

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.53 of 2024

M/s Pramila Motors Pvt. Ltd., having its Office at- Satyendra Nagar, Near Bypass, Aurangabad, Bihar- 824101 through its Director Prateek Khemka, Aged about 36 years, Male, Son of Anil Kumar Khemka, Resident of New Area, Maharaj Ganj Road, P.S.- Aurangabad, District Aurangabad, Bihar

... .. Petitioner/s

Versus

M/s Okinawa Autotech International Pvt. Ltd., having its Office at, Unit No.651-654, 6th Floor J.M.D. Mega Polis, Sector-48 Sohna Road, District-Gurgaon-122018 Haryana (India), through its Managing Director.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate
For the Respondent/s : Mr. Anurag Bhatt, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
ORAL JUDGMENT

Date : 22-03-2025

Heard Mr. Abhishek Kumar, the learned counsel
for the petitioner and Mr. Anurag Bhatt, the learned counsel
for the respondent.

2. The present petition invokes the jurisdiction
of this Court under Section 11 (6) of the Arbitration and



Conciliation Act, 1996 for appointment of an independent/impartial Arbitrator for resolution of the dispute between the parties.

3. The petitioner and the respondent entered into dealership agreement dated 04.08.2022 under which the petitioner agreed to become a dealer for the electric vehicles manufactured by the respondent at the terms and conditions mentioned in the agreement. Considerable amount of investments were made by the petitioner for setting up the dealership.

4. Clause 36 of the agreement provided for dispute resolution through arbitration. Clause 36.3 specified that the “venue” of arbitration would be New Delhi.

5. Since the supply of vehicles were not made on time, the dealership agreement was terminated at the instance of the petitioner. For settling the dues of the petitioner, a notice was sent to the respondent on 03.02.2024 though email as well as post, which was received by the respondent on 09.02.2024. When it was not responded to, another notice was sent on 19.02.2024



invoking the arbitration clause and asking the respondent to either consent to the name of the Arbitrator provided by the petitioner or propose a name at their end.

6. This notice was replied on 22.02.2024 intimating that the right to appoint an Arbitrator was reserved with the Managing Director/Chief Executive Officer. No name of an independent/impartial Arbitrator was provided by the respondent.

7. Thus, the cause of action for arbitration arose on 16.02.2022 when, till the seventh day, the respondent did not respond to the request of the petitioner to settle the account.

8. Under such circumstances, the present petition has been filed.

9. The learned counsel for the respondent, however, submitted that this Court would not have the jurisdiction to entertain the petition in view of Clause 36.3 which, in clear terms, provides that the “venue” of arbitration would be in New Delhi, and thus, the jurisdictional Court would be the High Court of New Delhi.



The name of the Arbitrator proposed by the petitioner was also not consented.

10. It was further urged on behalf of the respondent that in **BGS SGS SOMA JV vs. NHPC LIMITED, 2020 (4) SCC 234**, the Supreme Court has clearly laid down that whenever there is an express designation of the “venue” and no designation of any alternative place as the “seat”, and no other significant contrary indicia, the inexorable conclusion would be that the stated “venue” is actually the juridical “seat” of the arbitral proceedings. It has been urged that it was clearly held that whenever there is designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, it would presuppose that the “venue” is the “seat” of the arbitration proceedings.

11. Countering the afore-noted objection, the learned counsel for the petitioner submitted that (i) the agreement was signed at Aurangabad, Bihar, which comes within the territorial jurisdiction of Patna High Court; (ii) the subject matter of the agreement, i.e., the dealership was



set up in Aurangabad, Bihar pursuant to the agreement; (iii) the office of the petitioner is at Aurangabad, Bihar, (iv) the registered as well as the corporate office of the respondent is at Gurgaon, Haryana and not in Delhi and that (v) no part of the work, meeting or anything pursuant to the agreement took place in New Delhi.

12. With these background facts, it was urged that the judgment of the Supreme Court in **BGS SGS SOMA JV** (supra) has no application in this case, as the afore-noted judgment was in the context of international arbitration with “seat” outside India, whereas the present case is of domestic arbitration.

13. In support of the afore-noted contention, the learned counsel for the petitioner relied on the judgment of the Supreme Court in **Ms. Ravi Ranjan Developers Pvt. Ltd. Vs. Aditya Kumar, 2022 SCC Online SC 568**, wherein the Supreme Court has held that “seat of arbitration” and “venue of arbitration” cannot be used interchangeably and that the “venue of the arbitration” cannot be the basis for determining the



intention of the parties that the same place has the “seat of arbitration”. The intention of the parties as to the seat should be determined from other clauses in the agreement and the conduct of the parties.

14. After having heard the learned counsel for the parties, this Court is of the view that on a plain look at the agreement, it would become clear that the parties intended to exclude all other Courts except Delhi.

15. In ***Brahmani River Pellets Limited vs. Kamachi Industries Limited, 2020 (5) SCC 462***, it was held that where the contract specifies the jurisdiction of a Court at a particular place, only such Court will have the jurisdiction to deal with the matter and it would be presumed that the parties intend to exclude all other Courts. If the parties agree that the “venue of arbitration” shall be at a particular place, the intention of the parties is to exclude all other Courts.

16. It may not be necessary to decide, otherwise, in case of non-use of words like “exclusive jurisdiction”, “only”, “exclusive”, “alone”, which actually do



not make any material difference.

17. In that view of the matter, this Court will have no jurisdiction to entertain any petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996.

18. In ***Indus Mobile Distribution (P) Ltd. vs. Datawind Innovations (P) Ltd., 2017 (7) SCC 678***, it has been held that once a “seat” is designated, it has to be treated as akin to an exclusive jurisdiction clause.

19. It is also required to be noticed that the agreement in question does not mentioned the “seat” of arbitration but only mentions the “venue” for arbitration, which shall be at New Delhi.

20. Thus, in the considered view of this Court, Delhi High Court only shall have the jurisdiction to adjudicate the present request.

21. It may also be stated here that in ***Ms. Ravi Ranjan Developers Pvt. Ltd.*** (Supra) cited by the petitioner, the Supreme court had indicated that the intention of the parties in that case was never to subject to the jurisdiction of Calcutta as the respondent therein had



himself approached the jurisdiction of the District Court at Muzzaffarpur for interim protection under Section 9 of the Act and not before the Competent Court in Calcutta.

22. Based on these facts, it was held that the expression “seat” and “venue” cannot be considered to be interchangeable.

23. The facts of this case are on different footing.

24. The respondent also does not have his office at New Delhi but at Gurgaon.

25. In the absence of any clause in the agreement apart from Clause 36.3, which speaks of the “venue” being Delhi, there cannot be any other inference or intention of the parties for the “venue” and the “seat” being different.

26. It would also be apt here to mention that when two or more Courts have jurisdiction to adjudicate the disputes arising out of an arbitration agreement, the parties might, by agreement, decide to refer all disputes to any one Court to the exclusion of all other Courts, which might,



otherwise, have had the jurisdiction to decide the disputes.

27. The unilateral intention of one of the parties to the agreement cannot confer jurisdiction on a Court which inherently lacks the jurisdiction because of the “venue” having been specified and there being no other contrary indicia to infer any other intention.

28. As such, the petition fails and the request petition is rejected.

(Ashutosh Kumar, ACJ)

manoj/krishna-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.03.2025
Transmission Date	NA

