
(2016) 02 AHC CK 0164

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1101 of 2016.

Ballabh Lal

APPELLANT

Vs

Kukkoo Motors Finance Pvt. Ltd. & another

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6), 8

Citation : (2016) 4 ADJ 659 : (2016) 4 ALLJ 241 : (2016) 3 AllWC 3127 :
(2016) 116 ALR 111 : (2017) 1 ArbILR 459

Hon'ble Judges : Suneet Kumar, J.

Bench : Single Bench

Advocate : Dinesh Kumar, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Suneet Kumar, J. - The plaintiff/applicant has approached this Court assailing the orders passed by the courts below purportedly under Section 8 of the Arbitration and Conciliation Act, 1996, whereby, the parties have been referred to the Arbitrator in terms of the agreement.

2. The facts would reveal that the applicant instituted a suit being Original Suit No. 594 of 1998 (Sri Ballabh v. Kukkoo Motors Finance Pvt. Ltd) for permanent injunction restraining the respondent-finance company from transferring the vehicle, as well as, seeking mandatory injunction to return the vehicle to the applicant. The applicant purchased a truck after obtaining loan of Rs. 1,50,000/- from the respondent-finance company, the applicant defaulted, thereafter, upon termination of the Hire-Purchase agreement the vehicle was seized and auctioned by the respondent-finance company. It is averred in the plaint that the respondent-finance company had taken signatures on blank papers, further, the applicant had not signed any agreement with the respondent-company.

3. The respondent appeared and filed an application under Section 8 contending that the parties be referred to arbitration.

4. Initially, the trial court rejected the application filed under Section 8, however, in revision, the order was reversed and the matter remanded. Upon remand, the trial court considering the material available on record and the agreement allowed section 8 application and directed the parties to submit name of the Arbitrators under Section 11 of the Arbitration and Conciliation Act, 1996(1). The revisional court affirmed the order. Aggrieved, the applicant is assailing the revisional order dated 29 August 2009, as well as, review order dated 10 December 2015 passed by the Additional District Judge, Court No. 2, Mathura in Civil Misc. Case No. 15 of 2010 (Ballabh Lal v. Kukko Motors Finance Pvt. Ltd).

(1)(Arbitration Act)

5. The revisional court in the impugned order categorically noted that there is an agreement between the parties, whereon, the applicant appended his signature, therefore, was of the opinion that the trial court committed no error in referring the parties to settle the dispute through an arbitrator. However, the revisional court declined to interfere with the consequential order passed by the trial court directing the parties to submit the name of the arbitrators under section 11 of the Act. The applicant preferred a review application contending that the case cited by the revisional court has since been overruled by the Supreme Court, therefore, an error apparent on the face of the record.

6. Be that as it may, learned counsel for the applicant would not dispute that the applicant approached the respondent-finance company to obtain loan which was duly sanctioned and released to the applicant, thereafter, the applicant purchased the vehicle which was on hire purchase owned by the respondent-finance company. It is sought to be urged that certain blank papers and document were got signed from the applicant by the finance company, of which, he had no knowledge. The averments in the plaint would neither allege fraud or misrepresentation on behalf of the respondent-finance company nor would reflect that the dispute that is being sought to be raised is beyond the scope of the arbitration agreement. The dispute, inter se, parties primarily relates to non payment of the loan and the consequential action taken by the respondent-finance company to recover the dues by seizing the vehicle and thereafter auctioning it.

7. In these circumstances, the courts below were justified in referring the parties to seek arbitration as per arbitration clause. The second part of the order passed by the trial court directing the parties to suggest name of arbitrators under section 11 of the Act, in my opinion, was without jurisdiction.

8. It has been settled by the Constitution Bench (Seven Judges) of Supreme Court in S.B.P. and Company v. Patel Engineering Limited and another 2005(8) SCC 618, that Hon"ble the Chief Justice of India or the Chief Justice High Court, as the case may be, have been conferred exclusive power under Section 11(6) of the Act, 1996 to appoint an arbitrator. The civil court or any other court for that matter would have no jurisdiction to exercise powers under Section 11(6).

9. In *N. Radhakrishnan v. Maestro Engineers and others* (2010) 1 SCC 72, the question before the Supreme Court was whether though the subject matter of the suit was within the jurisdiction of the arbitrator, or whether the arbitrator was competent to deal with the dispute raised by the parties, the Court relying on its earlier decision rendered in *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums* (2003) 6 SCC 503, observed that if an agreement between the parties before the civil court, there is an arbitration clause, it would, therefore, be mandatory for the civil court to refer the dispute to an arbitrator.

10. In the facts before the Court in *Radhakrishnan's* case (*supra*) serious allegations of fraud were made against a party which in the opinion of the Court could not have been gone into by the arbitrator. The questions of fraud and misrepresentation in the accounts of partnership firm was held to be beyond the scope of the arbitrator and the matter could be effectively decided only by a civil court. It was held that a civil court rightly refused to refer the matter to arbitrator, where complicated question of fact and law is involved and serious allegation of fraud is made.

11. Learned counsel for the applicant would submit that in view of *Radhakrishnan's* case, the civil court was competent to entertain the suit and the matter should not have been referred to the arbitrator.

12. The facts of the present case is distinguishable, for the reason that there is no allegation of fraud or misrepresentation to the extent that it would involve complicated question of law and fact which require evidence to be led by the parties, only a bald allegation was made by the applicant, that he was made sign on printed forms and blank paper, by the respondent company, therefore, would allege that fraud was committed. Merely signing of forms and agreement would not constitute fraud. It is not being disputed that the transaction is a pure commercial transaction entered into by the applicant on the terms and conditions agreed by the applicant stipulated in the hire purchase agreement. Mere allegation that the agreement contains unfilled blank space would not mean that applicant had not consented to abide by the terms and conditions of the agreement which includes a clause to refer the dispute, if arises between the parties, to a sole arbitrator. Since there is an agreement between the parties, to refer the dispute or differences arising out of the agreement to the arbitrator; and in case, either party ignoring the terms of the agreement, approaches the civil court and the other party, in terms of section 8 of the Arbitration Act, moves the court for referring the parties the arbitration, in view of the peremptory language of Section 8, it is obligatory for the court to refer the parties to arbitration in terms of the agreement. (*Vide: P. Anand Gajpati Raju v. P.V.G. Raju* 2000(4) SCC 539 and *Branch Manager, Magma Leasing and Finance Limited and another v. Potluri Madhvilata and another* (2009) 10 SCC 103).

13. Bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court is not contemplated in Section 8. (*Vide: Sukanya Holdings (P) Limited v. Jayesh Pandya and another* (2003) 5 SCC 531).

14. There would be no impediment of the financier in taking the financed vehicle in terms of the agreement unless the contract is held to be unconscionable or opposed to public policy. (Vide: Orix Auto Finance (India) Limited v. Jagminder Singh and another (2006) 2 SCC 598).

15. In a recent judgment in M/s Sundaram Finance Limited and another v. T. Thankam Civil Appeal No. 2079 of 2015, decided on 2 February 2015, the Supreme Court upon considering the aforementioned judgments, in para 15 of the report, observed as follows:

"Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute. The general law should yield to the special law-generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court."

The order of the trial court declining to refer the matter to the arbitrator was set aside.

16. For the reasons and law stated herein above, the court below was justified in the facts of the case in referring the parties as per the arbitration clause to seek redressal under the Arbitration Act, however, the order directing the parties to furnish the name of arbitrators under Section 11 of the Arbitration Act being without jurisdiction is set aside.

17. The petition is partially allowed. It will be open for the parties to seek redressal regarding appointment of the arbitrator as per the provisions of the Arbitration Act.

18. No cost.