

MHKO010001372020



**Order below Exh.35, in Civil  
Misc. Appln. No.15/2020.**

**Badale Techno Precision, etc.**

**V/s.**

**Visage Holdings & Finance  
Pvt.Ltd., etc.**

01. The non-applicant No.1 M/s. Visage Holdings and Finance Pvt.Ltd. and non-applicant No.2 Branch Manager, Visage Holdings and Finance Pvt. Ltd., have filed the present application challenging the jurisdiction of this Court. It has prayed to dismiss the main petition/application filed by the applicant. It is also prayed to frame preliminary issue as regards jurisdiction of this Court.

02. **The brief facts are that -**

Applicant Badale Techno Precision Company and non-applicant No.1 finance company have entered into loan agreement on 14/08/2017 and borrowed money from non-applicant Visage Finance Company. As applicants failed to repay the loan, the finance company has appointed Arbitrator and the Sole Arbitrator was pleased to pass the ex-parte award on 10/10/2019. Being aggrieved by the said award, the present applicant has filed the application under Section 34 of Arbitration and Conciliation Act (in short "A & C Act") challenging the award.

03. The applicant strongly opposed the application by filing say (Exh.41) contending that the reasons given by the non-applicants are not according to law. This Court has jurisdiction to entertain the application. The award of Arbitration is not challenged before any other Court nor any interim relief was entertained by other Civil Court.

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Hence, as per Section 42 of the A & C Act, this Court has jurisdiction to entertain present application. Moreover, all the transactions have taken place in the office of non-applicant No.2 at Kolhapur. If the application is tried before this Court, non-applicants will not suffer any loss. Lastly applicant prayed to reject the application Exh.35 with heavy costs.

04. Heard arguments of both the sides. Meanwhile the parties have also agreed for amicable settlement, but it could not be factually implicated by the parties. Finance company has filed documents as per list Exh.14.

05. In view of rival contentions, following points arise for determination. My findings against each point is as under, for the reasons to follow.

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
<b>1</b>	Whether this Court has jurisdiction to entertain and deal with the application under Section 34 of Arbitration and Conciliation Act, challenging the arbitral award ?	Yes.
<b>2</b>	Whether preliminary issue is required to frame as regards jurisdiction of this Court ?	No.
<b>3</b>	What order ?	See final order.

**REASONS**

**As to Point Nos.1 & 2 :-**

06. As the finance company has challenged the jurisdiction of this Court by contending that as per the agreement, the arbitration was agreed to take place at Bangalore and hence, the application under Section 34 of

A.& C Act filed by borrower is not tenable. In this regard, it is necessary to go through the terms of the agreement. The finance company has placed reliance on the clause No.14.5 of the term-loan agreement dated 29/09/2017 (As per Sch.I). For convenience, the same is reproduced -

*“ Any dispute relating to the Loan hereunder, or in respect of any rights, liabilities and obligations arising out of this Agreement shall be resolved by arbitration by a sole arbitrator appointed by the Company. The arbitration proceedings shall be carried out in accordance with the provisions laid down by the Arbitration and Conciliation Act, 1996, and the place of arbitration shall be Bangalore. The arbitration proceedings shall be conducted in English Language. The parties shall equally share the costs of the arbitrator's fees etc.”*

07. The said agreement was executed on 29/09/2017. Perusal of the said term of the agreement as regards arbitration, the clause is not disputed and it pertains to arbitration proceedings that shall be taken by the Sole Arbitrator appointed by the finance company and that the place i.e. venue of Arbitration was decided to be Bangalore.

08. It is submitted by the advocate for the non-applicant finance company that as per the Clause 15.5 of the secured term-loan agreement dated 25/02/2019, any dispute relating to the loan hereunder, or in respect of any rights, liabilities and obligations arising out of the said

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agreement shall be resolved by the Sole Arbitrator and it was agreed that place of arbitration shall be Bangalore. It is a matter on record that the arbitration proceedings have taken place as per the agreement at Bangalore and the same were conducted by the Sole Arbitrator appointed by the finance company. It is contended that in view of the said agreement, Kolhapur Civil Court has no authority to deal with the present application.

09. The application for setting aside arbitral award under Section 34 is filed before this Court. In this regard, the aggrieved party can challenge the award under Section 42 of A & C Act before the Civil Court. However, the finance company is disputing the jurisdiction of Kolhapur Civil Court. This has been strongly opposed by the borrower/ Badale Company. It has relied on provision under Section 42 of the A & C Act and placed reliance on following judgments of Hon'ble Apex Court.

1. **Executive Engineer, Panvel Vs. Atlanta Limited [2014 AIR (SC) 1093]**. The question before the Hon'ble Apex Court was whether the jurisdiction lies with ordinary original civil jurisdiction or the High Court of Bombay or the Principal Civil Court of origin jurisdiction i.e. District Judge, Thane, in view of Section 2(1)(e) of A & C Act. The said case-law is of no help to the applicant as it is pertaining to the dispute whether the matter should be dealt by Hon'ble High Court or the District Court, Bombay.

2. **Parkins Architects DPC Vs. HSCC (India) Limited [2020 ACR (SC) 59]**. The learned advocate for

the borrower company has not made any submissions as to how the said case-law is applicable to the case in hand, nor the relevant portion of the said citation is highlighted. The bare reading of the said citation reveals that it is pertaining to the appointment of Arbitrator. The question before this Court is not about appointment of Arbitrator. Thus, both the case-laws relied upon by the applicants are not helpful to them.

**Legal provisions -**

10. As per Section 34, Civil Court has power to entertain application on the grounds specified in Sub-section (2) of Section 34. So also it is necessary to go through the following relevant provisions of the A & C Act.

11. In this regard it is necessary to go through the definition of the Court under the A & C Act which is defined under Section 2(e)(i) -

*“ Section 2(e)(i) – in the case of an arbitration other than international commercial arbitration, 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.”*

**Section 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 shall be made in that Court and in no other Court.*

12. In the above context, it is necessary to refer to the ratio laid down by Hon'ble Apex Court in following citations -

In the recent case of **Mankastu Implex Pvt. Ltd. Vs. Airvisual Ltd. [(2020) 5 SCC 399]** it is held that -

*“ Mere expression “place of arbitration” in the arbitration clause, cannot by itself be the basis to determine the intention of the parties that they have intended that place as the juridical “seat” of arbitration”.*

13. Similarly, it has been held in five Judge Bench decision in case of **Bharat Aluminium Company Vs. Kaiser Aluminium [(2012) 9 SCC 552]** that juridical or legal seat of arbitration once designated or determined, exclusively determines which courts will have jurisdiction over the arbitration, as opposed to the place where whole or part of the cause of action arises. A & C Act, 1996 has accepted the territoriality principle in Section 2(2). Thus, once the seat of arbitration is designated or determined, the same operates as an exclusive jurisdiction clause as a result of which only the courts where the seat is located

would have jurisdiction over the arbitration, to the exclusion of all other courts, even courts where part of the cause of action may have arisen. However, held, where it is found on the facts of a particular case that either no “seat” is designated by agreement, or has not been so determined by the Arbitral Tribunal, or the so-called “seat” is only a convenient “venue”, then there may be several courts where a part of the cause of action arises, that may have jurisdiction over the arbitration. Hence, an application under Section 9 of the A & C Act may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the “seat” or arbitration, and before such “seat” may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the A & C Act. This Court place reliance on above citations, as they are squarely applicable to the case in hand.

14. It is contended by the borrower that the agreement was executed at Kolhapur in the branch office of non-applicant No.2. So also the borrower is resident of Kolhapur and carrying out his business here. So also the branch of the finance company is situated at Kolhapur. Perusal of the term of contract and specifically clause No.15.5 reveals that only the place of “venue” of Arbitration was agreed to be Bangalore. The agreement is silent as to “seat” of Arbitration i.e. juridical or legal seat of Arbitration. Moreover, the agreement nowhere excludes the application of part I of A & C Act. There is no specific term in the agreement which bars the jurisdiction of Civil

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Court of places, other than Bangalore. So also the finance company has failed to bring on record that there is any determination about juridical “seat” of Arbitration by the Sole Arbitrator. So also prior to the application under Section 34 of A & C Act by the borrower, no other application was moved before any other Civil Court by any of the parties. In view of the conjoint reading of the above stated provisions of A & C Act and the ratio laid down in case of BALCO and Mankastu, this Court has no hesitation to hold that Principal Civil Court at Kolhapur has got jurisdiction to entertain any petition under Section 34. Hence, I answer Point Nos.1 and 2, accordingly.

**As to Point No.3 :-**

15. In view of my findings on point Nos.1 and 2, this Court holds that being the Principal Civil Court of Kolhapur District, it has jurisdiction to entertain and deal with the application under Section 34 of the A & C Act. Thus, the application is liable to be rejected. Hence, the following order.

**Order**

1. The application (Exh.35) is rejected.
2. The cost in main cause.  
(Pronounced in open Court)

Date : 21/07/2023.

**( Smt. K.B.Agrawal )**  
Principal District Judge, Kolhapur.