

F-45

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

+ O.M.P. 423/2003

M/S. CLASSY MOBIKE SHOP PVT. LTD. Petitioner
Through: None.

versus

M/S.YAMAHA MOTOR
INDIA PVT. LTD.AND ANR. Respondents
Through: Mr. Vijay Nair, Advocate with
Mr. Lalan Sinha and Mr. Rajat
Joneja, Advocates, for respondent
No.1.

% Date of Decision : May 06, 2010

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

J U D G M E N T

MANMOHAN, J (ORAL)

1. Despite the matter having been shown as part heard in the cause list, none has appeared for the petitioner today. Even yesterday, none had appeared for the petitioner. Yesterday's order is reproduced hereinbelow:

“Despite the matter having been called out a number of times, none has appeared for the petitioner. Today, I

have partially heard learned counsel for respondent no.1.

In the interest of justice, matter is adjourned to 6th May, 2010. Matter to retain its seniority. Registry is directed to show this matter as 'part heard'."

2. Consequently, I have no other option but to proceed ahead with the matter.

3. Upon perusal of the objection petition, I find that the primary ground raised by the petitioner-objector is that the Dealer's Sales Agreement does not constitute a valid agreement as it is not signed by the respondent No.1-claimant.

4. Mr. Vijay Nair, learned counsel for respondent No.1-claimant states that Dealer's Sales Agreement was executed in triplicate and one of the copies that had been filed with the claim petition was not executed by the respondent No.1-claimant. But as the two other Agreements had been executed by both the parties, a copy of the Dealer's Sales Agreement duly executed by both the parties was subsequently filed before the Registrar of ICA on 13th June, 2002. He has also handed over in Court today a photocopy of the Dealer's Sales Agreement duly executed by the respondent No.1-claimant.

5. In any event, I find that this objection of the petitioner-objector is untenable in law as this Court in *TVC Sky Shop Ltd. vs. Sahara Airlines Ltd. (Now known as Jet Lite (India) Ltd.)* reported in

MANU/DE/0255/2010 has held as under:-

“2. The respondent contested the petition and first filed a counter affidavit dated 18th February, 2008; in the said counter affidavit, it is inter alia pleaded that the agreement containing the arbitration clause relied upon by the petitioner and filed before the court is not signed/accepted by the petitioner at the designated place marked "Acceptance" (it is signed by the respondent only); it is the case of the respondent that as per the terms of the agreement, it was to become effective only upon receipt by the respondent of signed copy of the agreement from the petitioner; that the petitioner never signed the agreement and returned the same to the respondent and hence no arbitration agreement came into being between the parties. The petitioner there upon moved IA No. 6271/2008 in this Court for permission to produce before the Court, the original agreement bearing the signatures of the petitioner also. The said application was allowed on 21st May, 2008. This Court on 18th August, 2008 directed the respondent to file an affidavit clarifying its stand on the pleading of the petitioner of the agreement having been acted. The respondent thereafter filed an additional affidavit and also filed IA No. 12290/2008 under Section 340 of the Cr.P.C. In the additional affidavit, while admitting the transactions with the petitioner, it is stated that the same were on the basis of invoices raised by the petitioner on the respondent and which did not contain an arbitration clause and contain clause regarding jurisdiction of Mumbai. The senior counsel for the respondent has urged that though the petitioner did not return the signed agreement but the parties nevertheless proceeded to transact business. The application under Section 340 of the Cr.P.C. has been filed on the ground that while the stand of the petitioner originally was that the copy of the agreement filed along with the petition was the only copy available with it, the signed copy having already been forwarded to the respondent, the petitioner forged the agreement subsequently filed and bearing the signatures of both the parties.

xxx

xxx

xxx

8. In the present case, it is the respondent which forwarded the duly signed agreement in writing containing an arbitration clause to the petitioner, showing its willingness for arbitration of disputes if any arising between the parties. The respondent thereafter accepted the goods/services from the petitioner. Such acceptance is also in writing through invoices. There is nothing in the said invoices to indicate that the respondent had agreed to waive the provision for arbitration contained in the document forwarded by the respondent itself to the petitioner. In the opinion of this Court from such conduct of the parties, an arbitration agreement came into existence between the parties. The printed clause in the invoices of the same being subject to Mumbai jurisdiction is not found to be inconsistent to the arbitration agreement between the parties.”

6. Since in the present case, petitioner-objector has accepted goods/services from the respondent No.1-claimant, in my opinion, petitioner-objector would be bound by the Dealer's Sales Agreement including the arbitration clause contained in the said agreement.

7. In view thereof, the objections raised in the present petition being devoid of merit are dismissed but with no order as to costs.

MANMOHAN,J

MAY 06, 2010

js