is that the agreement dated 30/6/2007 vide contract No. CO-3092 was executed at the branch office of the appellant at Indore between the appellant and respondent No.1 in which respondent No. 2 was the guarantor. The said agreement was for financing the vehicle Mitsubishi Lorry. The respondents had committed default in payment of installment and had voluntarily surrendered the vehicle in question to the appellant authorising the appellant to sell in the open market. The vehicle was sold by the appellant in the open market to fetch the best price but even after appropriating the sale consideration, the appellant had still incurred the loss and the balance amount remained to be recovered from the respondents. The Arbitration proceedings were accordingly initiated. The appellant had filed an application under Section 9 of the Act before the 8 Additional District Judge Indore with a prayer for attaching the immovable property of

the respondents disclosed in the application. Alternatively, seeking direction to the respondents to furnish security of due amount. The said application under Section 9 of the Act has been rejected by the trial court on the ground of lack of jurisdiction.

5/ Learned counsel for the appellant submits that as per Clause No. 22 of the agreement only the venue of the arbitration is Chennai but no cause of action arose at Chennai and the jurisdiction of Indore Court has not been excluded by agreement between the parties, therefore, the judgment of the Supreme court in the matter of **Balaji Coke Industry Pvt. Ltd. Vs. M/s Maa Bhagwati Coke (Guj) Pvt. Ltd.**, reported in **2009 AIR SCW 5751** has wrongly been attracted by the trial court. He has further referred to Section 2 (1)(e) and Section 20 of the Act and has submitted that the parties were free to choose the venue of the arbitration but that will not affect the jurisdiction of the Court. He has also placed reliance upon the judgment of the Supreme court in the matter of **Rajasthan State Electricity Board Vs. Universal Petrol Chemicals Limited**, reported in **(2009) 3 SCC 107** and in the matter of **M/s Patel Roadways Limited Bombay Vs. M/s Prasad Trading Company with M/s Patel Roadways Ltd., Bombay**

**Vs. M/s Tropical Agro Systems Pvt. Ltd and another**, reported in **AIR 1992 SC 1514**. He has submitted that the parties by agreement can exclude the jurisdiction but cannot confer the jurisdiction on a court having no jurisdiction.

6/ Counsel for respondents has opposed the appeal and has submitted that arbitration award has already been passed therefore, application under Section 9 is not maintainable and that the trial court has rightly placed reliance upon the judgment in the matter of Balaji Coke Industry (supra). He has further submitted that the parties by agreement had agreed for the jurisdiction of Chennai Court.

7/ I have heard the learned counsel for the parties and perused the record.

8/ The respondent had taken the preliminary objection about maintainability of Section 9 application submitting that the award has already been passed by the Arbitrator, but such an objection can not be sustained since Section 9 of the Act expressly provides that the provisions of Section 9 can be invoked at any time after the making of the arbitral award, but before it

is enforced in accordance with Section 36. In the present case though the award has been passed but it has not been enforced till now, therefore, the application under Section 9 of the Act will be maintainable.

9/ The next issue is about the territorial jurisdiction of the Indore Court to entertain the application under Section 9 of the Act.

10/ Section 9 of the Act provides for filing an application to a Court. Section 2(e) of the Act defines Court as under :-

“2. Definition.-(1) \*\*\*\*\*

- (a) \*\*\*\*\*
- (b) \*\*\*\*\*
- (c) \*\*\*\*\*
- (d) \*\*\*\*\*

(e) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.”

11/ In view of the above definition, it is open to a party to an agreement to file an application under Section 9 in a Principal Civil Court of original jurisdiction which had jurisdiction to decide the question forming subject matter of arbitration .

12/ The appellant's case in the application under Section 9 is that the vehicle was financed at Indore and the immovable property of the appellant is at Indore and the Branch Office of the appellant is also at Indore, therefore, the Indore Court has the jurisdiction whereas the plea of the respondent in the reply to the application under Section 9 of the Act is that the Arbitrator has been appointed at Chennai and the arbitration proceedings are pending before the territorial jurisdiction of the Chennai Court as also the proposal of the respondent No.1 was received, approved and accepted at Chennai, the loan agreement and guarantee agreement between the parties were executed at Chennai, loan amount was paid to the dealer from Chennai and the loan amount due and payable and Chennai, the hypothecation endorsement was recorded in the registration certificate of the hypothecated vehicle by the registering authority Chennai, the registered office of the appellant is at Chennai, therefore, the Chennai Court will have the jurisdiction.

13/ The trial Court in the impugned order placing reliance upon the judgment of the Supreme Court in the matter of Balaji Coke (supra) has held that the Indore Court has no jurisdiction but the Chennai Court has

jurisdiction to entertain the application under Section 9 of the Act.

14/ It is settled position in law that where two or more competent courts have jurisdiction to entertain a suit, the parties to the contract by agreement exclude the jurisdiction of one such court to try the dispute, but the parties to a contract by agreement cannot confer jurisdiction to a court which has no territorial jurisdiction to entertain such a dispute. (**See:-** M/s Patel Roadways Limited Bombay Vs. M/s Prasad Trading Company with M/s Patel Roadways Ltd., Bombay Vs. M/s Tropical Agro Systems Pvt. Ltd and another, reported in AIR 1992 SC 1514; Rajasthan State Electricity Board Vs. Universal Petrol Chemicals Limited, reported in (2009) 3 SCC 107). In the present case plea of parties noted above shows that both Indore as well as Chennai court has the jurisdiction, therefore, the only issue is if the parties by agreement had excluded the jurisdiction of Indore Court.

15/ The Clause 22 of the loan agreement relating to arbitration and jurisdiction provides as under :-

“22 (a) All disputes, differences any/ or claim arising out of this Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance

with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the sole Arbitration of an Arbitrator nominated by the Managing Director/ Joint Managing Director of the Lender. The award given by such an Arbitrator shall be final and binding on the Borrower to this agreement.

It is a term of this agreement that in the event of such an arbitrator to whom the matter has been originally referred dying or being unable to act for any reason, the Managing Director/Joint Managing Director of the Lender, at the time of such death of the arbitrator or of his inability to act as arbitrator, shall appoint another persons to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

(b) The venue of arbitration proceedings shall be at Chennai.

(c) The arbitrator so appointed herein above, shall also be entitled to pass an award on the hypothecated asset and also on any other securities furnished by or on behalf of the borrower".

16/ In view of the above arbitration clause, the arbitration proceedings were to take place at Chennai. Undisputedly the arbitration proceedings have been

concluded by the arbitrator at Chennai and the arbitration award has been passed at Chennai.

17/ Supreme court in the matter of **Balaji Coke** (supra) has considered the similar arbitration clause, where the place of arbitration was agreed by the parties to be Kolkata but the Section 9 application was filed at Bhavnagar (Gujarat). The Supreme Court in the matter of **Balaji Coke** (supra) has held as under :-

“18. In the instance case, the parties had knowingly and voluntarily agreed that the contract arising out of the High Seas Sale Agreement would be subject to Kolkata jurisdiction and even if the courts in Gujarat also had jurisdiction to entertain any action arising out of the agreement, it has to be held that the agreement to have the disputes decided in Kolkata by an Arbitrator in Kolkata, West Bengal, was valid and the Respondent-company had wrongly chosen to file its application under Section 9 of the Arbitration and Conciliation Act before the Bhavnagar Court (Gujarat) in violation of such agreement. The decisions of this Court in A.B.C. Laminart (P) Ltd. (supra) as also Hakam Singh (supra) are very clear on the point.”

18/ Since the arbitration clause in the present case is similar to the arbitration considered by the Supreme

court in the matter of Balaji Coke (supra) therefore, I am of the opinion that the issue involved in the present case is squarely covered by the judgment of the Supreme Court in the matter of **Balaji Coke** (supra) in favour of the respondent, and the trial Court has committed no error in rejecting the application under Section 9 of the Act filed by the appellant placing reliance upon the said judgment and in holding that only Chennai court has the jurisdiction.

19/ Thus, no case for interference in these appeals is made out. The appeals are accordingly dismissed.

**(Prakash Shrivastava)**  
**Judge**

BDJ