
(2007) 08 P&H CK 0147
In the Punjab And Haryana At Chandigarh

Centurion Bank of Punjab

APPELLANT

Vs

Maresh Lal

RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 16, 8

Citation : (2008) 1 ARBLR 280 : (2007) 4 PLR 159

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Permod Kohli, J.—Petitioner is aggrieved by order dated 6.1.2006 passed by Civil Judge (Junior Divn.), Jalandhar whereby, application filed by the petitioner-bank under Sections 8 and 11 of the Arbitration and Conciliation Act, 1996 (for short the "Act") has been rejected on the ground that arbitration agreement is vague.

2. Briefly stated, the facts as emerge from the record reveal that the respondent filed a suit for mandatory and permanent injunction seeking a direction for return of the vehicle which was seized by the petitioner-bank for non-payment of loan amount During the pendency of the suit, the petitioner bank, defendant in the suit made an application under Sections 8 and 11 of the Act for a prayer to refer the parties to the Arbitration in view of the arbitration Clause in the agreement executed between the parties with regard to the transaction in question. The agreement is a loan-cum-hypothecation agreement and Clause 24 of the agreement contains the arbitration Clause (Annexure P-1). Clause 24 of the agreement reads as under:

Except where it has been provided otherwise, any dispute of difference arising out or in connection with the present agreement between the parties including any dispute of difference relating to the interpretation of the agreement or any clause thereof shall be referred to sole arbitration of, or of a person appointed by Mr...and the provisions of the arbitration and conciliation act, 1996 and rules

thereunder and any amendment thereto from time to time shall apply. No objection shall be taken on the ground that the arbitrator so appointed is an employee of the bank or is in any way associated with the bank. The award of the arbitration shall be final, conclusive and binding on all the parties. The arbitrator shall be competent to decide whether any matter of dispute of difference referred to him falls within purview of arbitration as provided for above and/or for any matter relating to arbitration under the Arbitration and Conciliation Act, 1996. The venue of the arbitration proceedings shall be at Mumbai.

3. A reading of Clause 24 of the Act indicates that all disputes and differences between the parties are required to be adjudicated upon by the arbitrator to be appointed by the parties or the person whose name is not mentioned and the column is bank. The name of a particular person who is to be appointed as Arbitrator is also nowhere mentioned in the agreement. Mere non-mentioning of the name of Arbitrator or the authority, who may be called upon to appoint arbitrator, does not by itself nullify the agreement in any manner. Clause 24 of the Act authorises the parties to appoint Arbitrator with their mutual consent. On failure of parties to appoint an agreed arbitrator, arbitrator can be appointed under law by the Chief Justice in terms of Section 11 of the Act. It has been vehemently argued on behalf of the respondent that the existence and validity of the agreement can only be decided by the Civil Court and since the agreement is vague, its validity cannot be determined in proceedings u/s 8 of the Act or by the Arbitrator. This argument is totally misconceived. Section 16 of the Arbitration and Conciliation Act, provides and confers the jurisdiction to decide the question of existence or validity of the arbitration agreement upon the arbitrator and for purpose of invoking the arbitration; the Clause containing arbitration itself constitutes an independent agreement. Therefore, question as to whether the entire agreement is valid or not is to be decided by the arbitrator in terms of Section 16 of the Act. The Courts below have failed to consider this important issue and mis-interpreted Clause 24 and the agreement as vague.

4. In view of the fact, that Clause 24 itself clearly provides for adjudication by arbitration, and all kinds of disputes and differences fall within the scope and ambit of arbitration clause, it was obligatory upon the trial court to have referred the parties to arbitration leaving the parties to approach in terms of Section 11 for nomination/ appointment of arbitrator. The impugned order is not sustainable in law and is liable to be set aside. I order accordingly. Application of the petitioner for reference under Sections 8 and 11 of the Act is allowed only to the extent that parties are referred to the arbitration and liberty is granted to them to resort to recourse as provided u/s 11 of the Act for appointment/nomination of the arbitrator.

5. It has been brought to my notice that when the notice of motion was issued in this revision, this Court had clearly observed that filing of written statement by the petitioner shall not affect his right in the present revision petition. The

petitioner has already filed the written statement His right to seek arbitration is, thus, not waived as is clearly stipulated by the Court.

The revision petition is, accordingly, allowed.