

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. No.101/2007

M/S. GOPAL SINGH ..... Petitioner  
Through: Mr. H.S. Kohli, Advocate.

versus

M/S. ASHOKA LEYLAND  
FINANCE & ANR. .... Respondents  
Through: Mr. T.S. Ahuja & Mr. Arun  
Arora, Advs.

% Date of Decision : November 16, 2009

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

### **J U D G M E N T**

#### **MANMOHAN, J (ORAL)**

1. The present petition has been filed under Sections 11, 13, 14, 15 and 16 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996') for termination of the mandate of the arbitrator and for substitution of the Arbitrator.

2. Mr. Kohli, learned counsel for the petitioner submitted that as no cause of action had arisen at Chennai, arbitration could not be held at the said venue. Mr. Kohli emphasised that the agreement had been executed at Delhi, the loan had been disbursed at Delhi, repayment of partial loan had been done at Delhi and the alleged breach had also taken place at Delhi. In this context, Mr. Kohli relied upon a judgment

of the Calcutta High Court in the case of *Tata Finance Limited Vs. Pragati Paribahan and Others* reported in *2001 (1) RAJ 145 (Cal.)*

wherein it has been held as under :-

*“11. In the instant case, it has wrongly been stated in the agreement that the same was being executed at Bombay. In fact, the same had been executed at Calcutta. Admittedly, all the installments had been paid at Calcutta. The seizure of the vehicle which gave rise to the disputes and differences between the parties also took place at Calcutta.*

*12. It cannot, therefore, be said that any part of cause of action arose at Bombay and, thus, the Bombay Courts could have exclusive jurisdiction in the matter.”*

3. He further submitted that the Arbitrator was biased against the petitioner inasmuch as even after the petitioner had pointed out blanks in the claim statement, the Arbitrator had once again sent another set of the claim statement containing the same blanks. Mr. Kohli stated that the Arbitrator had been repeatedly ‘threatening’ the petitioner that in case, he did not participate in the proceedings, the petitioner would be proceeded ex-parte.

4. On the other hand, Mr. Ahuja, learned counsel for the respondents drew my attention to Clause 23 of the loan agreement dated 1<sup>st</sup> February, 2004 which reads as under :-

*“23. LAW, JURISDICTION, ARBITRATION*

*(a) All disputes, differences and/or claim arising out of or touching upon 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 Lender. The award given by such an Arbitrator shall be final and binding on the Borrower and Guarantor to this agreement.*

*(b) Dispute for the purpose of Arbitration includes default committed by the Borrower as per clause 14 of 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 to dying or being unable to act for any reason, the Lender, at the time of such death of the arbitrator or of his inability to act as arbitrator, shall appoint another person 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.*

*(c) The venue of Arbitration proceedings shall be at Chennai.*

*(d) 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/Guarantor.”*

*(emphasis supplied)*

5. Mr. Ahuja submitted that since the agreed venue of the arbitration proceedings was Chennai, the arbitration proceedings could only be held at the said venue.

6. Mr. Ahuja denied that the Arbitrator was biased against the petitioner. He stated that the claim statement as filed by the respondents had been forwarded by the learned Arbitrator and the

Arbitrator was not competent to alter or amend the said claim statement.

7. Having heard the parties, I find that Section 20 of the Act, 1996 provides the mode and manner of fixing the place of arbitration. According to the said Section parties are free to fix a place of arbitration, failing which, the arbitral tribunal has the default power to fix the place of arbitration. Section 20 (1) of the Act, 1996 reads as under :-

*“20. Place of arbitration – (1) The parties are free to agree on the place of arbitration.”*

8. In view of the aforesaid, it is apparent that the parties are free to choose a ‘seat’ of arbitration, a geographical location to which an arbitration is ultimately tied. In fact, in my opinion, the aforesaid Section incorporates the principles of party autonomy as would be apparent from the words *‘parties are free to agree on’*. Consequently, the said Section gives the parties the option to either agree or disagree on a procedural requirement. Since the parties in the present case have chosen the seat of arbitration as Chennai, it is irrelevant as to whether any cause of action had arisen at the said place or not. I am of the view that concept of venue of arbitration is entirely different from the concept of jurisdiction of courts which, needless to say, cannot be conferred upon a particular court, even with consent of the parties.

9. I am also of the opinion that just because the Arbitrator has resupplied the claim statement containing the initial blanks in the claim

statement, it cannot be said that the Arbitrator was biased against the petitioner. In fact, as rightly pointed out by Mr. Ahuja, the Arbitrator cannot tamper with the claim statement filed by the respondents. Consequently, both the grounds urged by learned counsel for the petitioner are untenable in law. I may also mention that against the principal loan of Rs.7,20,000/-, the petitioner has only repaid till date a sum of Rs.57,200/-.

10. Accordingly, the present petition being devoid of merits is dismissed with costs of Rs.5,000/- to be paid to the respondents.

**MANMOHAN, J.**

**NOVEMBER 16, 2009**  
**'AA'**