2025:AHC-LKO:53646

*Reserved: 11.08.2025*
*Pronounced: 08.09.2025*

**HIGH COURT OF JUDICATURE AT ALLAHABAD**
**(LUCKNOW)**

**Court No. - 6**

**MATTERS UNDER ARTICLE 227 No. - 4781 of 2025**

Moksh Innovation Inc. Thru. Its Manager Shri Jitendra Singh Bisht

**…. Petitioner**

**Versus**

E- City Entertainment India Pvt. Ltd. Thru. Its Managing Director

**….Respondents**

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| **Counsel for Petitioner(s)** | **:** | Piyush Kumar Agarwal |
| **Counsel for Respondent(s)** | **:** | Pushpila Bisht |

**CORAM: HON'BLE PANKAJ BHATIA, J.**

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

**1**. Heard Sri J.N. Mathur, learned Senior Advocate assisted by Sri Piyush Kumar Agarwal and Sri Ramit Singh, learned Counsel appearing for the petitioner and Ms. Pushpila Bisht along with Ms. Prerna Jalan and Ms. Shriya Ojha, learned Counsel for the opposite party.

**2**. The present petition has been filed under Article 227 challenging the order dated 08.07.2025 passed in Arbitration Case No.261 of 2018 whereby the objections filed under Section 34 by the petitioner were returned to be presented before appropriate court.

The petitioner also challenges ex-parte award dated 04.07.2012 passed by the Arbitrator.

**3**. The facts that emerge are that the petitioner had taken the property situate at Third Floor Fun Republic Mall, Gomti Nagar, Lucknow under a Leave and License Agreement dated 01.02.2007 for an initial period of three years with an option of renewal for two terms on enhancement of license fee @15% at the time of renewal. The total license period was ten years on which premises, the petitioner was to operate a restaurant. It is admitted that the security deposit was also given by the petitioner at the time of the agreement. In terms of the said agreement, there was a prescription of Arbitration Clause wherein the right to appoint Arbitrator was given to the Managing Director of the respondent or any person nominated by him. The venue of the Arbitration was fixed at Mumbai and the exclusive jurisdiction in terms of the said agreement vested in the courts at Mumbai. The said agreement is on record as Annexure no.3. On the same date, an another agreement was executed on 01.02.2007, which was executed in between the petitioner, the respondent and one M/s E.-city Property Management and Services Pvt. Limited. The scope of second agreement was in respect of payment of electricity and common area maintenance charges etc. for which the said third entity M/s E-City Property Management was the agency, as mutually agreed in between the petitioner and the respondent. In the said agreement various charges were fixed. The said second agreement also contains an Arbitration Clause, however, the jurisdiction clause prescribed that the jurisdiction in respect of that agreement would be at District Court and the High Court of U.P.

**4**. It is stated that after taking the premises on license, substantial investments were made, however on 01.08.2007 on account of an

accident, a part of the roof of property fell down which resulted in the closure of the restaurant ultimately.

**5.** As, the petitioner were apprehending that they would be evicted and stopped from operating the restaurant, a Regular Suit No.797 of 2008 was filed before the Civil Judge (SD), Lucknow seeking a relief of injunction wherein a Commissioner was also appointed, which demonstrated that the respondent had put lock on the premises and thus, according to petitioner, they were deprived of carrying out the business activities from 19.07.2007. The injunction application filed by the petitioner came to be dismissed, against which a Misc. Appeal No.718 of 2008 was preferred before the High Court. In the said appeal, an application was filed under section 8 of the Arbitration and Conciliation Act on 11.08.2005 on which ground, the appeal was not pressed by the petitioner.

**6.** It is on record that the respondent sent a notice on 09.04.2009 wherein both the agreements were referred and names of three persons were proposed as Arbitrator and the venue of the Arbitration was said to be at Mumbai. The said notice was replied by the petitioner denying the allegations and not agreeing to any of the name of the three persons, the venue at Mumbai was also denied. Thereafter, on 26.05.2009, the petitioner instituted proceedings under Section 9 of the Arbitration and Conciliation Act in the Court of District Judge, Lucknow which was registered as Arbitration Case No.28 of 2009. In the said case, interim protection was sought with regard to protection of possession and business over the premises and, the said application was admitted on 26.05.2009 and an order of status-quo was passed on 21.07.2009 (Anneuxre no.10).

**7.** It is stated that in the said case No.28 of 2009, the respondent filed an application bringing on record the fact that the arbitrator had

already passed an award on 04.07.2012. It is argued that on this date, the petitioner gained knowledge of the ex-parte award. It is stated that despite request, no signed copy of the award has been served to the petitioner till date, however, the petitioner preferred objections under section 34 of the Arbitration Act on 01.10.2012 for setting aside the award vide petition which is contained in Annexure no.12. at Lucknow. It is stated that the award in question contained various irregularities and illegalities. It is stated that during the pendency of the said case, the Execution Petition came to be filed under section 36 of the said Act by M/s E-City which was registered as Execution Petition No.133 of 2021, which is said to be pending. The petitioner also filed an application under section 11 of the Arbitration Act before this Court, which came to be dismissed on 18.11.2023 and a review application filed by the petitioner was also dismissed. The Special Appeal preferred against the orders under section 11 and the review application also came to be dismissed by the Supreme Court in Special Appeal (D) No.266 of 2024 vide order dated 08.05.2024.

**8.** It is stated that a petition under Article 227 No.2676 of 2024 (E-City Entertainment India Pvt. Ltd vs. Moksh Innovations Inc.) was filed by M/s E-City seeking early disposal of the execution proceedings and on the said orders were passed by this court directing the disposal of the proceedings under section 34 vide order dated 23.07.2024. On the basis of the arguments advanced before the Commercial Court, the Commercial Court proceeded to pass an order on 08.07.2025 returning the objection filed by the petitioner under section 34 for being filed before the appropriate court having jurisdiction as, the Commercial Court was of the view that the objections have been filed before the Court at Lucknow which did not have the jurisdiction in view of the prescriptions contained in the

Arbitration Act and two agreements. Challenging the said, the present petition has been filed.

**9.** The submission of Sri J. N. Mathur, learned Senior Advocate assisted by Sri Piyush Kumar Agarwal and Sri Ramit Singh is that the order impugned is bad in law inasmuch as, there is a distinction between the consent of 'seat' and 'venue' in the Arbitration Clause. He argues that in the first agreement, only the venue was prescribed at Mumbai and not the seat. He argues that none of the part of cause of action had arisen at Mumbai, therefore, the award was without jurisdiction and any proceedings seeking setting aside of the award had to be filed at Lucknow, which were rightly filed.

**10.** Reliance is placed upon the judgment of the Supreme Court in the case of **Hindustan Construction Company Limited vs. NHPC Limited and another; (2020) 4 SCC 310.** The counsel for the petitioner also relies upon the judgment of this court in the case of **M/s Devi Dayal Trust and others vs. M/s Rajhans Towers Private Limited (2024):AHC:89177.** He also relies upon the judgment of the **Supreme Court in the case of State of West Bengal and others vs. Associated Contractors ; (2015) 1 SCC 32** .

**11.** The next point argued by Sri J. N. Mathur, learned Senior Advocate is that in view of the prescriptions contained in Section 42 of the Act, all the proceedings had to be initiated and filed at Lucknow, more so as the petition under section 9 was filed at Lucknow, which was the first petition under section 9 and thus, all the subsequent action ought to have been taken at Lucknow and the petitioner had rightly filed the objection under section 34 of the Act at Lucknow and to that extent, the order impugned is bad in law.

**12.** The counsel for the respondent, on the other hand, argues that in the light of the agreement, it was clearly provided that the 'Venue' of the Arbitration will be at Mumbai. It was further qualified with the stipulation that the Courts at Mumbai would have jurisdiction. It is further argued that in the second agreement, although Lucknow was provided as the Venue of Arbitration, however both the arguments were interlinked and the main agreement was the agreement which prescribed for the Venue at Mumbai. She places reliance on the judgment of the Supreme Court in the case of **BGS SGS SOMA JV vs. NHPC Limited; (2020) 4 SCC 234** as well as the judgment of the Supreme Court in the case of **Hindustan Construction Company Limited vs. NHPC Limited and another; (2020) 4 SCC 310.**

**13.** In the light of the arguments advanced and recorded above, it is essential to see the arbitration clause as well as, the jurisdiction clause recorded in the two agreements which are contained in paragraph XIX of Leave and License Agreement dated 01.02.2007. Relevant portion of para XIX is reads as under :

> *"Further, any disputes arising between the parties hereto, under or in respect of these presents and/or in respect of any issues arising out of the license shall be governed by and construed in accordance with the laws of India. The Venue of Arbitration shall be Mumbai. The Courts in Mumbai alone shall have the exclusive jurisdiction."*

The second agreement which was a tripartite agreement (Maintenance Agreement) dated 01.02.2007 was mainly in respect of maintenance of the property and contained the following clause :

> *"ARBITRATION: Excepting the cases of theft/pilferage of energy or interference with the meter etc. (which are inter-alia offences) and only after the Bill amount payable ore paid to Licensor, in the event of any differences or disputes arising between the Licensor and / or Property Manager*

> *and the Licensee in respect of any matter connected with the accuracy of Bills, supply of services or interpretation of any of these terms and conditions which cannot be determined amicably, 'or settled between Licensor / Property Manager and the Licensee, the matter shall be referred to arbitration of a Sole Arbitrator appointed by the Licensor / Property Manager. Reference to arbitration shall be without prejudice to the right of the Licensor/ Property Manager to effect recovery of arrears of dues (through disconnection of supply or otherwise). The decision of the arbitrator shall be final and binding on the parties. The Licensee hereby confirms that it shall have no objection to his appointment even if the persons so appointed, as the arbitrator, is an employee or advocate of the Licensor / Property Manager or its otherwise connected with the Licensor / Properly Manager and the Licensee confirms that notwithstanding such relationship/connection, the Licensee shall have no doubts as to the independence or impartiality of the said arbitrator.*
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> *The District Court and High Court of Uttar Pradesh alone shall have the jurisdiction in deciding any matters relating to this agreement."*

**14.** In the light of, there being stipulations specifying Venue of the Arbitration at Mumbai, it is essential to notice that the Supreme Court had extensively considered the provision of the Venue prescribed in the arbitration proceedings in the case of **BGS SGS SOMA JV (supra)** and had held as under :

> ***82.*** *On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of*

*arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration.*

***94.*** The decision in *Hardy Exploration & Production (India) Inc.* [*Union of India* v. *Hardy Exploration & Production (India) Inc.*, (2019) 13 SCC 472 : (2018) 5 SCC (Civ) 790] is therefore contrary to the five-Judge Bench in *BALCO* [*BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810], in that it failed to apply the *Shashoua* [*Shashoua* v. *Sharma*, 2009 EWHC 957 (Comm) : (2009) 2 Lloyd's Law Rep 376] principle to the arbitration clause in question. The *Hardy Exploration & Production (India) Inc.* [*Union of India* v. *Hardy Exploration & Production (India) Inc.*, (2019) 13 SCC 472 : (2018) 5 SCC (Civ) 790] decision would lead to the result that a foreign award would not only be subject to challenge in the country in which it was made, but also subject to challenge under Section 34 of Part I of the Arbitration Act, 1996, which would lead to the chaos spoken of in para 143 of *BALCO* [*BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , with the concomitant risk of conflicting decisions, as held in *Venture Global Engg.* [*Venture Global Engg.* v. *Satyam Computer Services Ltd.*, (2008) 4 SCC 190] [overruled in *BALCO* [*BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] ], which would add to problems relating to enforcement, and undermine the policy underlying the New York Convention and the UNCITRAL Model Law. We, therefore, declare that the judgment in *Hardy Exploration & Production (India) Inc.*, being contrary to the five-Judge Bench in *BALCO*, cannot be considered to be good law.

> ***97.*** *Given the fact that if there were a dispute between NHPC Ltd. and a foreign contractor, Clause 67.3(vi) would have to be read as a clause designating the "seat" of arbitration, the same must follow even when sub-clause (vi) is to be read with sub-clause (i) of Clause 67.3, where the dispute between NHPC Ltd. would be with an Indian contractor. The arbitration clause in the present case states that "Arbitration proceedings shall be held at New Delhi/Faridabad, India…", thereby signifying that all the hearings, including the making of the award, are to take place at one of the stated places. Negatively speaking, the clause does not state that the venue is so that some, or all, of the hearings take place at the venue; neither does it use language such as "the Tribunal may meet", or "may hear witnesses, experts or parties". The expression "shall be held" also indicates that the so-called "venue" is really the "seat" of the arbitral proceedings. The dispute is to be settled in accordance with the Arbitration Act, 1996 which, therefore, applies a national body of rules to the arbitration that is to be held either at New Delhi or Faridabad, given the fact that the present arbitration would be Indian and not international. It is clear, therefore, that even in such a scenario, New Delhi/Faridabad, India has been designated as the "seat" of the arbitration proceedings.*
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> ***98.*** *However, the fact that in all the three appeals before us the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, would lead to the conclusion that both parties have chosen New Delhi as the "seat" of arbitration under Section 20(1) of the Arbitration Act, 1996. This being the case, both parties have, therefore, chosen that the courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the "seat" has been chosen, which would then amount to an exclusive jurisdiction clause so far as courts of the "seat" are concerned.*

**15.** In the light of the said judgment, it is clear that it was the Venue at Mumbai, which had the jurisdiction, more so, when the provision for Venue was qualified with the specific provision that the Courts at Mumbai had the jurisdiction. Thus, the first issue is decided against the petitioner.

**16.** Coming to the second submission with regard to the application filed under Section 9 and the arguments founded on provisions contained in Section 42 of the Act, admittedly, the proceedings were filed at Lucknow which were registered as Arbitration Case No.28 of 2009 and an order of status-quo was also passed on 21.07.2009. The arbitration proceedings at Mumbai, commenced subsequent thereto. On the first brush, the argument founded on the mandate of Section 42 appears to be worthy of consideration, however, in view of the judgment of the Supreme Court in the case of **Hindustan Construction Company Limited (supra),** wherein it is clarified that if the 'seat' of arbitration is designated, the same operates as an exclusive jurisdiction clause and it is only the Courts where the 'seat' is located, would have the jurisdiction and even the application under section 9 could be filed only before the said Court. The necessary observations made by the Supreme Court are contained in para 3 which is as under :

> *3. This Court in Civil Appeal No. 9307 of 2019 entitled BGS SGS Soma JV v. NHPC [BGS SGS Soma JV v. NHPC, (2020) 4 SCC 234] delivered a judgment on 10-12-2019 i.e. after the impugned judgment was delivered, in which reference was made to Section 42 of the Act and a finding recorded thus : (SCC pp. 287-88, para 59)*
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> > *"59. Equally incorrect is the finding in Antrix Corpn. Ltd. [Antrix Corpn. Ltd. v Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non-obstante clause, and then goes on to state '...where with respect to an arbitration agreement any application under this Part has been made in a court...' It is obvious that the application made under this part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part-I be made*

> *only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, 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. Again, an application under Section 9 of the Arbitration Act, 1996 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" of 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 Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay [Konkola Copper Mines v. Stewarts & Lloyds of India Ltd., 2013 SCC OnLine Bom 777 : (2013) 5 Bom CR 29], [Nivaran Solutions v.Aura Thia Spa Services (P) Ltd., 2016 SCC OnLine Bom 5062 : (2016) 5 Mah LJ 234] and Delhi [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] High Courts in this regard is incorrect and is overruled."*

**17.** The reference to the judgment in the case of **State of West Bengal and others vs. Associated Contractors; (2015) 1 SCC 32,** would not change the position inasmuch as in the said case, the court had only decided that the bar under section 42 is not applicable to certain applications including the application made under section 8, section 11 and also to applications filed before the Court inferior to principal Civil Court having no original jurisdiction and the applications filed in a court that has no subject matter jurisdiction.

**18.** In fact in the light of law explained in the case of **Hindustan Construction Company (supra)** and the fact that the application under section 9 was filed before the Court having no subject matter of jurisdiction as, the Venue was decided mutually in between the parties to be at Mumbai, the interpretation would not change.

**19.** Coming to the judgment of this court in the case of **M/s Devi Dayal Trust and others vs. M/s Rajhans Towers Private Limited (2024):AHC: 89177,** this court had decided the matter on the foundation of Section 42 mainly because, the application was first filed by one of the parties at Gautam Buddh Nagar and it was held that once the party has chosen the Venue and had initiated the proceedings, all the subsequent proceedings had to be instituted at the said place. The said judgment would also not alter the conclusion arrived at by this court.

**20.** On the basis of the reasoning recorded above, no error can be found with the order of the trial court warranting interference in exercise of power under Article 227 of the Constitution of India.

**21.** The writ petition is **dismissed.**

**Date: September 08, 2025** **[Pankaj Bhatia, J.]**
*VNP/-*