



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.191 OF 2009

Kotak Mahindra Bank Ltd.,
a banking Company incorporated within
the meaning of the Banking Regulation
Act, 1949 having its registered office
at 36-38A, Nariman Bhavan, 227, Nariman
Point, Mumbai-400 021 and branch offices
at 2nd Floor, Dani Corporate Park,
158, CST Road, Kalina, Santacruz-East,
Mumbai-400 098 and Vinay Bhavya Complex,
5th Floor, 159-A, C.S.T. Road,
Kalina, Santacruz-East,
Mumbai.

...Petitioner.

Vs.

1 Sharma Crane Service,
Proprietor Mr. R.K. Sharma
Co. Haryan Road,
Carriers Sharma Complex,
Bhanpuri, Billaspur Road,
Raipur-492 028.

2 Shree Transport Service,
Proprietor Sarita Sharma,
Bhanpuri,
Raipur- 493 222.

...Respondents.

AND

ARBITRATION PETITION NO.193 OF 2009

Kotak Mahindra Bank Ltd.,
a banking Company incorporated within
the meaning of the Banking Regulation
Act, 1949 having its registered office
at 36-38A, Nariman Bhavan, 227, Nariman
Point, Mumbai-400 021 and branch offices
at 2nd Floor, Dani Corporate Park,
158, CST Road, Kalina, Santacruz-East,
Mumbai-400 098 and Vinay Bhavya Complex,
5th Floor, 159-A, C.S.T. Road,
Kalina, Santacruz-East,
Mumbai.

...Petitioner.

Vs.

1 Sharma Crane Service,
Proprietor Mr. R.K. Sharma
Co. Haryan Road,
Carriers Sharma Complex,
Bhanpuri, Billaspur Road,
Raipur-492 028.

2 Shree Transport Service,
Proprietor Sarita Sharma,
Bhanpuri,
Raipur- 493 221.

...Respondents.

AND

ARBITRATION PETITION (LODGING) NO.393 OF 2009

Kotak Mahindra Bank Ltd.,
a banking Company incorporated within
the meaning of the Banking Regulation
Act, 1949 having its registered office

at 36-38A, Nariman Bhavan, 227, Nariman
Point, Mumbai-400 021

...Petitioner.

Vs.

1 Sarita Sharma,
Proprietor of M/s. Shree Transport Services
Dhanlaxmi Nagar,
Bhanpuri,
Raipur-493 221.

...Respondent.

AND

ARBITRATION PETITION (LODGING) NO.394 OF 2009

Kotak Mahindra Bank Ltd.,
a banking Company incorporated within
the meaning of the Banking Regulation
Act, 1949 having its registered office
at 36-38A, Nariman Bhavan, 227, Nariman
Point, Mumbai-400 021 and branch offices
at 2nd Floor, Dani Corporate Park,
158, CST Road, Kalina, Santacruz-East,
Mumbai-400 098 and Vinay Bhavya Complex,
5th Floor, 159-A, C.S.T. Road,
Kalina, Santacruz-East,
Mumbai.

...Petitioner.

Vs.

1 Rajkumar Sharma,
Proprietor of M/s. Haryana Road Carriers,
Dhanlaxmi Nagar,
Bhanpuri,
Raipur-493 221.

...Respondent.

Mr.Rahul Mehta with Mr. Nikhil Mehta i/by Ms. Disha Karmbar for the Petitioner.

Ms. Kashmira Bharucha i/by M/s. Arpan M. Rajput & Co. for the Respondents.

DATE OF RESERVING THE JUDGMENT :- 21ST OCTOBER, 2009.

DATE OF PRONOUNCING THE JUDGMENT: 26TH NOVEMBER,2009

JUDGMENT-

1 Heard finally, by consent of the parties.

2 The Petitioner has invoked Section 9 of the Arbitration and Conciliation Act, 1996 (for short, the Arbitration Act) as Respondents defaulted in making timely installments though agreed and that events of defaults are the basic cause of action for these Petitions.

3 The Petitioner is common party to all these petitions and as Respondents are also common and interlinked, though they entered into four separate agreements. Respondent-Rajkumar Sharma, is the sole proprietor of Haryan Road Carriers and Mrs. Sarita Sharma is a proprietor of Shree Transport Service for whom Rajkumar Sharma holds the power of attorney. Therefore, this common judgment/order.

4 The Petitioner is in the business of providing financial facilities such as Personal Loan, Home loan, Commercial Vehicle Loan etc.. Some time in the year 2005 and 2006, the Respondents approached the Petitioner for loan to purchase the vehicles. The Petitioner agreed to lend loan and accordingly Respondents submitted separate application for the same. The

relevant documents have been signed accordingly at Nagpur.

5 The Respondents resisted the Petition, basically on the ground of jurisdiction.

6 The relevant clause of jurisdiction as relied by the parties are as under.

“10.16 Unless the same falls within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, any and all claims and disputes arising out of or in connection with this Agreement or its performance shall be settled by arbitration by a single Arbitrator to be appointed by the Bank. The arbitration shall be held, either in Mumbai or New Delhi or Chennai or Kolkata or in the place of execution of this Agreement, sole discretion to be exercised by the Bank at the time such arbitration is to commence, in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

10.17. In the event that the claim or dispute does not fall within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts Due To Banks and Financial Institutions Act, 1993, for the purposes of arbitration mentioned in clause (10.16), the Courts aforesaid shall, subject to the provisions of law, have exclusive jurisdiction, if any law does not permit the same, the Courts of the city in which the concerned branch is situated, shall subject to the provisions of law have exclusive jurisdiction in relation to this Agreement, the arbitration and all matters arising in connection herewith and therewith.”

7 In Arbitration Petition No. 193 of 2009, the principal outstanding loan/claim amount is Rs.2,05,608/-.

8 In Arbitration Petition No. 191 of 2009, the principal outstanding loan/claim amount is Rs.2,38,263/-.

9 In Arbitration Petition (L) No. 393 of 2009, the principal outstanding loan/claim amount is Rs.4,34,362.47/-.

10 In Arbitration Petition (L) No. 394 of 2009, the principal outstanding loan/claim amount is Rs.13,07,196.67/-.

11 The basic preliminary submission in view of Section 1(4) read with Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act 1993, (for short, the Act) provides that the peculiar jurisdiction of the Debts Recovery Tribunal (for short, the DRT) is more than 10 lacs.

12 The Petitioner is admittedly a financial institution/bank. Therefore, any claim and/or debt recovery for the amount more than Rs.10 lacs, the DRT has exclusive jurisdiction. If the amount is less than Rs.10 lacs, the said tribunal has no jurisdiction to entertain such dispute/claims. This submission/contention/issue is not in much dispute. Both the learned counsel consider this position in view of clear provision of law. Their notes of arguments also supports the same.

13 The point is, the agreed arbitration clause were permitted the petitioner to file such petition under Section 9 of the Arbitration Act in the jurisdiction of this Court at Mumbai and/or jurisdiction is elsewhere.

14 In view of above, it is clear that the Petitioner can invoke Section 9 of the Arbitration Act only if, the amount so claimed or dispute is less than Rs.10 lacs. Therefore, if the amount is more than Rs.10 lacs as per the

clause itself, the DRT has only jurisdiction to entertain and consider the dispute of the position of the Petition. Therefore, there is no need to discuss further in view of specific agreement between the parties that such Act should prevail in case of conflict. In my view there is no conflict in view of above agreed clause itself.

15 Out of these 4 matters, the claim in 3 matters is less than Rs.10 lacs. The submission that the total amount in all these 4 matters are above Rs.10 lacs and as the Respondents are same and are interconnected though 4 different agreements have been signed, yet 4 separate Petitions under Section 9 of Arbitration Act, are filed and, therefore, not maintainable in this Court at Mumbai, is unacceptable. The authorities so relied by the learned counsel appearing for the Respondents are distinct on the facts and circumstances. There was no such agreed arbitration clause in these matters. There is no dispute that the parties have entered into 4 different agreements/contracts and signed accordingly for different vehicles/properties. Therefore, for all the purposes there are 4 different agreements and as there are defaults committed by the Respondents, and as different cause of action arose and therefore, such 4 petitions as filed are maintainable. Such petitions cannot be clubbed together only to remove from the jurisdiction of this Court and specially under Section 9 of the Arbitration Act. The submission of clubbing together all these matters and treating the same having valuation of more than 10 lacs and therefore falls

within the ambit/ jurisdiction of DRT is unsustainable. In all these matters, Respondents are different and they signed these agreements in their respective capacity separately. Accordingly, separate vehicles/ machineries have been provided by the Petitioner to the Respondents.

16 The Petitioner, therefore, in view of the agreed clause and as there are defaults, in my view, all the Arbitration clauses under the Arbitration Act separated by issuing/ serving separate notices. Therefore, submissions that this amount to a single cause of action and/or consolidated application ought to have been filed before the DRT for the alleged claims, have no force.

17 Admittedly, the agreements took place at Raipur. The Respondents are residing and doing their business at Raipur, the Vehicles/ Equipments are also lying in the area. The prayers are for injunction and appointment of Court Receiver. The Respondents have no branch office at Mumbai. The Petitioners main office/ registered office is in Mumbai. The termination notice though sent through Mumbai office, that itself cannot be the reason to invoke and file Section 9 Petition in the Court of Mumbai. Clause 10.16 provides discretion to be exercised by the Petitioner to invoke/commence the Arbitration Proceedings under the Act. It may either in Mumbai or Delhi or Chennai or Kolkata or in the place of execution of agreement. In the cases, where the amount so claimed is less than 10 lacs, the Petitioner can file such proceedings in the appropriate Court. Clause 10.17 provides

that the Courts above shall, subject to the provisions of law, have exclusive jurisdiction, unless the law does not permit the same. The Court of the city in which the concerned branch is situated shall subject to the provisions of law, have exclusive jurisdiction in relation to this agreement including the arbitration and all matters arising in connection there with. In my view, there is no exclusive jurisdiction of this Court at Mumbai as sought to be contended of any court, referred above. It is the discretion of the Petitioner which has to be taken note of. In view of above clauses, 10.16 and 10.17, I am inclined to observe that the general provisions of Code of Civil Procedure (C.P.C.), need to be considered to give full opportunity to both the parties and basically to the Respondents. I am of the view, in absence of clear exclusive jurisdiction clause of courts and as peculiar clauses which provides sole discretion to be exercised by the Bank and as agreement so executed at Raipur and as the Respondents office and place of business is at Raipur and as the concerned branch of the Petitioner is also situated at Raipur, the Court of city of the concerned branch at Raipur shall have jurisdiction for seeking such interim relief/ protection under Section 9 of the Arbitration Act and not in the Court of Mumbai as done in the present case.

18 Therefore, all the Petitions, as filed under Section 9 of the Arbitration Act, in this Court at Mumbai, are not maintainable, except before the court/tribunal, as per the agreed clause itself.

19 The Apex Court recently in *Shree Baidyanath Ayurved Bhawan Private Limited Vs. Praveen Bhatia & Ors., (2009) 8 S.C.C. 779* and prior to that in *Rajasthan State Electricity Board Vs. Universal Petrol Chemicals Ltd. (2009) 3 S.C.C. 107*, considering the various facets of such submission referring to Arbitration Act, 1996, has observed that such agreement/ arbitration clauses need to be respected.

20 In view of above, the Petition in which the claim amount is below Rs.10 lacs, is dismissed for want of jurisdiction. However, the liberty is granted to the Petitioner to file or initiate proceedings before the appropriate forum/Court.

21 All the Petitions are therefore, dismissed with exemplary costs of Rs.10,000/- (Rupees ten thousand only) to be paid to the Respondents.

22 Rule discharged. All the interim orders, granted earlier, also stand vacated.

(ANOOP V. MOHTA, J.)